

THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION:

the travaux préparatoires and selected documents

IV. Key Post-Charter Convention Documents

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a. The Mandate of the Convention on the Future of Europe 6219

Document Reference	Title	Date	Language	Page
SN 300/1/01 REV 1	Presidency Conclusions: European Council Meeting in Laeken, 14 and 15 December 2001 [Extracts]	15/12/2001	EN	6220

b. Meeting Records – Plenary, Praesidium and Working Group II 6242

CONV 14/02	Report on plenary of 21-22 March 2002	25/03/2002	EN	6243
CONV 40/02	Report on plenary of 15-16 April 2002	25/04/2002	EN	6254
None	Summary of Conclusions: Meeting of the Praesidium – Brussels, 25 April 2002	06/05/2002	EN	6266
None; annex: SN 2252/02	Summary of Conclusions: Meeting of the Praesidium – Brussels, 8 May 2002	08/05/2002	EN/FR	6269
CONV 52/02	Praesidium Note: Working Groups	17/05/2002	EN	6274
CONV 72/02	Note from Vitorino: Mandate of the Working Group on the Charter	31/05/2002	EN	6278
CONV 77/1/02 REV 1	Praesidium Note: Composition of the Working Groups	14/06/2002	EN	6283
CONV 124/02	Secretariat Note: Working Groups	19/06/2002	EN	6290
CONV 121/02, WG II 2	Agenda for meeting of the Working Group on Incorporation of the Charter/Accession to the ECHR on Tuesday 25 June 2002	19/06/2002	EN	6294
CONV 164/02, WG II 4	Summary of meeting on 25 June 2002	28/06/2002	EN	6295
CONV 172/02, WG II 5	Agenda for meeting of the Working Group on Incorporation of the Charter/Accession to the ECHR	03/07/2002	EN	6298
None	Summary of Conclusions: Meeting of the Praesidium – Brussels, 10 July 2002	12/07/2002	EN	6299
CONV 196/02, WG II 6	Provisional Agenda for the Meeting of the Working Group on Incorporation of the Charter/Accession to the ECHR on Tuesday 23 July 2002	15/07/2002	EN	6302
CONV 203/02, WG II 7	Summary of the meeting held on 12 July 2002 chaired by Commissioner António Vitorino	18/07/2002	EN	6304
CONV 223/02, WG II 8	Summary of the meeting held on 23 July 2002 chaired by Commissioner António Vitorino	31/07/2002	EN	6309
WG II WD 13	Interventions of Schoo, Piris and Petite at 23/07/02 meeting	05/09/2002	EN	6318

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CONV 244/02, WG II 9	Agenda for the meeting of the Working Group on Incorporation of the Charter/Accession to the ECHR on Tuesday 17 September 2002	09/09/2002	EN	6369
None	Summary of Conclusions: Meeting of the Praesidium – 11 September 2002	13/09/2002	EN	6370
CONV 163/02, WG II 3	Secretariat Note: Timetable of meetings	18/09/2002	EN	6373
WG II WD 19	Hearing of Judge Skouris on 17/09/02	27/09/2002	EN	6374
CONV 295/02, WG II 10	Summary of the meeting held on 17/09/02 chaired by Commissioner António Vitorino	26/09/2002	EN	6383
CONV 306/02, WG II 11	Agenda for the meeting of Working Group II on 4 October 2002 14h30 - 18h30	30/09/2002	EN	6393
CONV 309/02, WG II 12	Agenda for the meeting of Working Group II on 7 October 2002 10h00 to 18h30	01/10/2002	EN	6394
CONV 348/02, WG II 13	Agenda for the meeting of Working Group II on 21 October 2002 9h30 to 13h00	16/10/2002	EN	6395
CONV 350/02, WG II 14	Summary of the meeting held on Friday 4 October 2002 chaired by Commissioner António Vitorino	17/10/2002	EN	6396
CONV 351/02, WG II 15	Summary of the meeting on Monday 7 October 2002 chaired by Commissioner António Vitorino	17/10/2002	EN	6399
CONV 360/02, WG II 17	Summary of the meeting of Working Group II held on 21 October 2002	23/10/2002	EN	6402
CONV 378/02	Summary report of the plenary session – Brussels, 28 and 29 October 2002	31/10/2002	EN	6403
None	Verbatim minutes from the session on 28 October 2002: The Charter of Fundamental Rights [Extract]	28/10/2002	MULTI	6423
None	Verbatim minutes from the session on 29 October 2002: The Charter of Fundamental Rights	29/10/2002	MULTI	6431
CONV 601/03	Summary report on the plenary session – Brussels, 27 and 28 February 2003 [Extract]	11/03/2003	EN	6466
None	Verbatim minutes from the session on 27 February 2003: Debate on Draft Articles 1-3; Debate on Draft Articles 5-7	27/02/2003	MULTI	6469
CONV 674/03	Summary report of the additional plenary session on amendments relating to articles 1 to 7 of the Draft Constitution, Brussels, 26 March 2003	08/04/2003	EN	6512
None	Summary of Proceedings: Meeting of the Praesidium – Brussels, 21-23 May 2003	26/05/2003	EN	6526
CONV 783/03	Summary report on the plenary session – Brussels, 30 and 31 May 2003 [Extracts]	16/06/2003	EN	6529
CONV 814/03	Summary report of the Plenary Session – Brussels, 11 and 13 June 2003	19/06/2003	EN	6533

c. Drafts, and Members' Amendments and Contributions

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CONV 116/02, WG II 1	Secretariat Note: Modalities and consequences of incorporation into the Treaties of the Charter of Fundamental Rights and accession of the Community/Union to the ECHR	18/06/2002	EN	6541
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WG II WD 1	Contribution from Mr. Bobby McDonagh on incorporation and accession	24/06/2002	EN	6567
CONV 157/02	Note submitted by Jacques Santer: Contribution from the Secretary General of the Council of Europe	25/06/2002	EN	6570
WG II WD 2	Contribution from Ms. Elena Paciotti (MEP)	28/06/2002	EN	6579
WG II WD 3	Paper by Mr. António Vitorino on the relationship between the Charter and the Union's competencies	05/07/2002	EN	6581
WG II WD 4	Working document by Baroness Scotland on the "missing" horizontal article in the Charter of Rights	09/07/2002	EN	6585
WG II WD 5	Working document by Mr. Vytenis Povilas Andriukaitis on the Legal status of the Charter	09/07/2002	EN	6591
WG II WD 6	Working document by Ms. Elena Paciotti on answers to questions in chapter II of CONV 116/02	12/07/2002	EN	6594
WG II WD 7	Working document by Mr. Vytenis Povilas Andriukaitis on answers to some questions raised at the first meeting of the WG	12/07/2002	EN	6634
WG II WD 8	Working Document from Mr António Vitorino circulating a Council of Europe study on technical and legal issues of accession	12/07/2002	EN	6639
CONV 193/02	Note from Mr van Linden: Parliamentary Assembly Resolution 1290 (2002)	17/07/2002	EN	6676
WG II WD 9	Working Document from Mr. António Vitorino on possible drafting adjustments to arts 51(2) and 52(2) and on "replication"	18/07/2002	EN	6694
WG II WD 10	Working Document by Mr. Alexander Arabadjiev on "replication"	22/07/2002	EN	6699
WG II WD 11	Working Document by Mr. Janusz Trzcinski on CONV 116/02, concerning incorporation and accession	23/07/2002	EN	6701
WG II WD 12	Working document by Réne van der Linden on the Charter/ECHR relationship	25/07/2002	EN	6703
WG II WD 14	Note by Neil MacCormick on clarifying horizontal articles	04/09/2002	EN	6705
WG II WD 15	Proposals by Mr. Ingvar Svensson and Mrs. Lena Hjelm-Wallén on accession	12/09/2002	EN	6707
WG II WD 16	Note by Baroness Scotland on the "missing horizontal": interim progress report	13/09/2002	EN	6716
WG II WD 17	Working Document by Professor Jürgen Meyer on enforceability of Charter and judicial remedies	16/09/2002	EN	6721
WG II WD 18	Working Document by Mr Esko Helle, supported by Messers Andriukaitis and MacCormick, on accession to the ECHR	16/09/2002	EN	6724
WG II WD 20	Working Document by M. Ben Fayot circulating a note by Sir Francis Jacobs, Advocate General, on effective judicial remedies	27/09/2002	FR/EN	6728
WG II WD 21	Working Document from Mr. António Vitorino on effective judicial remedies and access of individuals to the ECJ	01/10/2002	EN	6738
WG II WD 22	Working Document de Mme Elena Paciotti qui contient un projet de Constitution de l'Union basé sur les résolutions du Parlement européen	03/10/2002	FR	6745
WG II WD 23	Compromise proposals from António Vitorino on drafting adjustments in the horizontal articles	04/10/2002	EN	6801
WG II WD 24	Comments by Mr. Vytenis Povilas Andriukaitis on horizontal articles	09/10/2002	EN	6806
WG II WD 25	Draft final report	14/10/2002	EN	6808
WG II WD 26 REV 1	Document de travail 26: commentaires au projet de rapport final du groupe (WD 025)	18/10/2002	MULTI	6826

Document Reference	Title	Date	Language	Page
CONV 354/02, WG II 16	Final report of Working Group II	22/10/2002	EN	6870
None	Note summarising report	29/10/2002	EN	6887
CONV 368/02	Contribution from Mr Iñigo Méndez de Vigo, Mr Klaus Hänsch and Mr Andrew Duff: European Parliament Resolution on the impact of the Charter and its future status	25/10/2002	EN	6888
CONV 369/02	First draft Constitutional Treaty [Extract]	28/10/2002	EN	6896
CONV 495/03	Contribution from Mr Erwin Teufel: Freiburg Draft of the European Constitutional Treaty [Extracts]	20/01/2003	EN	6906
CONV 528/02	Præsidium Note: Draft of Articles 1 to 16 of the Constitutional Treaty [Extracts]	06/02/2003	EN	6914
CONV 567/03	Contribution from Mr David Heathcoat-Amory: "The EU Convention, the Council of Europe and the Future of Europe"	19/02/2003	EN	6921
CONV 574/1/03 REV 1	Analysis of Reactions to draft Articles 1 to 16 of the Constitutional Treaty [Extracts: arts 2 and 5]	26/02/2003	EN	6926
CONV 607/03	Letter from several members seeking incorporation of the Charter in the Constitutional Treaty	11/03/2003	EN	6944
CONV 659/03	Letter from several members on incorporation of the Charter in the Constitutional Treaty	14/04/2003	EN	6947
CONV 703/03	Contribution by Mr Giuliano Amato, Vice President of the Convention, attaching a paper by the European University Institute [Extracts]	28/04/2003	EN	6950
CONV 736/03	Letter from Mr Peter Hain concerning the Charter	13/05/2003	EN	6989
CONV 726/03	Draft text of Part II with comments	26/05/2003	EN	6991
CONV 724/03	Draft Constitution, Volume I – Revised text of Part One	26/05/2003	EN	7011
WG II WD 27	Consultation on the updated and consolidated version of the Explanations	03/06/2003	EN	7020
CONV 779/03	Reactions to the draft Articles of the revised text of Part One (Volume I) – Analysis [Extract]	04/06/2003	EN	7081
None	All amendments to art.I-2	04/06/2003	MULTI	7084
None	All amendments to art.I-5	04/06/2003	MULTI	7186
WG II WD 28	Reactions of Working Group members to WD II 27 (consolidated and updated Explanations on the Charter)	12/06/2003	MULTI	7272
CONV 797/1/03 REV 1	Text of Part I and Part II of the Constitution [Extracts]	12/06/2003	EN	7288
CONV 811/03	Præsidium Note: Revised texts [Extracts]	12/06/2003	EN	7307
CONV 828/03	Updated Explanations relating to the Charter of Fundamental Rights	09/07/2003	EN	7310
CONV 850/03	Draft Treaty Establishing a Constitution for Europe	18/07/2003	EN	7362
CONV 828/1/03 REV 1	Updated Explanations relating to the Charter of Fundamental Rights	18/07/2003	EN	7383

d. NGOs and Others' Amendments and Contributions

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CONV 112/02	Digest of contributions to the forum ahead of the plenary session on civil society 24-25 June 2002	17/06/2002	EN	7436
CONV 112/02 ADD 1	Addendum: List of Contributions to the Forum		EN	7445

Document Reference	Title	Date	Language	Page
CONV 120/02	Secretariat Note: Reports from the meetings of the eight civil society contact groups, 10-18 June 2002	20/06/2002	EN	7451
CONV 167/02	24-25 June 2002 Plenary: minutes	04/07/2002	EN	7473
None	Verbatim minutes from the session on 24 June 2002	24/06/2002	MULTI	7490
None	Verbatim minutes from the session on 25 June 2002	25/06/2002	MULTI	7537

e. IGC Documents, 2003-2004

7574

12656/03	Secretariat Note attaching the European Parliament's Resolution on the draft Treaty establishing a Convention [sic] for Europe and on the convening of the IGC	26/09/2003	EN	7575
CIG 4/03	Secretariat comments on the draft Treaty establishing a Constitution for Europe – Basic document [Extracts]	06/10/2003	EN	7585
CIG 5/03	Presidency Note: Indicative Timetable	06/10/2003	EN	7645
CIG 37/03	Presidency Note: Non-institutional issues raised by Delegations [Extracts]	24/10/2003	EN	7647
CIG 43/03	Presidency Note: new list of issues to be dealt with by the Legal Experts group (new mandate)	04/11/2003	EN	7651
CIG 50/03	Draft Treaty establishing a Constitution for Europe (following editorial and legal adjustments by the Working Party of IGC Legal Experts) [Extracts]	04/11/2003	EN	7656
CIG 51/03	Presentation of the outcome of proceedings of the Working Party of IGC Legal Experts – CIG 50/03	25/11/2003	EN	7682
CIG 52/1/03 REV 1	Presidency Note: Naples Ministerial Conclave: Presidency proposal	25/11/2003	EN	7689
CIG 52/03 ADD 1	Presidency Note: Naples Ministerial Conclave: Presidency proposal texts	25/11/2003	EN	7702
CIG 60/03	Presidency Note: Presidency proposal for the IGC of 12-13 December 2003	09/12/2003	EN	7706
CIG 60/03 ADD 1	Presidency Note: Presidency proposal for the IGC of 12-13 December 2003: ADDENDUM 1 [Extracts]	09/12/2003	EN	7709
CIG 60/03 ADD 2	Presidency Note: Presidency proposal for the IGC of 12-13 December 2003: ADDENDUM 2	11/12/2003	EN	7713
CIG 64/04	European Parliament Resolution on the progress report on the IGC, adopted at the 3-4 December 2003 session	14/01/2004	EN	7717
CIG 73/04	Presidency working document for the meeting of Focal Points on 4 May 2004 in Dublin [Extracts]	29/04/2004	EN	7720
CIG 75/04	Presidency Note: Discussion at Ministerial Meeting, 17/18 May 2004 [Extracts]	13/05/2004	EN	7726
CIG 76/04	Presidency Note: Presidency proposals following the meeting of “focal points” on 4 May 2004 [Extracts]	13/05/2004	EN	7730
CIG 79/04	Presidency Note: Revised version of CIG 76/04 following the Ministerial meeting on 24 May 2004 [Extracts]	10/06/2004	EN	7734
CIG 80/04	Presidency Note: Ministerial meeting, Luxembourg, 14 June 2004 [Extracts]	12/06/2004	EN	7738
CIG 81/04	Presidency Note: Overall compromise texts for the meeting at Brussels, 17/18 June 2004 [Extracts]	16/06/2004	EN	7742
CIG 82/04	Presidency Note: Meeting of Heads of State or Government, Brussels, 17/18 June 2004 [Extracts]	16/06/2004	EN	7746
CIG 83/04	Presidency Note: Proposed amendments to CIG 81/04 following discussions on Thursday 17 June 2004 [Extracts]	18/06/2004	EN	7749
CIG 84/04	Presidency Note: Proposed amendments to CIG 81/04 following discussions on Thursday 17 and Friday 18 June 2004 [Extracts]	18/06/2004	EN	7751
CIG 85/04	Presidency Note: outcome of the Intergovernmental Conference [Extracts]	18/06/2004	EN	7753

2. *Selected travaux préparatoires from the Treaty of Lisbon and beyond* 7755

a. Council and IGC Documents, 2005-2007 7756

Document Reference	Title	Date	Language	Page
SN 177/05	Declaration by the Heads of State or Government of the Member States of the European Union on the Ratification of the Treaty Establishing a Constitution for Europe (European Council, 16 and 17 June 2005)	18/06/2005	EN	7757
10633/01/06 REV 1	Presidency Conclusions – Brussels European Council, 15/16 June 2006 [Extract]	17/07/2006	EN	7759
None	Berlin Declaration – Declaration on the occasion of the 50th anniversary of the signature of the Treaties of Rome	25/03/2007	EN	7764
10659/07	Presidency Report – Pursuing the treaty reform process	14/06/2007	EN	7766
11177/1/07 REV 1	Presidency Conclusions – Brussels European Council, 21/22 June 2007 [Extracts]	20/07/2007	EN	7772
CIG 2/07	Draft Treaty Amending the Treaty on European Union and the Treaty Establishing the European Community [Extracts]	23/07/2007	EN	7783
CIG 3/07	Note from the Presidency of the IGC: Draft Declarations	23/07/2007	EN	7787
CIG 2/1/07 REV 1	Draft Treaty Amending the Treaty on European Union and the Treaty Establishing the European Community [Extracts]	05/10/2007	EN	7833

b. The Irish Protocol, 2009-2012 7837

17271/1/08 REV 1	Presidency Conclusions – Brussels European Council, 11/12 December 2008 [Extracts]	13/02/2009	EN	7838
11225/2/09 REV 2	Presidency Conclusions – Brussels European Council, 18/19 June 2009 [Extracts]	10/07/2009	EN	7844
2013/106/EU	European Council Decision of 11 May 2012 on the examination by a conference of the representatives of the governments of the Member States on the Irish Government's proposed amendment to the Treaties in the form of a protocol on the concerns of the Irish people on the Treaty of Lisbon	11/05/2012 (Entered into force)	EN	7854

c. The Withdrawn Proposal for a Czech Protocol 7856

EUCO 132/13	Council Recommendation for a European Council Decision in respect of the Czech Republic's proposed amendment to the Treaties in the form of a protocol on the application of the Charter to the Czech Republic	18/06/2013	EN	7857
8383/14	Letter from M. Povejsil to T. Sotirosopulos: Discontinuation of the procedure for an amendment to the Treaties	31/03/2014	EN	7868
8385/14	Withdrawal of the Recommendation for a European Council Decision in respect of the Czech Republic's proposed amendment to the Treaties in the form of a protocol on the application of the Charter to the Czech Republic	08/04/2014	EN	7870

IV. Key Post-Charter Convention Documents

IV.1. Selected travaux préparatoires from the 2002-2003 Convention on the Future of Europe and 2003-2004 Inter-Governmental Conference ('IGC')

IV.1.a. The Mandate of the Convention on the Future of Europe

PRESIDENCY CONCLUSIONS

EUROPEAN COUNCIL MEETING IN LAEKEN

14 AND 15 DECEMBER 2001

Presidency conclusions - Laeken, 14 and 15 December 2001

1. Just when the European Union is introducing its single currency, its enlargement is becoming irreversible and it is initiating an important debate on its future, the European Council meeting in Laeken on 14 and 15 December 2001 has provided fresh impetus to increase the momentum of its integration.
2. The European Council's discussions were preceded by an exchange of views with the President of the European Parliament, Mrs Nicole Fontaine, on the principal items on the agenda.

I. THE FUTURE OF THE UNION

The Laeken declaration

3. Following the conclusions adopted in Nice, the European Council adopted the declaration set out in Annex I. That declaration and the prospects it opens mark a decisive step for the citizen towards a simpler Union, one that is stronger in the pursuit of its essential objectives and more present in the world. In order to ensure that preparation for the forthcoming Intergovernmental Conference is as broadly-based and transparent as possible, the European Council has decided to convene a Convention, with Mr V. Giscard d'Estaing as Chairman and Mr G. Amato and Mr J.L. Dehaene as Vice-Chairmen. All the candidate countries will take part in the Convention. In parallel with the proceedings of the Convention, a Forum will make it possible to give structure to and broaden the public debate on the future of the Union that has already begun.
4. In parallel with the proceedings of the Convention, a certain number of measures can already be taken without amending the Treaties. In this context, the European Council welcomes the Commission's white paper on governance and the Council Secretary-General's intention of submitting, before the European Council meeting in Barcelona, proposals for adapting the Council's structures and functioning to enlargement. The European Council will draw the operational conclusions from it at its meeting in Seville. Finally, the European Council welcomes the final report by the High-Level Advisory Group ("Mandelkern Group") on the quality of regulatory arrangements and the Commission communication on regulatory simplification, which should lead to a practical plan of action in the first half of 2002.

Transition to the euro

5. The introduction of euro notes and coins on 1 January 2002 will be the culmination of a historic process of decisive importance for the construction of Europe. Every measure has been taken to ensure that the physical introduction of the euro is a success. The use of the euro on international financial markets should be easier as a result. The euro area now represents a pole of stability for those countries participating in it by protecting them from speculation and financial turmoil. It is strengthening the internal market and contributing to the maintenance of healthy fundamental figures, fostering sustainable growth. The euro is also helping to bring the citizens of the Union closer together by giving visible, concrete expression to the European design. In that regard, the European Council welcomes the recent adoption by the Council and the European Parliament of a Regulation intended to reduce substantially the cost of cross-border payments in euro.

The European security and defence policy

6. The European Council has adopted the declaration on the operational capability of the European security and defence policy set out in Annex II, as well as the Presidency report. Through the continuing development of the ESDP, the strengthening of its capabilities, both civil and military, and the creation of appropriate structures within it and following the military and police Capability Improvement Conferences held in Brussels on 19 November 2001, the Union is now capable of conducting some crisis-management operations. The Union is determined to finalise swiftly arrangements with NATO. These will enhance the European Union's capabilities to carry out crisis-management operations over the whole range of Petersberg tasks. In the same way, the implementation of the Nice arrangements with the Union's partners will augment its means of conducting crisis-management operations. Development of the means and capabilities at its disposal will enable the Union progressively to take on more demanding operations.

Enlargement

7. The Commission document entitled "Making a success of enlargement", the regular reports and the revised partnerships for accession are a solid framework for the success of the accession process, which is now irreversible. The Berlin European Council established the financial framework permitting enlargement.

Presidency conclusions - Laeken, 14 and 15 December 2001

8. In recent months considerable progress has been made in the negotiations and certain delays have been made good. The European Union is determined to bring the accession negotiations with the candidate countries that are ready to a successful conclusion by the end of 2002, so that those countries can take part in the European Parliament elections in 2004 as members. Candidacies will continue to be assessed on their own merits, in accordance with the principle of differentiation. The European Council agrees with the report of the Commission, which considers that, if the present rate of progress of the negotiations and reforms in the candidate States is maintained, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic, the Czech Republic and Slovenia could be ready. It appreciates the efforts made by Bulgaria and Romania and would encourage them to continue on that course. If those countries are to receive specific support, there must be a precise framework with a timetable and an appropriate roadmap, the objective being to open negotiations with those countries on all chapters in 2002.
9. The candidate countries must continue their efforts energetically, in particular to bring their administrative and judicial capabilities up to the required level. The Commission will submit a report on the implementation of the plan of action for strengthening institutions to the Seville European Council in June 2002.
10. The roadmap drawn up by the Nice European Council remains fully applicable. At the beginning of 2002 the Commission will propose common positions on the agriculture, regional policy and budgetary chapters on the basis of the present *acquis* and of the principles decided on in Berlin. Proceedings on the drafting of the accession treaties will begin in the first half of 2002.
11. The European Council welcomes the recent meetings between the leaders of the Greek and Turkish Cypriot communities and would encourage them to continue their discussions with a view to an overall solution under the auspices of the United Nations consistent with the relevant resolutions of the United Nations Security Council.
12. Turkey has made progress towards complying with the political criteria established for accession, in particular through the recent amendment of its constitution. This has brought forward the prospect of the opening of accession negotiations with Turkey. Turkey is encouraged to continue its progress towards complying with both economic and political criteria, notably with regard to human rights. The pre-accession strategy for Turkey should mark a new stage in analysing its preparedness for alignment on the *acquis*.

II. THE UNION'S ACTION FOLLOWING THE ATTACKS IN THE USA ON 11 SEPTEMBER

The Union's action in Afghanistan

13. The European Council welcomes the signing in Bonn on 5 December of the agreement defining the provisional arrangements applicable in Afghanistan pending the re-establishment of permanent State institutions. It urges all Afghan groups to implement that agreement.
14. The European Council has undertaken to participate in the efforts of the international community with a view to restoring stability in Afghanistan on the basis of the outcome of the Bonn Conference and the relevant resolutions of the United Nations Security Council. In that context, it encourages the deployment of an international security force, which would be mandated, on the basis of a resolution of the United Nations Security Council, to contribute to the security of the Afghan and international administrations established in Kabul and the surrounding areas and to the establishment and training of new Afghan security and armed forces. The Member States of the Union are examining their contributions to such a force. The participation of the Member States of the Union in that international force will provide a strong signal of their resolve to better assume their crisis-management responsibilities and hence help stabilise Afghanistan.
15. The urgent needs of the Afghan people mean that humanitarian aid continues to be an absolute priority. The delivery of such aid, inter alia for refugees and displaced persons, must be adapted to changes in the situation and must take place in as efficient and well-coordinated a manner as possible. The Union has already pledged or is ready to pledge a total of EUR 360 million for humanitarian aid, of which EUR 106 million will come from the Community budget.

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16. More than twenty years of war and political instability have destroyed the structures of Afghan society, completely disrupted the functioning of the public institutions and authorities and caused immense human suffering. The European Union will help the Afghan people and its new leaders rebuild the country and encourage as swift a return to democracy as possible. The situation of women will merit particular attention. Rehabilitation and reconstruction will require strong international cooperation and coordination. The European Union has appointed Mr Klaus-Peter Klaiber Special Representative in Afghanistan under the authority of the High Representative for the CFSP. On 21 December in Brussels, the Union will co-chair the first meeting of the steering group to support political renewal in Afghanistan and better coordinate donors' efforts with a view to the ministerial conference scheduled for January 2002 in Tokyo. At those meetings, the Union will undertake to help to cover the requirements, alongside the USA, the Arab countries and Japan, inter alia.

Combating terrorism

17. The European Union reaffirms its total solidarity with the American people and the international community in combating terrorism with full regard for individual rights and freedoms. The plan of action adopted on 21 September is being implemented in accordance with the timetable set. The progress which has been achieved indicates that the objectives will be met. Agreement on the European arrest warrant constitutes a decisive step forward. The common definition of terrorist crimes, the drawing up of lists of terrorists and terrorist organisations, groups and bodies, the cooperation between specialist services and the provisions concerning the freezing of assets which have been adopted following Resolution 1373 of the United Nations Security Council all constitute practical responses in the campaign against terrorism. The European Council invites the Council and the Commission to move swiftly towards finalising the programme to improve cooperation between Member States with regard to threats of the use of biological and chemical means; the work of the European Civil Protection Agency will provide the framework for such cooperation.
18. The European Union is committed to alleviating the consequences of the attacks of 11 September for the aviation sector with a view to ensuring a rapid and coordinated response from all Member States. The European Council welcomes the adoption of a common position of the Council on the Regulation on aviation security.

III. TRENDS IN THE ECONOMIC AND SOCIAL SPHERES AND IN SUSTAINABLE DEVELOPMENT

General economic situation and prospects

19. The Union's economy is experiencing a period of slower growth and uncertainty under the combined impact of a global slowdown and a reduction in demand. Yet, present expectations are for a gradual recovery in the course of 2002. Disposable incomes are improving owing to diminishing inflation and tax cuts in several countries. Budgetary policy is geared to maintaining sound public finances. It has resulted in a reduction in long-term interest rates, which will help support demand. The progress already made in budgetary consolidation within the framework of the Stability and Growth Pact will enable budgetary policy to play a positive part in combating the slowdown with automatic stabilisers working while staying on the medium-term path of consolidation. Confidence must be based on the consistent implementation of the economic policy strategy as defined in the Broad Economic Policy Guidelines (BEPGs), the main axes of which are macroeconomic stability and structural reforms to enhance job creation and the Union's potential for growth. The European Council endorsed the report of the ECOFIN Council on the taxation of savings.

20. The European Council welcomes the outcome of the Ministerial Conference in Doha, which launched a new round of global trade negotiations based on an approach balanced equally between liberalisation and regulation, taking account of the interests of developing countries and promoting their capacity for development. The Union is determined to promote the social and environmental dimension of that round of negotiations.

The Lisbon strategy

21. At the Barcelona European Council on 15 and 16 March 2002 we will take stock of our progress towards the Lisbon strategic goal of becoming the most dynamic knowledge-based economy in the world, with full employment and increased levels of social cohesion, by 2010, and agree concrete steps on the priority actions we must take to deliver this strategy. The slowdown in growth makes it more important than ever to deliver the structural reforms agreed at Lisbon and Stockholm, and to demonstrate the continued relevance of our agenda for economic and social issues and sustainable development to Europe's citizens and businesses. We should use the structural indicators we have agreed to assess our progress and focus our activity. In order to give the European Council a full picture of the situation and to ensure that its decisions are coherent, the various preparatory processes will have to converge on the spring European Council.
22. Progress has been made following the Stockholm European Council on the various aspects of the Lisbon strategy. After thirty years of discussion, agreement has been reached on the European Company. There have been agreements on the liberalisation of postal services and on the package of Directives concerning telecommunications. The adoption of a series of economic and social structural indicators, including as regards quality in work and the fight against poverty and social exclusion as well as key indicators for sustainable development, will make it possible to see more clearly how each Member State is performing. The Commission will use them as a basis when drawing up its summary report to be submitted in January 2002.

Employment

23. The aim of the Lisbon strategy is to enable the Union to regain the conditions for full employment. We must accelerate our efforts to achieve by 2010 the 70% employment rate agreed in Lisbon. That must be the first objective of the European Employment Strategy. At the social summit on 13 December 2001 the social partners expressed their willingness to develop social dialogue by jointly drawing up a multiannual work programme before the European Council at the end of 2002. They also stressed the need to develop and improve coordination of tripartite consultation on the various aspects of the Lisbon strategy. It was agreed that a social affairs summit of this kind would in future be held before each spring European Council.

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24. The European Council endorses the agreement reached in the Council concerning the 2002 employment guidelines, the individual recommendations to the Member States and the joint report on the employment situation. These decisions bear witness to the Union's desire, despite the world economic slowdown, to persist in its efforts to reform the structure of the labour market and continue to pursue its objectives concerning full employment and quality in work.

Fleshing out the European social model

25. In the field of social legislation, the European Council welcomes the political agreement between the Council and the European Parliament on the Directive on informing and consulting workers and the political agreement by the Council on a common position on the Directive on the protection of workers in the event of the insolvency of their employer. It stresses the importance of preventing and resolving social conflicts, and especially trans-national social conflicts, by means of voluntary mediation mechanisms concerning which the Commission is requested to submit a discussion paper.
26. The European Council welcomes the Council's conclusions and the joint Council and Commission report concerning services of general interest, which will be the subject of an assessment, at Community level, as to their performance and their effects on competition. The European Council encourages the Commission to set up a policy framework for State aid to undertakings entrusted with the provision of services of general interest.
27. The European Council notes with interest the consideration given to the principle of equality between men and women in the broad economic policy guidelines and in the Euro-Mediterranean partnership, and also the list of indicators of gender pay inequalities.
28. The first joint report on social inclusion and the establishment of a set of common indicators constitute important elements in the policy defined at Lisbon for eradicating poverty and promoting social inclusion, taking in health and housing. The European Council stresses the need to reinforce the statistical machinery and calls on the Commission gradually to involve the candidate countries in this process.

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29. The European Council notes the political agreement on extending the coordination of social security systems to third-country nationals and calls on the Council to adopt the necessary provisions as soon as possible.
30. The European Council has noted the Joint Report on pensions drawn up by the Social Protection Committee and the Economic Policy Committee. The adequacy of pensions, the sustainability and modernisation of pension systems and the improvement of access to occupational pension schemes are all of particular importance for dealing with the increasing needs. The European Council calls on the Council to take a similar approach when preparing the report on health care and care for the elderly, in the light of the Commission communication. Particular attention will have to be given to the impact of European integration on Member States' health care systems.

Research and development

31. The Lisbon European Council drew attention to the importance of encouraging innovation, especially through the introduction of a Community patent, which should have been available at the end of 2001. The European Council asks the Internal Market Council to hold a meeting on 20 December 2001 in order to reach, in particular in the light of the Presidency document and of the other contributions of the Member States, agreement on a flexible instrument involving the least possible cost while complying with the principle of non-discrimination between Member States' undertakings and ensuring a high level of quality.
32. The European Council welcomes the adoption by the Council of a common position on the 6th Framework Programme for research and development, aimed at reinforcing the European Research Area.
33. The European Council reaffirms the strategic importance it attaches to the Galileo project and welcomes the decision of the European Space Agency taken in Edinburgh to grant finance to the amount of EUR 550 m. The European Council calls on the Council to continue its work with a view to taking a decision on the funding of the development phase by March 2002 and to decide on the Regulation by June 2002, taking account of the audit report by Price Waterhouse Coopers.

Sustainable development and quality of life

34. The European Council welcomes the adoption by the Council of the key environmental indicators which supplement the social and economic structural indicators with a view to the forthcoming summary report by the Commission. The European Council will assess – on this basis, and for the first time – the implementation of the Sustainable Development Strategy at its next meeting in the spring in Barcelona.
35. The European Council welcomes the outcome of the Marrakesh Conference on Climate Change. The Union is determined to honour its commitments under the Kyoto Protocol and confirms its desire that the Protocol should come into force before the Johannesburg World Summit on Sustainable Development, where the European Union intends to be represented at the highest political level.
36. The European Union has sought to respond to people's expectations regarding health, consumer protection, safety and quality of life. The European Council especially welcomes the setting up of the European Food Safety Authority, the European Air Safety Agency and the European Maritime Safety Agency. The Commission will very shortly be submitting a proposal for setting up a European Railway Safety Agency. The European Council notes the adoption of a number of texts seeking to increase consumer protection in the areas of product safety, indebtedness, the standards applicable to blood products and the prudent use of antimicrobial agents in human medicine.

IV. STRENGTHENING THE AREA OF FREEDOM, SECURITY AND JUSTICE

37. The European Council reaffirms its commitment to the policy guidelines and objectives defined at Tampere and notes that while some progress has been made, there is a need for new impetus and guidelines to make good delays in some areas. Holding Justice and Home Affairs sessions at shorter intervals will help speed work up. It is also important that decisions taken by the Union be transposed speedily into national legal systems and that conventions concluded since the Maastricht Treaty came into force be ratified as soon as possible.

A true common asylum and immigration policy

38. Despite some achievements such as the European Refugee Fund, the Eurodac Regulation and the Directive on temporary protection, progress has been slower and less substantial than expected. A new approach is therefore needed.
39. The European Council undertakes to adopt, on the basis of the Tampere conclusions and as soon as possible, a common policy on asylum and immigration, which will maintain the necessary balance between protection of refugees, in accordance with the principles of the 1951 Geneva Convention, the legitimate aspiration to a better life and the reception capacities of the Union and its Member States.
40. A true common asylum and immigration policy implies the establishment of the following instruments:
- the integration of the policy on migratory flows into the European Union's foreign policy. In particular, European readmission agreements must be concluded with the countries concerned on the basis of a new list of priorities and a clear action plan. The European Council calls for an action plan to be developed on the basis of the Commission communication on illegal immigration and the smuggling of human beings;
 - the development of a European system for exchanging information on asylum, migration and countries of origin; the implementation of Eurodac and a Regulation for the more efficient application of the Dublin Convention, with rapid and efficient procedures;
 - the establishment of common standards on procedures for asylum, reception and family reunification, including accelerated procedures where justified. These standards should take account of the need to offer help to asylum applicants;
 - the establishment of specific programmes to combat discrimination and racism.
41. The European Council asks the Commission to submit, by 30 April 2002 at the latest, amended proposals concerning asylum procedures, family reunification and the "Dublin II" Regulation. In addition, the Council is asked to expedite its proceedings on other drafts concerning reception standards, the definition of the term "refugee" and forms of subsidiary protection.

More effective control of external borders

42. Better management of the Union's external border controls will help in the fight against terrorism, illegal immigration networks and the traffic in human beings. The European Council asks the Council and the Commission to work out arrangements for cooperation between services responsible for external border control and to examine the conditions in which a mechanism or common services to control external borders could be created. It asks the Council and the Member States to take steps to set up a common visa identification system and to examine the possibility of setting up common consular offices.

Eurojust and judicial and police cooperation in criminal matters

43. The Decision setting up Eurojust and the setting up of the instruments needed for police cooperation – Europol, whose powers have been increased, the European Police College and the Police Chiefs Task Force – constitute significant progress. The Council is urged swiftly to examine the Commission Green Paper on the European Public Prosecutor, taking account of the diversity of legal systems and traditions. The European Council calls for a European network to encourage the training of magistrates to be set up swiftly; this will help develop trust between those involved in judicial cooperation.

Combating drug trafficking

44. The European Council notes the importance of intensifying the fight against drug trafficking and the urgency of adopting the Commission proposal on the subject by the end of May 2002. It reserves the right to take fresh initiatives in the light of the Commission's midterm report on the implementation of the European Union's Action Plan on Drugs.

Harmonisation of laws, mutual recognition of judgments and the European arrest warrant

45. The Framework Decision on combating trafficking in human beings, the European arrest warrant and the common definition of terrorist offences and of minimum sentences constitute important progress. Efforts to surmount the problems arising from differences between legal systems should continue, particularly by encouragement of recognition of judicial decisions, both civil and criminal. For example, the harmonisation of family law took a decisive step forward with the suspension of intermediate procedures for the recognition of certain judgements and especially for cross-border rights of access to children.

V. EXTERNAL RELATIONS**The Middle East**

46. The European Council adopted the Declaration set out in Annex III.

The Western Balkans

47. The European Union has taken a full role in encouraging and assisting the countries of the region to continue their efforts in the framework of the Stabilisation and Association Process. The prospect of accession and the assistance provided by the European Union are key elements in promoting that process, respecting human rights, democratic principles and internationally recognised frontiers. The European Council welcomes the appointment of Dr Erhard Busek as Special Coordinator of the Stability Pact and thanks his predecessor, Mr Bodo Hombach, for his major contribution to the stability of the region.
48. The Union will continue to contribute to the recovery and stability of the Former Yugoslav Republic of Macedonia, particularly by insisting on full implementation of the Ohrid Agreement. The European Council welcomes the elections held in Kosovo on 17 November which launched the process of provisional self-government for the benefit of all communities and of stability in accordance with Resolution 1244 of the UN Security Council. It mandates the High Representative for the CFSP to encourage the dialogue between Belgrade and Podgorica with a view to reaching a negotiated solution for the status of a democratic Montenegro in a democratic Federal Republic of Yugoslavia.

**LAEKEN DECLARATION
ON THE FUTURE OF THE EUROPEAN UNION**

I. EUROPE AT A CROSSROADS

For centuries, peoples and states have taken up arms and waged war to win control of the European continent. The debilitating effects of two bloody wars and the weakening of Europe's position in the world brought a growing realisation that only peace and concerted action could make the dream of a strong, unified Europe come true. In order to banish once and for all the demons of the past, a start was made with a coal and steel community. Other economic activities, such as agriculture, were subsequently added in. A genuine single market was eventually established for goods, persons, services and capital, and a single currency was added in 1999. On 1 January 2002 the euro is to become a day-to-day reality for 300 million European citizens.

The European Union has thus gradually come into being. In the beginning, it was more of an economic and technical collaboration. Twenty years ago, with the first direct elections to the European Parliament, the Community's democratic legitimacy, which until then had lain with the Council alone, was considerably strengthened. Over the last ten years, construction of a political union has begun and cooperation been established on social policy, employment, asylum, immigration, police, justice, foreign policy and a common security and defence policy.

The European Union is a success story. For over half a century now, Europe has been at peace. Along with North America and Japan, the Union forms one of the three most prosperous parts of the world. As a result of mutual solidarity and fair distribution of the benefits of economic development, moreover, the standard of living in the Union's weaker regions has increased enormously and they have made good much of the disadvantage they were at.

Fifty years on, however, the Union stands at a crossroads, a defining moment in its existence. The unification of Europe is near. The Union is about to expand to bring in more than ten new Member States, predominantly Central and Eastern European, thereby finally closing one of the darkest chapters in European history: the Second World War and the ensuing artificial division of Europe. At long last, Europe is on its way to becoming one big family, without bloodshed, a real transformation clearly calling for a different approach from fifty years ago, when six countries first took the lead.

The democratic challenge facing Europe

At the same time, the Union faces twin challenges, one within and the other beyond its borders.

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Within the Union, the European institutions must be brought closer to its citizens. Citizens undoubtedly support the Union's broad aims, but they do not always see a connection between those goals and the Union's everyday action. They want the European institutions to be less unwieldy and rigid and, above all, more efficient and open. Many also feel that the Union should involve itself more with their particular concerns, instead of intervening, in every detail, in matters by their nature better left to Member States' and regions' elected representatives. This is even perceived by some as a threat to their identity. More importantly, however, they feel that deals are all too often cut out of their sight and they want better democratic scrutiny.

Europe's new role in a globalised world

Beyond its borders, in turn, the European Union is confronted with a fast-changing, globalised world. Following the fall of the Berlin Wall, it looked briefly as though we would for a long while be living in a stable world order, free from conflict, founded upon human rights. Just a few years later, however, there is no such certainty. The eleventh of September has brought a rude awakening. The opposing forces have not gone away: religious fanaticism, ethnic nationalism, racism and terrorism are on the increase, and regional conflicts, poverty and underdevelopment still provide a constant seedbed for them.

What is Europe's role in this changed world? Does Europe not, now that it is finally unified, have a leading role to play in a new world order, that of a power able both to play a stabilising role worldwide and to point the way ahead for many countries and peoples? Europe as the continent of humane values, the Magna Carta, the Bill of Rights, the French Revolution and the fall of the Berlin Wall; the continent of liberty, solidarity and above all diversity, meaning respect for others' languages, cultures and traditions. The European Union's one boundary is democracy and human rights. The Union is open only to countries which uphold basic values such as free elections, respect for minorities and respect for the rule of law.

Now that the Cold War is over and we are living in a globalised, yet also highly fragmented world, Europe needs to shoulder its responsibilities in the governance of globalisation. The role it has to play is that of a power resolutely doing battle against all violence, all terror and all fanaticism, but which also does not turn a blind eye to the world's heartrending injustices. In short, a power wanting to change the course of world affairs in such a way as to benefit not just the rich countries but also the poorest. A power seeking to set globalisation within a moral framework, in other words to anchor it in solidarity and sustainable development.

The expectations of Europe's citizens

The image of a democratic and globally engaged Europe admirably matches citizens' wishes. There have been frequent public calls for a greater EU role in justice and security, action against cross-border crime, control of migration flows and reception of asylum seekers and refugees from far-flung war zones. Citizens also want results in the fields of employment and combating poverty and social exclusion, as well as in the field of economic and social cohesion. They want a common

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approach on environmental pollution, climate change and food safety, in short, all transnational issues which they instinctively sense can only be tackled by working together. Just as they also want to see Europe more involved in foreign affairs, security and defence, in other words, greater and better coordinated action to deal with trouble spots in and around Europe and in the rest of the world.

At the same time, citizens also feel that the Union is behaving too bureaucratically in numerous other areas. In coordinating the economic, financial and fiscal environment, the basic issue should continue to be proper operation of the internal market and the single currency, without this jeopardising Member States' individuality. National and regional differences frequently stem from history or tradition. They can be enriching. In other words, what citizens understand by "good governance" is opening up fresh opportunities, not imposing further red tape. What they expect is more results, better responses to practical issues and not a European superstate or European institutions inveigling their way into every nook and cranny of life.

In short, citizens are calling for a clear, open, effective, democratically controlled Community approach, developing a Europe which points the way ahead for the world. An approach that provides concrete results in terms of more jobs, better quality of life, less crime, decent education and better health care. There can be no doubt that this will require Europe to undergo renewal and reform.

II. CHALLENGES AND REFORMS IN A RENEWED UNION

The Union needs to become more democratic, more transparent and more efficient. It also has to resolve three basic challenges: how to bring citizens, and primarily the young, closer to the European design and the European institutions, how to organise politics and the European political area in an enlarged Union and how to develop the Union into a stabilising factor and a model in the new, multipolar world. In order to address them a number of specific questions need to be put.

A better division and definition of competence in the European Union

Citizens often hold expectations of the European Union that are not always fulfilled.

And vice versa – they sometimes have the impression that the Union takes on too much in areas where its involvement is not always essential. Thus the important thing is to clarify, simplify and adjust the division of competence between the Union and the Member States in the light of the new challenges facing the Union. This can lead both to restoring tasks to the Member States and to assigning new missions to the Union, or to the extension of existing powers, while constantly bearing in mind the equality of the Member States and their mutual solidarity.

A first series of questions that needs to be put concerns how the division of competence can be made more transparent. Can we thus make a clearer distinction between three types of competence: the exclusive competence of the Union, the competence of the Member States and the shared competence of the Union and the Member States? At what level is competence exercised in the

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most efficient way? How is the principle of subsidiarity to be applied here? And should we not make it clear that any powers not assigned by the Treaties to the Union fall within the exclusive sphere of competence of the Member States? And what would be the consequences of this?

The next series of questions should aim, within this new framework and while respecting the "acquis communautaire", to determine whether there needs to be any reorganisation of competence. How can citizens' expectations be taken as a guide here? What missions would this produce for the Union? And, vice versa, what tasks could better be left to the Member States? What amendments should be made to the Treaty on the various policies? How, for example, should a more coherent common foreign policy and defence policy be developed? Should the Petersberg tasks be updated? Do we want to adopt a more integrated approach to police and criminal law cooperation? How can economic-policy coordination be stepped up? How can we intensify cooperation in the field of social inclusion, the environment, health and food safety? But then, should not the day-to-day administration and implementation of the Union's policy be left more emphatically to the Member States and, where their constitutions so provide, to the regions? Should they not be provided with guarantees that their spheres of competence will not be affected?

Lastly, there is the question of how to ensure that a redefined division of competence does not lead to a creeping expansion of the competence of the Union or to encroachment upon the exclusive areas of competence of the Member States and, where there is provision for this, regions. How are we to ensure at the same time that the European dynamic does not come to a halt? In the future as well the Union must continue to be able to react to fresh challenges and developments and must be able to explore new policy areas. Should Articles 95 and 308 of the Treaty be reviewed for this purpose in the light of the "acquis jurisprudentiel"?

Simplification of the Union's instruments

Who does what is not the only important question; the nature of the Union's action and what instruments it should use are equally important. Successive amendments to the Treaty have on each occasion resulted in a proliferation of instruments, and directives have gradually evolved towards more and more detailed legislation. The key question is therefore whether the Union's various instruments should not be better defined and whether their number should not be reduced.

In other words, should a distinction be introduced between legislative and executive measures? Should the number of legislative instruments be reduced: directly applicable rules, framework legislation and non-enforceable instruments (opinions, recommendations, open coordination)? Is it or is it not desirable to have more frequent recourse to framework legislation, which affords the Member States more room for manoeuvre in achieving policy objectives? For which areas of competence are open coordination and mutual recognition the most appropriate instruments? Is the principle of proportionality to remain the point of departure?

More democracy, transparency and efficiency in the European Union

The European Union derives its legitimacy from the democratic values it projects, the aims it pursues and the powers and instruments it possesses. However, the European project also derives

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its legitimacy from democratic, transparent and efficient institutions. The national parliaments also contribute towards the legitimacy of the European project. The declaration on the future of the Union, annexed to the Treaty of Nice, stressed the need to examine their role in European integration. More generally, the question arises as to what initiatives we can take to develop a European public area.

The first question is thus how we can increase the democratic legitimacy and transparency of the present institutions, a question which is valid for the three institutions.

How can the authority and efficiency of the European Commission be enhanced? How should the President of the Commission be appointed: by the European Council, by the European Parliament or should he be directly elected by the citizens? Should the role of the European Parliament be strengthened? Should we extend the right of co-decision or not? Should the way in which we elect the members of the European Parliament be reviewed? Should a European electoral constituency be created, or should constituencies continue to be determined nationally? Can the two systems be combined? Should the role of the Council be strengthened? Should the Council act in the same manner in its legislative and its executive capacities? With a view to greater transparency, should the meetings of the Council, at least in its legislative capacity, be public? Should citizens have more access to Council documents? How, finally, should the balance and reciprocal control between the institutions be ensured?

A second question, which also relates to democratic legitimacy, involves the role of national parliaments. Should they be represented in a new institution, alongside the Council and the European Parliament? Should they have a role in areas of European action in which the European Parliament has no competence? Should they focus on the division of competence between Union and Member States, for example through preliminary checking of compliance with the principle of subsidiarity?

The third question concerns how we can improve the efficiency of decision-making and the workings of the institutions in a Union of some thirty Member States. How could the Union set its objectives and priorities more effectively and ensure better implementation? Is there a need for more decisions by a qualified majority? How is the co-decision procedure between the Council and the European Parliament to be simplified and speeded up? What of the six-monthly rotation of the Presidency of the Union? What is the future role of the European Parliament? What of the future role and structure of the various Council formations? How should the coherence of European foreign policy be enhanced? How is synergy between the High Representative and the competent Commissioner to be reinforced? Should the external representation of the Union in international fora be extended further?

Towards a Constitution for European citizens

The European Union currently has four Treaties. The objectives, powers and policy instruments of the Union are currently spread across those Treaties. If we are to have greater transparency, simplification is essential.

Four sets of questions arise in this connection. The first concerns simplifying the existing Treaties without changing their content. Should the distinction between the Union and the Communities be reviewed? What of the division into three pillars?

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Questions then arise as to the possible reorganisation of the Treaties. Should a distinction be made between a basic treaty and the other treaty provisions? Should this distinction involve separating the texts? Could this lead to a distinction between the amendment and ratification procedures for the basic treaty and for the other treaty provisions?

Thought would also have to be given to whether the Charter of Fundamental Rights should be included in the basic treaty and to whether the European Community should accede to the European Convention on Human Rights.

The question ultimately arises as to whether this simplification and reorganisation 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? The values which the Union cherishes, the fundamental rights and obligations of its citizens, the relationship between Member States in the Union?

III. CONVENING OF A CONVENTION ON THE FUTURE OF EUROPE

In order to pave the way for the next Intergovernmental Conference as broadly and openly as possible, the European Council has decided to convene a Convention composed of the main parties involved in the debate on the future of the Union. In the light of the foregoing, it will be the task of that Convention to consider the key issues arising for the Union's future development and try to identify the various possible responses.

The European Council has appointed Mr V. Giscard d'Estaing as Chairman of the Convention and Mr G. Amato and Mr J.L. Dehaene as Vice-Chairmen.

Composition

In addition to its Chairman and Vice-Chairmen, the Convention will be composed of 15 representatives of the Heads of State or Government of the Member States (one from each Member State), 30 members of national parliaments (two from each Member State), 16 members of the European Parliament and two Commission representatives. The accession candidate countries will be fully involved in the Convention's proceedings. They will be represented in the same way as the current Member States (one government representative and two national parliament members) and will be able to take part in the proceedings without, however, being able to prevent any consensus which may emerge among the Member States.

The members of the Convention may only be replaced by alternate members if they are not present. The alternate members will be designated in the same way as full members.

The Praesidium of the Convention will be composed of the Convention Chairman and Vice-Chairmen and nine members drawn from the Convention (the representatives of all the governments holding the Council Presidency during the Convention, two national parliament representatives, two European Parliament representatives and two Commission representatives).

Three representatives of the Economic and Social Committee with three representatives of the European social partners; from the Committee of the Regions: six representatives (to be appointed by the Committee of the Regions from the regions, cities and regions with legislative powers), and

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the European Ombudsman will be invited to attend as observers. The Presidents of the Court of Justice and of the Court of Auditors may be invited by the Praesidium to address the Convention.

Length of proceedings

The Convention will hold its inaugural meeting on 1 March 2002, when it will appoint its Praesidium and adopt its rules of procedure. Proceedings will be completed after a year, that is to say in time for the Chairman of the Convention to present its outcome to the European Council.

Working methods

The Chairman will pave the way for the opening of the Convention's proceedings by drawing conclusions from the public debate. The Praesidium will serve to lend impetus and will provide the Convention with an initial working basis.

The Praesidium may consult Commission officials and experts of its choice on any technical aspect which it sees fit to look into. It may set up ad hoc working parties.

The Council will be kept informed of the progress of the Convention's proceedings. The Convention Chairman will give an oral progress report at each European Council meeting, thus enabling Heads of State or Government to give their views at the same time.

The Convention will meet in Brussels. The Convention's discussions and all official documents will be in the public domain. The Convention will work in the Union's eleven working languages.

Final document

The Convention will consider the various issues. It will draw up a final document which may comprise either different options, indicating the degree of support which they received, or recommendations if consensus is achieved.

Together with the outcome of national debates on the future of the Union, the final document will provide a starting point for discussions in the Intergovernmental Conference, which will take the ultimate decisions.

Forum

In order for the debate to be broadly based and involve all citizens, a Forum will be opened for organisations representing civil society (the social partners, the business world, non-governmental organisations, academia, etc.). It will take the form of a structured network of organisations receiving regular information on the Convention's proceedings. Their contributions will serve as input into the debate. Such organisations may be heard or consulted on specific topics in accordance with arrangements to be established by the Praesidium.

Annexes to the Presidency conclusions - Laeken, 14 and 15 December 2001

Secretariat

The Praesidium will be assisted by a Convention Secretariat, to be provided by the General Secretariat of the Council, which may incorporate Commission and European Parliament experts.

IV.1.b. Meeting Records – Plenary, Praesidium and Working Group II

THE EUROPEAN CONVENTION
THE SECRETARIAT

Brussels, 25 March 2002 (05.04)
(OR. fr)

CONV 14/02

NOTE

Subject : **Note on the plenary meeting**
– Brussels, 21 and 22 March 2002

Opening of the plenary meeting

The Convention Chairman, Mr Valéry Giscard d'Estaing, opened the meeting, assisted by the two Vice-Chairmen, Mr Jean-Luc Dehaene and Mr Giuliano Amato.

I. General debate: "What do you expect of the European Union?"

Introduction. Mr Giscard d'Estaing opened the first substantive debate of the Convention by emphasising the size of the task at hand. He said that the citizens of Europe felt that their voice was not being heard on the future of Europe and that the first phase of the Convention should therefore be a listening phase.

He invited the members of the Convention to begin the debate. They were to speak freely and at a personal level, addressing first and foremost the other members of the Convention. The Chairman wanted the members of the Convention to identify what, in their view, should be Europe's priorities for the next twenty-five to fifty years.

Over eighty members of the Convention took part in the debate. The nature and the content of the contributions varied widely. Some members concentrated on a couple of priorities or even on just one. Others embraced the whole gamut of European affairs. Many contributions began with an analysis of the current situation within the Union. Notwithstanding the wealth and diversity of contributions, the following general themes recurred:

Assessment of the current situation. Very many members of the Convention commended the considerable progress made in the last fifty years, which had surpassed even the most optimistic forecasts conceivable at the outset. The results were taken for granted, especially the most important one, namely peace in Europe.

Among the successes of European integration, particular mention was made of the single market, the four freedoms (free movement of persons, goods, services and capital), the introduction of the euro for twelve Member States and the removal of controls on persons at borders within the Schengen area. Today, if Community nationals decided to leave one Member State to go and live in another, they did so by choice and because they had been afforded that opportunity, not because the move had been imposed upon them by fear or by force.

Many members of the Convention welcomed the enlargement process under way. Upon its completion, the scission of Europe in two, which had resulted from the Second World War, would disappear forever.

Nevertheless, many speakers also pointed to the weaknesses and shortcomings of present-day Europe. Europe did not listen to its citizens enough. Citizens did not feel they could hold to account those in positions of power who took decisions on Europe's behalf. The fact that the European Parliament was elected by universal suffrage, that the ministers sitting around the Council table represented their governments and that the European Commissioners were appointed by the Member States' governments and accountable to the European Parliament did not dispel the view that Europe was not democratic enough. Europe's citizens had to be directly able to choose and remove those at the helm of its affairs.

Public opinion often regarded the institutional mechanisms of the Union as laborious, complex and difficult to understand. Inside the Union, Europe was perceived as abstract and distant. Outside, it was perceived as not effective enough, failing, for instance, to respond rapidly and adequately to the challenges posed by globalisation and cross-border developments.

A number of speakers thought that Europe tended to be too prominent at the expense of the independence and freedom of nation states.

Expectations of Europe. A large number of Convention members thought that their fellow citizens expected greater involvement by Europe. Europe would have to be able to meet that expectation. Greater European presence was mentioned in the following areas in particular:

- an area of security and justice aimed, in particular, at enabling Europe to react to terrorist threats or migration pressure at its borders;
- European action on the international stage, enabling the Union to assume its full responsibilities and champion its values.

Others pointed to the need to build a credible and efficient economic and social nucleus and to step up coordination of fiscal and budgetary policies, especially between the twelve states sharing the same currency – the euro.

Defence policy, internal cohesion, food safety, the environment and solidarity with developing countries were also mentioned as areas in which Europe should play a greater role.

A number of members expressed a wish that the Union respect and protect the Member States' cultural identities. They wanted less European intervention and a willingness to scale down European action in certain fields. Reducing Europe's powers and limiting the *acquis communautaire* to areas where it could bring real added value would lend Europe greater legitimacy.

Principles which Europe must respect. All the members of the Convention stressed the shared values which unite our continent, citing *inter alia* democracy, the rule of law and the protection and promotion of human rights. Some mentioned the Charter of Fundamental Rights and asked that it be incorporated into the treaties. Others called on the Union to accede to the European Convention on Human Rights.

The theme of equality between Member States was mentioned several times, especially by the Convention members from the candidate countries. Each state, whatever its population, should feel at ease and respected in an enlarged Europe. Solidarity between Member States and the mechanisms underpinning it were also raised by a number of speakers.

The majority of Convention members called for a simpler division of powers and responsibilities, under which it would be clear to all what was the domain of the Union and what was covered at national, regional or even local level. The division of responsibilities should be one of the main topics to be addressed by the Convention. Europe's citizens were expecting clarity in this area above all.

A very large number of Convention members signalled their attachment to the principle of subsidiarity. They wanted effective arrangements put in place to ensure compliance with that principle.

A significant proportion of Convention members touched on the subject of democratic legitimacy and wanted the European Union to take account of citizens' expectations and give citizens a greater say in and fuller scrutiny of European decision-making. Transparency and accountability should improve the way Europe worked.

Institutional aspects. Some Convention members wanted the Union to have a treaty with constitutional status in some shape or form. A hierarchy of rules ought to be introduced. Several members reiterated their attachment to the Community method. Others emphasised the intergovernmental method. Tried and tested, it had shown that it worked. Extension of the qualified-majority rule and of the codecision procedure with the European Parliament was raised as well. Several members also referred to the role of the Presidency and the rotating Presidency system.

Convention. Several speakers addressed the work of the Convention itself. The vast majority stressed their determination to succeed in the task they had been given and warned their colleagues of the consequences if the Convention were to fail.

Some advocated that the Convention aim for a consensual text which could guarantee the success of the next intergovernmental conference (IGC).

Many Convention members stressed the importance of consulting civil society and, in particular, young people. Their proposals would have to be heard. A few members also wanted the churches to be given a hearing. One member proposed that a questionnaire be sent to every citizen, based on the model used in Switzerland for constitutional reforms.

II. Requests by representatives of the candidate countries

The Convention discussed the proposal presented by the Praesidium in response to the requests by the candidate countries at the inaugural meeting (CONV 10/2).

A few speakers wanted it amended so that two representatives (and not just one) from the candidate countries were invited to attend the Praesidium's proceedings as observers. Some representatives from the candidate countries also pressed for the right to be able to speak in their own language during the Convention's discussions.

The Chairman and some members of the Praesidium pointed out that not all Member States were represented within the Praesidium, nor should the candidate countries be as such. The possibility for Convention members from candidate countries to speak in their own language, at their request, would be re-examined at the technical level in consultation with the European Parliament.

The Chairman found that there was broad agreement on the proposals submitted to the Convention.

III. Working methods

The Convention held an exchange of views on the Praesidium's proposal on working methods (CONV 9/2).

The majority of speakers called for a flexible and pragmatic approach so that the Convention could quickly get down to the substance, given its limited time frame. Some speakers requested amendments. Others gave their agreement, while making a number of points.

The Chairman answered the questions raised, explained the reasons for the amendments made to the initial text and assured the members that the working methods would be applied flexibly, in a pragmatic manner and with an open mind. He also pointed out that a review procedure (Article 16) had been included in order to adapt working methods in future, should this prove necessary.

Winding up the discussions, the Chairman found a consensus within the Convention on the adoption of the working methods as they stood.

IV. Forum

Further to the note on the Forum (CONV 8/02), the recommendations of which were agreed to, Mr Dehaene mentioned the following points:

- the organisation of an online Internet chat with civil society would be considered;
- the open letter on the Convention and the Forum would be sent to the editors of the major European newspapers in the coming days;
- it was important to organise forums with civil society in the states represented within the Convention;
- the Economic and Social Committee would hold regular meetings with representatives of civil society after the meetings of the Convention; Mr Dehaene proposed that a member of the Praesidium and a member of the Secretariat be present at those meetings;
- a "Eurobarometer" of public opinion on the issues addressed by the Laeken Declaration, as proposed by a member of the Convention, would be worth carrying out.

The representative of the Committee of the Regions provided some information on the dialogue initiated with the regions on the issues being debated within the Convention.

V. Youth Convention

The Chairman recalled the proposal to hold a "Youth Convention", modelled on the Convention itself. He provided some explanations on the organisational aspects. The Youth Convention would be held in Brussels in July, either immediately before or immediately after the meeting of the Convention, scheduled for 11 and 12 July 2002. The Youth Convention would be organised along the same lines as the Convention. The young people should be briefed on the work initiated by their seniors. The members of the Convention would be responsible for choosing the young people, 168 being designated by Convention members from the Member States and the candidate countries, 32 by the European Parliament and 10 by the Commission. They would be aged between 18 and 25.

The Chairman stressed the importance of balanced representation as regards age, level of education, gender, etc. The Youth Convention would largely be funded by the Commission, with the support of the Secretariat and the European Parliament.

A note on the organisation of the Youth Convention would soon be sent to members of the Convention.

VI. Forthcoming meetings

The Chairman said that after this meeting, intended as a general discussion, the Convention should move on to more specific issues. The Praesidium proposed that the next two meetings focus on:

- Europe's tasks (what powers should be exercised at European level?);
- performance of those tasks (from the viewpoint of both democratic legitimacy and effectiveness).

In order to improve preparations for the first debate, members of the Convention would receive a document describing the current division of powers within the Union.

The hearing of civil society would take place after the meetings in April and May 2002 so that its representatives could state their views on those two main topics, having been briefed on the first Convention's initial discussions.

ANNEX**List of speakers in order of speaking
Plenary meeting, 21 and 22 March 2002****General debate: "What do you expect of the European Union?"**

1. Ms Sylvia-Yvonne KAUFMANN
2. Mr Alojz PETERLE
3. Mr Alain BARRAU
4. Ms Cristiana MUSCARDINI
5. Mr Jürgen MEYER
6. Mr Josep BORRELL FONTELLES
7. Mr Andrew DUFF
8. Mr Pierre CHEVALIER * Alternate member: Mr Louis MICHEL
9. Mr Erwin TEUFEL
10. Mr Paraskevas AVGERINOS
11. Mr Proinsias DE ROSSA
12. Mr Jens-Peter BONDE
13. Mr Michael ATTALIDES
14. Mr Josef ZIELENIEC
15. Mr António VITORINO
16. Mr Ray McSHARRY
17. Mr Gianfranco FINI
18. Mr Mesut YILMAZ
19. Mr Elio DI RUPO
20. Mr Alain LAMASSOURE
21. Mr Peter HAIN
22. Mr Jozef OLEKSY
23. Mr Slavko GABER
24. Mr Hans van MIERLO
25. Mr Eduardo ZAPLANA
26. Mr Pavol HAMZIK
27. Ms Ana PALACIO
28. Mr Sören LEKBERG
29. Mr Matjaz NAHTIGAL
30. Mr Peter GLOTZ
31. Mr Klaus HÄNSCH
32. Mr Michael FRENDÓ
33. Mr Iñigo MENDEZ DE VIGO
34. Ms Lena HJELM-WALLEN
35. Mr Georges KATIFORIS
36. Mr Reinhard Eugen BÖSCH
37. Mr Lamberto DINI
38. Mr Edvins INKENS
39. Mr Antonio TAJANI

40. Ms Meglena KUNEVA
41. Mr David HEATHCOAT-AMORY
42. Ms Maria Eduarda AZEVEDO
43. Mr Marco FOLLINI
44. Mr Rihards PIKS
45. Mr Hubert HAENEL
46. Mr Goran LENNMARKER
47. Ms Danuta HUBNER
48. Mr Jozsef SZÁJER
49. Mr Matti VANHANEN
50. Mr João de VALLERA
51. Mr Timothy KIRKHOPE
52. Mr Rolandas PAVILIONIS * Alternate member: Mr Vytenis ANDRIUKAITIS
53. Ms Linda McAVAN
54. Mr Pál VASTAGH
55. Mr Hannes FARNLEITNER
56. Mr Peter SERRACINO-INGLOTT
57. Mr Alberto COSTA
58. Mr Ben FAYOT
59. Ms Ritta KORHONEN * Alternate member: Mr Kimmo KILJUNEN
60. Mr Jan FIGEL
61. Mr Carlos CARNERO GONZALEZ * Alternate member: Ms Anne VAN LANCKER
62. Ms Ayfer YILMAZ
63. Mr Jacques SANTER
64. Ms Teija TIILIKAINEN
65. Mr Johannes VOGGENHUBER
66. Mr René van der LINDEN
67. Ms Marietta YANNAKOU-KOUTSIKOU
68. Mr Henning CHRISTOPHERSEN
69. Mr Peter KREITZBERG
70. Mr Michel BARNIER
71. Mr Ali TEKIN
72. Mr Alvydas MEDALINSKAS
73. Mr John BRUTON
74. Ms Gisela STUART
75. Mr Karel DE GUCHT
76. Ms Piia-Noora KAUPPI * Alternate member: Ms Hanja MAIJ-WEGGEN
77. Ms Pervenche BERÈS * Alternate member: Mr Olivier DUHAMEL
78. Mr Henrik DAM KRISTENSEN
79. Ms Evelin LICHTENBERGER * Alternate member: Mr Caspar EINEM
80. Mr Nickolay MLADENOV
81. Mr Paul HELMINGER
82. Mr Gabriel CISNEROS
83. Mr Livin MAIOR

Requests by representatives of the candidate countries

84. Mr Aloiz PETERLE
85. Mr Matjaz NAHTIGAL
86. Mr Gundars KRATS * Alternate member: Mr Roberts ZILE
87. Mr Janos MARTONYI
88. Mr Jens-Peter BONDE
89. Ms Ana PALACIO

Working methods

90. Mr Elmar BROK
91. Mr Ben FAYOT
92. Mr Alvydas MEDALINSKAS
93. Mr Hannes FARNLEITNER
94. Mr Peter ALTMAIER * Alternate member: Mr Erwin TEUFEL
95. Mr Andrew DUFF
96. Mr Panayiotis DEMETRIOU
97. Mr Jens-Peter BONDE
98. The Earl of STOCKTON * Alternate member: Mr Timothy KIRKHOPE
99. Ms Ana PALACIO
100. Mr Klaus HÄNSCH

Forum

101. Mr Eduardo ZAPLANA
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THE EUROPEAN CONVENTION

THE SECRETARIAT

Brussels, 25 April 2002 (02.05)**(OR. fr)****CONV 40/02****NOTE**

Subject : **Note on the plenary meeting**
- Brussels, 15 and 16 April 2002¹

I. Opening of the plenary meeting

The Convention Chairman, Mr Valéry Giscard d'Estaing, opened the meeting, assisted by the Vice-Chairman, Mr Giuliano Amato.

He congratulated Mr PETERLE for having been chosen by the representatives of the national parliaments of the applicant countries as a guest to the Praesidium.

He reminded members of the Convention that, as announced in CONV 18/02, the Praesidium had decided that members of the Convention from applicant countries could express themselves in their own languages. He explained the interpretation arrangements.

He pointed out to members of the Convention that in order to make for more lively debate, at the end of each set of five interventions according to the speakers' list, members could react by asking the Chairman of the meeting for the floor by raising a blue card. Those arrangements would be tried out as an experiment for one or two meetings, and their operation assessed thereafter.

The Chairman reminded the meeting that the Commission had distributed a note to the Convention which contained elements of the latest Eurobarometer regarding the future of the European Union. That note made very clear citizens' expectations of Europe.

¹ A verbatim record of the plenary meeting is given on the website www.european-convention.eu.int.

II. General debate: the missions of the European Union

Introduction

Mr Giscard d'Estaing opened the debate by reminding the meeting that several documents dealing with this subject had been communicated to the Convention, on the one hand by members of the Convention, and on the other hand by the Praesidium, which had forwarded two documents: the first attempted to organise the debate by raising specific questions on the missions of the European Union (CONV 16/02) and the second (CONV 17/02) contained a description of how the competence of the European Union is made up.

Members of the Convention made 86 interventions.

First question: Scope of the missions of the Union

The first question for the Convention was whether, taking into account the new dimension of the Union, the present international environment, its present remit, and the aspirations of its citizens, the Union should be given more tasks and if so, what should be added, or on the contrary, it should be given fewer tasks, and if so which tasks should be given back to Member States?

1. General questions

A broad trend had emerged within the Convention on the need to avoid calling into question the present remit of the Union, with only two members wishing certain competences to be given back to Member States.

Certain speakers raised the difficulties of delimiting competence in terms of subjects and the need to establish instead a delimitation according to the intensity of the action according to areas by means of establishing policy instruments.

In this respect, several members stressed the need to consider the question of the Union's missions together with the question of the division of competences and instruments. To that

end, a desire was expressed for the Treaty to indicate clearly who did what by indicating the degree of Union competence for each policy.

Several members wanted the three-pillar structure to be replaced by a single institutional structure.

2. The Union's missions which received the support of a large number of speakers

The majority of speakers mentioned the need to strengthen the Union's missions in two areas while conferring on it the necessary competences to carry out those missions:

- The common foreign policy, in order to enhance the presence and action of the Union on the international scene, particularly in crisis management. The Union should be capable of reacting effectively to the new challenges of international politics.
- The liberty, security and justice policy to enable the Union to act more effectively, in particular against terrorism, organised crime, illegal immigration, drugs and trafficking in human beings. In this context, certain members called for the introduction of a common border protection service.

Many members also wanted:

- an economic government as a corollary of Monetary Union,
- a reference to human rights by inserting the Fundamental Rights Charter into the Treaties. The question of the Union having a legal personality and its accession to the European Convention on Human Rights was raised,
- a link between external policy and development aid policy.

3. Other missions of the Union mentioned

Certain members wanted the Union also to take more action in the following areas:

- the environment,
- research and innovation,
- food security,
- security of supply.

4. *Missions on which differences emerged*

Several members called for European action in the following areas:

- economic and social cohesion and the development of a European social model, requiring a European social treaty taking into account the differences between Member States,
- combating poverty and social exclusion,
- combating unemployment,

and certain members wanted the Union to have its own tax arrangements. Other speakers considered that unnecessary.

As regards education, vocational training and teaching, some members called for the implementation of a European education system, whereas others wanted those issues to fall within the competence of Member States.

5. *Member States' missions*

As regards missions that should continue to be the responsibility of Member States, the majority of speakers who touched on the question referred to the following areas:

- the internal organisation of Member States,
- public services,
- culture,
- social security.

Some of those speakers pointed out that these were examples and not a complete list.

However, it was observed that the fact that the Union did not intervene directly in those areas should not prevent it from encouraging cooperation between Member States in those areas and/or supporting the coordination of the action of Member States.

Second question: The criteria used for deciding which missions should be carried out at Union level

The second question for the Convention was to determine the criteria used to decide which missions should be carried out at Union level and the principles on which the Convention should base such decisions.

The aspirations of citizens should, according to the members of the Convention, inform the division of competence between the Union and Member States.

A large majority of speakers reminded the meeting of the following criteria:

- the criterion of subsidiarity: the Union should only take action in the areas where it alone could do so given the cross-border elements of the action, or in areas where the Union could act more effectively than Member States individually. Certain speakers stressed the need to reinforce the application of the principle of subsidiarity;
- the criterion of proportionality: any action by the Union should not go beyond what was necessary to achieve the objectives pursued.

Certain speakers also mentioned the solidarity principle.

Third question: Member States' competence

The third question for the Convention aimed in particular to ascertain whether the Treaties should explicitly decide that responsibilities not covered by the missions of the Union should remain with Member States or whether they should be spelt out in the Treaties and, if that is the case, on the basis of what criteria. It was also asked what the principles should be on which the Convention might base such a decision.

Most speakers stressed the need to clarify in the Treaties the principle whereby missions not allocated to the Union by the Treaties continue to be the responsibility of Member States, but without drawing up in the Treaty an enumerative list of Member States' competence. The majority of the members of the Convention considered that drawing up such a list would risk setting in stone Member States' competence and be detrimental to the requisite flexibility to adapt to new realities. Certain speakers pointed out that given that competence remained under Member States except where allocated to the Union, it was difficult to draw up an enumerative list of Member States' competence.

Fourth question: Evolution of competence

The final question for the Convention was whether the missions of the Union should be settled now, for all time, or whether the possibility of further evolution should be foreseen.

Flexibility of the system for the delimitation of competence

The large majority of speakers supported a flexible system for the delimitation of competence allowing for some adaptation of the Union's missions to the new challenges and for citizens' expectations to be met optimally. Several speakers indicated that in this respect, the flexibility and dynamism at the heart of the Union's past development, and which was one of its strong points, should be preserved. A system of lists, whether of the competence of the Union or of Member States, would run counter to that flexibility. In that respect, it was pointed out by way of example that it was the current flexibility that enabled the Community to deal with problems relating to asylum and to adopt the Directive on electronic commerce.

Certain speakers emphasised the importance of having clear and democratic decision-making principles rather than a rigid system for the delimitation of competence. The need to preserve Article 95 and Article 308 of the TEC was also mentioned in this context.

Checks to ensure compliance with the principle of delimitation of competence and the subsidiarity principle

According to the large majority of speakers, the flexible system of delimitation should be accompanied by the implementation of effective means of checking compliance with the principle of delimitation of competence and the subsidiarity principle, as they considered that controlling the effective application of those principles was the best guarantee of their compliance. For most speakers, those controls should imply the participation of national parliaments. In this context it was pointed out that national Parliaments could already check compliance with the principle of delimitation of competence and the subsidiarity principle in certain areas insofar as there were debates on those matters at national level.

There was a discussion on whether the controls should include a new mechanism and whether such a mechanism should be political or judicial. Most speakers were in favour of an a priori or a posteriori mechanism composed of representatives of national parliaments, some being in favour of including representatives of the European Parliament. Certain speakers supported a judicial mechanism, putting forward the idea of a court composed of members of national constitutional courts or of a mechanism of cooperation between the Court of Justice and national constitutional courts.

Some speakers supported the participation of the regions in such a control, in particular those with legislative powers, while indicating that the allocation of competence between federal States and their federated entities should continue to be organised by the Member States concerned.

Finally, the need to establish varying arrangements for the amendments of the Treaties was mentioned: more rigid arrangements for the basic provisions and more flexible arrangements for the others.

III. Youth Session of the Convention

The Convention approved the document presented to it containing proposals for the organisation of a "Convention for the Young People of Europe" on the model of the Convention itself (CONV 15/02).

In discussing the document, more in-depth consideration was given to a number of problems, in particular the selection procedure for young people participating in the Convention. Several speakers stressed the need to establish transparent and objective selection procedures and to have a balance in the representation of the various sectors of society and the various viewpoints on European integration.

The Chairman stressed that the chosen selection procedure guaranteed such a balance and that the debate between the young people should be as free as possible. As regards the organisation of the debate within the Youth Convention, he indicated that there would be a Praesidium and a rapporteur appointed by the "Youth Convention" and that the rapporteur would report to the Convention. The question of establishing contact with the young people after the Youth Convention was over should be examined at a later stage.

IV. **Other business**

Setting up working parties

As regards the requests by members of the Convention for working parties to be set up as soon as possible, the Chairman of the meeting pointed out that the Praesidium was currently considering the matter and in particular was giving thought to topics that might usefully be examined by such working parties.

The next session

Winding up, Chairman said that the session of the Convention on 23 and 24 May 2002 would be devoted to the execution of the European Union's missions in the light of both legitimacy and efficiency. The session would consider in depth the matter of Union competence and the instruments to implement it.

ANNEX

List of speakers following order of intervention.

Plenary meeting 15 and 16 April 2002

LIST OF SPEAKERS

Monday 15 April

1. Mr Andrew DUFF - United Kingdom (European Parliament)
2. Ms Ayfer YILMAZ - Turkey (Parliament)
3. Mr Pierre MOSCOVICI - France (Government)
4. Mr John BRUTON - Ireland (Parliament)
5. Mr Rytis MARTIKONIS - Lithuania (Government)

Blue cards: Duhamel, Fayot, Van der Linden, McAvan, MacCormick

6. Mr Alain LAMASSOURE - France (European Parliament)
7. Mr Hans van MIERLO - Netherlands (Government)
8. Mr Erwin TEUFEL - Germany (Parliament)
9. Mr Peter SKAARUP - Denmark (Parliament)
10. Mr Alfred SANT - Malta (Parliament)

Blue cards: Voggenhuber, Maij-Weggen Stuart, Belohorská, Muscardini

11. Mr Peter HAIN - United Kingdom (Government)
12. Mr Edmund WITTBRODT - Poland (Parliament)
13. Mr Alain BARRAU - France (Parliament)
14. Mr Jürgen MEYER - Germany (Parliament)
15. Mr Jozef OLESKY - Poland (Parliament)

Blue cards: Borrell Fontelles, Spini, Bonde

16. Ms Danuta HÜBNER - Poland (Government)
17. Mr Soren LEKBERG - Sweden (Parliament)
18. Mr Michel BARNIER - Commission
19. Ms Inese BIRZNIECE - Latvia (Parliament) * Alternate for Mr INKENS
20. Mr Ben FAYOT - Luxembourg (Parliament)
21. Mr Mesut YILMAZ - Turkey (Government)
22. Mr Vytenis ANDRIUKAITIS - Lithuania (Parliament)

23. Mr Gianfranco FINI - Italy (Government)
24. Mr Olivier DUHAMEL - France (European Parliament)
25. Ms Eleni MAVROU - Cyprus (Parliament)
- Blue cards: Barrau, Tajani, MacCormick, Giscard d'Estaing, Palacio.*
26. Mr Henrik Dam KRISTENSEN - Denmark (Parliament)
27. Mr Michael FRENDO - Cyprus (Parliament)
28. Mr Joao de VALLERA - Portugal (Government)
29. Ms Renée WAGENER - Luxembourg (Parliament) *Alternate for Mr HELMINGER
30. Mr Reinhard Eugen BÖSCH - Austria (Parliament)
31. Mr Roberts ZILE - Latvia (Government)
- Blue cards: Muscardini, Rack, Palacio, Medalinskas, Katiforis.*
32. Mr Mimmo KILJUNEN - Finland (Parliament)
33. Ms Nelly KUTSKOVA - Bulgaria (Government)* Alternate for Ms Meglena KUNEVA
34. Mr Georges JACOBS - UNICE (European social partners, observer)
35. Ms Marietta GIANNAKOU - Greece (Parliament)
36. Mr René van der LINDEN - Netherlands (Parliament)
37. Mr Jacques SANTER - Luxembourg (Government)
- Blue cards: Wuermeling, Katiforis, Palacio*
38. Mr Alvydas MEDALINSKAS - Lithuania (Parliament)
39. Mr Göran LENNMARKER - Sweden (Parliament)
40. Mr Michael ATTALIDES – Cyprus (Government)
41. Mr Han van BAALEN - Netherlands (Parliament) * Alternate for Mr Frans TIMMERMANS
42. Mr Puis HASOTTI - Romania (Parliament)
43. Mr Peter SERRACINO-INGLOTT - Malta (Government)
44. Mr Paraskevas AVGERINOS - Greece (Parliament)
45. Ms Hanja MAIJ-WEGGEN - European Parliament
46. Mr Peter GLOTZ - Germany (Government)
47. Mr William ABITBOL - European Parliament * Alternate for Mr BONDE
- Blue cards: Muscardini, Carnero Gonzalez, Borrell Fontelles, Van der Linden, Leenmarker, Palacio.*
48. Mr David HEATHCOAT-AMORY - United Kingdom (Parliament)
49. Mr Panayotis DEMETRIOU – Cyprus (Parliament)
50. Mr Matjaz NAHTIGAL - Slovenia (Government)
- Blue cards: Birzniece, Duff, Van Lancker, Duhamel, Heathcoat-Amory.*

Plenary meeting 16 April 2002**LIST OF SPEAKERS****Tuesday 16 April**

1. Mr Adrian SEVERIN - Romania (Parliament) * Alternate for Mr MAIOR
2. Mr Ray McSHARRY - Ireland (Government)
3. Mr Lamberto DINI - Italy (Parliament)
4. Mr Neil MacCORMICK - European Parliament * Alternate for Mr VOGGENHUBER
5. Mr Proinsias DE ROSSA - Ireland (Parliament)

Blue cards: Wuermeling, Katiforis

6. Mr Valdo SPINI - Italy (Parliament) * Alternate for Mr FOLLINI
7. Mr Hannes FARNLEITNER - Austria (Government)
8. Mr Matti VANHANEN - Finland (Parliament)
9. Ms. Evelin LICHTENBERGER - Austria (Parliament)

10. Mr Huber HAENEL - France (Parliament)

11. Mr Pavol HAMZIK - Slovakia (Parliament)

Blue cards: Heathcoat-Amory, Fayot, Rack, Bonde

12. Ms Cristiana MUSCARDINI - European Parliament
13. Mr Peter GOTTFRIED – Hungary (Government) * Alternate for Mr MARTONYI
14. Ms Eduarda AZEVEDO - Portugal (Parliament)
15. Mr Klaus HAENSCH - European Parliament
16. Mr Henning CHRISTOPHERSEN - Denmark (Government)
17. Ms Anne VAN LANCKER - European Parliament
18. Mr Caspar EINEM - Austria (Parliament)
19. Mr Louis MICHEL - Belgium (Government)
20. Ms Elena PACIOTTI - European Parliament * Alternate for McAVAN
21. Mr Antonio VITORINO - Commission
22. Ms Sylvia-Yvonne KAUFMANN - European Parliament

Blue cards: Palacio, Duff, Thorning-Schmidt

23. Mr Ali TEKIN - Turkey (Parliament)
24. Ms Hildegard PUWAK - Romania (Government)
25. Mr Elio DI RUPO - Belgium (Parliament)
26. Ms Ana PALACIO - Spain (Government)

27. Mr Jan KAVAN – Czech Republic (Government)
28. Mr Josep BORRELL FONTELLES – Spain (Parliament)
29. Mr Alberto COSTA - Portugal (Parliament)
30. Mr Johannes VOGGENHUBER - European Parliament
31. Ms Teija TIILIKAINEN - Finland (Government)
32. Mr Tunne KELAM - Estonia (Parliament)
33. Mr Joachim WUERMELING- Germany (European Parliament) * Alternate for Mr E. BROK

Item 2 of the agenda

Mr Jens-Peter BONDE - European Parliament

Ms Lena HALLENGREN - Sweden (Government) * Alternate for HJELM-WALLÉN

Mr Timothy KIRKHOPE - European Parliament

Mr Valdo SPINI - Italy (Parliament) * Alternate for Mr FOLLINI

Ms Helle THORNING-SCHMIDT - European Parliament * Alternate for Mr MARINHO

Mr Alvydas MEDALINSKAS - Lithuania (Parliament)

Blue cards: Martikonis, Palacio, Maij-Weggen, Tomlinson, Carnero Gonzalez, Farnleitner, MacCormick, Bonde.

Item 3 of the agenda

Mr Andrew Nicholas DUFF - European Parliament

Ms Irena BELOHORSKÁ - Slovakia (Parliament)

Mr Jens-Peter BONDE - European Parliament

Mr Alvydas MEDALINSKAS - Lithuania (Parliament)

THE EUROPEAN CONVENTION

Brussels, 6 May 2002

THE SECRETARIAT

SUMMARY OF CONCLUSIONS

**Subject: Meeting of the Praesidium
Brussels, 25 April 2002**

I. POINTS SETTLED1. Autumn calendar

The Praesidium, taking into account both the wish of members designated by national parliaments to have Convention sessions on Monday and Tuesday and the need underlined by the other members of having sufficient time for prior co-ordination meetings of components and political groups, reached agreement on the attached calendar.

2. Handling of Plenary sessions

It was agreed that the introduction of blue card interventions at the April session had worked well. Further to increase the spontaneity of debate ,speakers whose contributions had been the subject of blue card comments should in future be given a (green card) right of brief reply.

II. OUTSTANDING ISSUES3. Working groups

The Praesidium considered the Secretariat document SN 2103/2/02 REV 2.

Following an exchange of views, in particular on the scope of the mandate of the working groups and on suggestions for the setting up of other working groups, the Chairman concluded that at the May session the Praesidium would announce the setting up of 6 working

groups. Five of them would correspond to those suggested in the above mentioned paper, with slight amendments to their mandate, and a sixth one would consider improved economic co-ordination mechanisms in the context of monetary union. The Praesidium agreed to finalise the mandate of the 6 working groups at its next meeting on the basis of a new Secretariat draft.

As to the idea, put forward by the "invitee", of a working group on minorities and cultural identities, it was concluded that rather than creating a specific working group, these questions could be dealt with in the working groups on the "Charter" and on "Complementary competences".

As to the Presidency on the working groups, the Praesidium agreed the following :

- Subsidiarity : Ms Palacio
- Charter : Mendez de Vigo or Vitorino
- Legal personality : Amato
- National parliaments : Stuart or Bruton
- Complementary competences : Christophersen
- Economic governance : Hänsch.

It was further agreed that each working group Chairman would prepare for the Praesidium a short paper describing the approach to be followed in the group.

Topics for other working groups, notably in the field of foreign policy and JAI, would be identified following the debate in the plenary in June.

4. The Forum and the Convention session devoted to civil society

On the basis of the note by the Vice-Chairman Dehaene and of its oral presentation, the Praesidium took stock of the activities carried out within the Forum and was informed about the modalities for the June session devoted to civil society. It was agreed that the designated Convention Observers have a specific position in relation to the dialogue with civil society and would therefore be given the possibility to address the Convention. Vice-Chairman Dehaene also referred to the meetings of NGOs and other organisation representing civil

society organised by ECOSOC, which could also allow participants to identify spokesmen to address the Convention.

The Praesidium stressed the need to ensure that the session devoted to civil society be lively and interesting. It was agreed that the members of the Convention could intervene in the debate with the blue card.

4. Consultation of students on the future of Europe

The Praesidium noted with interest the proposal put forward by four members of the Convention.

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The next Praesidium Meeting will take place on 8 May, at 10h30.

THE EUROPEAN CONVENTION

Brussels, 8 May 2002

THE SECRETARIAT

SUMMARY OF CONCLUSIONS

**Subject: Meeting of the Praesidium
Brussels, 8 May 2002**

I. POINTS SETTLED**1. Convention session of 23-24 May**

The Praesidium agreed that two papers would be forwarded to the Convention with a view to preparing the debate : one on "Competences" (new expanded version of the CONV 17/02, taking into account elements emerging from the April session), and a second one on "Instruments" (the Secretariat draft, amended on the basis of the Praesidium discussion).

The paper on National Parliaments would need further elaboration and would then be circulated later.

2. Convention session devoted to civil society

In order to allow for more time for preparation, the session devoted to civil society would be the entire second session of June (24-25.06.02). The Praesidium agreed that the session would be organised according to the modalities set out in the Secretary General's paper dated 7 May. It decided however to add a seventh contact group on culture. The contact groups would be chaired as follows :

Social	Mr Hänsch
Environmental	Ms Katiforis
Human Rights	Mr Vitorino
Development	Mr Christophersen
Academia	Vice-President Amato
Regional/Sub-Regional groups	Ms Palacio
Culture	Mr Peterle

One or two other members of the Convention would be invited to play a part; all the other members would of course be welcome to attend these hearings.

3. Working groups

The Praesidium agreed the mandate of the six working groups (attached). As to the presidency and to the deadlines, it agreed the following :

- Subsidiarity : Mendez de Vigo (September)
- Charter : Vitorino (November)
- Legal personality : Amato (November)
- National parliaments : Stuart (November)
- Complementary competences : Christophersen (October)
- Economic governance : Hänsch (October).

This information would be given to the Convention on 23 May. The working groups would be established on 6-7 June. The Secretariat would issue a document containing the mandates, specifying the deadlines and indicating how members of the Convention could volunteer. They could indicate in order of priority their (two or three) preferences for working groups in order to allow the Praesidium to decide of the composition of each working group, with a view to achieving a balance between the different components and nationalities.

The Praesidium was informed of the names of the members of the Secretariat who will assist the working groups :

- Subsidiarity : *Arpio (02-285.6183), De Poncins (02-285.5112)*
- Charter: *Ladenburger (02-285.5057), Bartol (02-285.6694)*
- Legal personality : *Passos (02-285.5049), Bribosia (02-285.5047)*
- National Parliaments : *van den Heuvel (02-285.8503), de Peyron (02-285.9816)*
- Complementary competences : *Martinez (02-285.5061), Schiavo (02-285.5972)*
- Economic governance : *Pilette (02-285.8989), Milton (02-285.8519).*

The Chairpersons of the working groups will prepare, with their assistance, the papers aimed at introducing the debate in the working groups.

The Praesidium agreed that other working groups (notably on foreign and defence policy and JAI) would be set up in July.

4. The note of the Secretariat on "Contributions" was endorsed, and the Budget report noted.

II. OUTSTANDING ISSUES

5. Note on the missions of the Union by Mr Katiforis

The Praesidium had a first exchange of views on this note, for which the President thanked Mr Katiforis.

6. Consultation of students on the future of Europe

This proposal will be discussed at a future meeting of the Praesidium.

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The next Praesidium meeting will take place on 22 May, at 16h00.

THE EUROPEAN CONVENTION
DEPUTY SECRETARY-GENERAL

Brussels, 30 April 2002 (02.05)
(OR. fr)

SN 2252/02

Draft mandates for working groups

- (i) How can compliance with the principle of subsidiarity be monitored in the most effective manner possible? Should a monitoring mechanism or procedure be established? Should this procedure be of a political and/or legal nature?
- (ii) If it is decided to incorporate the Charter of Fundamental Rights in the Treaty: how should this be done and what would be the consequences? What would be the implications of accession by the Community/Union to the European Convention on Human Rights?
- (iii) What would be the consequences of explicit recognition of the EU's legal personality? And of a merger of the Union's legal personality with that of the European Community? Could these contribute to the simplification of the Treaties?
- (iv) How is the role of national Parliaments exercised in the current architecture of the European Union? What national arrangements function best? Is there a need to consider new mechanisms/procedures at national level or at European level?
- (v) How should "complementary" competences be dealt with in future: should Member States be given back full competence in respect of those matters for which the Union currently has complementary competence, or should the limits of the Union's complementary competence be clearly set out?
- (vi) The introduction of the single currency implies more thorough-going economic and financial cooperation. What forms might such cooperation take?

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LA CONVENTION EUROPEENNE

Bruxelles, le 30 avril 2002

L'ADJOINTE AU SECRÉTAIRE GÉNÉRAL

SN 2252/02**Projet de mandats des groupes de travail**

- i) Comment assurer de la manière la plus efficace le contrôle du respect du principe de subsidiarité ? Faut-il créer un mécanisme ou une procédure de contrôle ? Cette procédure doit-elle être de nature politique et/ou judiciaire?
- ii) Si l'on décide d'insérer la Charte des droits fondamentaux dans le Traité : par quelles modalités convient-il de le faire et quelles en seraient les conséquences? Quelles seraient les conséquences d'une adhésion de la Communauté/Union à la Convention européenne des Droits de l'Homme ?
- iii) Quelles seraient les conséquences d'une reconnaissance explicite de la personnalité juridique de l'UE? Et celles d'une fusion de la personnalité juridique de l'Union et celle de la Communauté européenne ? Peuvent-elles contribuer à la simplification des traités ?
- iv) De quelle façon est exercé le rôle des Parlements nationaux dans l'actuelle architecture de l'Union européenne ? Quels sont les arrangements nationaux qui fonctionnent le mieux ? Est-il nécessaire d'envisager de nouveaux mécanismes/procédures au niveau national ou au niveau européen ?
- v) Comment traiter à l'avenir les compétences dites « complémentaires »: convient-il de rendre aux Etats membres toute compétence pour les matières dans lesquelles actuellement l'Union a une compétence complémentaire, ou faut-il expliciter les limites de la compétence complémentaire de l'Union ?
- vi) La mise en place de la monnaie unique implique une coopération économique et financière plus poussée. Quelles formes une telle coopération pourrait-elle prendre ?

THE EUROPEAN CONVENTION
THE SECRETARIAT

Brussels, 17 May 2002 (21.05)
(OR. fr)

CONV 52/02

NOTE

from : Praesidium
to : Convention

Subject: Working Groups

1. As discussion has begun within the Convention on matters of substance, the need has emerged to set up working groups to meet the twin aims of investigating a number of specific questions in greater depth and involving the members of the Convention in fundamental work which cannot be done in plenary session.
2. Article 15 of the Working Methods lays down that:
"In the light of views expressed in the Convention, the Chairman or a significant number of the members of the Convention may recommend that the Praesidium set up Convention Working Groups. The Praesidium will determine their mandate, working arrangements and composition, taking into account the specific expertise of members, alternates and observers in relation to the subject under discussion. Every member of the Convention may attend all such meetings. The Secretariat establishes a summary note after each meeting of the working groups."

3. The discussion in plenary meeting, in particular that of 15 and 16 April, yielded a number of indications in the light of which the Chairman recommended to the Praesidium that working groups should be set up. The Praesidium has agreed to set up six working groups at this stage with the following mandates:

- Group 1: How can verification of compliance with the principle of subsidiarity be ensured? Should a verification mechanism or procedure be introduced? Should such a procedure be political and/or judicial in character?
- Group 2: If it is decided to include the Charter of Fundamental Rights in the Treaty: how should this be done, and what would be the consequences thereof? What would the consequences be of accession by the Community/Union to the European Convention on Human Rights?
- Group 3: What would the consequences be of explicit recognition of the legal personality of the EU, and of a fusion of the legal personalities of the EU and the European Community? Might they contribute to simplification of the Treaties?
- Group 4: How is the role of national Parliaments carried out in the present architecture of the European Union? What are the national arrangements which function best? Should new mechanisms/procedures be envisaged at national or European level?
- Group 5: How should "complementary" competence be treated in future? Should Member States be accorded full competence for matters in which the Union at present has complementary competence, or should the limits of the Union's complementary competence be spelled out?
- Group 6: The introduction of the single currency implies closer economic and financial cooperation. What forms might such cooperation take?

4. Concerning the chairmanship of the working groups, the deadline by which each group should reach conclusions to be submitted to the plenary session and the assistance provided by the Secretariat to the working groups' chairmen, the following has been decided. The deadlines set are intended to give further substance to the plenary meetings of the Convention scheduled for September, October and November. For this reason the deadlines differ as shown:

Group 1:	Chairman:	Mendez de Vigo
	Deadline:	September
	Secretariat:	Arpio, De Poncins
Group 2:	Chairman:	Vitorino
	Deadline:	November
	Secretariat:	Ladenburger, Bartol
Group 3:	Chairman:	Amato
	Deadline:	November
	Secretariat:	Passos, Bribosia
Group 4:	Chairman:	Stuart
	Deadline:	September
	Secretariat:	van den Heuvel, de Peyron
Group 5:	Chairman:	Christophersen
	Deadline:	October
	Secretariat:	Martinez, Schiavo
Group 6:	Chairman:	Hänsch
	Deadline:	October
	Secretariat:	Pilette, Milton

5. For the working groups to work effectively, the number of their members should ideally be about 20 to 25, to allow for representation of the different constituent elements and for the fact that any other member of the Convention may attend meetings as laid down in Article 15 of the Working Methods.

6. The guiding criterion for the composition of the working groups, in accordance with Article 15 of the Working Methods, is that of specific expertise, and that criterion applies to members, alternates and observers.

The Praesidium invites Convention members, alternates and observers to express their interest in taking part in any of the working groups, listing them in order of preference where interested in more than one group. This information must be communicated to the Convention Secretariat by Thursday 30 May 2002, for the attention of Ms Martinez Iglesias:

e-mail: maria-jose.martinez-iglesias@consilium.eu.int

Fax: + 32 2 285 5060

7. The composition of the working groups will be determined by the Praesidium on the above basis in order to ensure the necessary balance between constituent elements, and the working groups will be formally established at the plenary meeting on 6 June 2002.

THE EUROPEAN CONVENTION

THE SECRETARIAT

**Brussels, 31 May 2002 (03.05)
(OR. fr)****CONV 72/02****NOTE**

from : Mr António Vitorino
to : Members of the Convention

Subject : **Mandate of the Working Group on the Charter**

Please find attached a note on the above subject as an aid to the discussions of the Working Group on the Charter.

Working Group II: "Charter/ECHR"

Chairman: António Vitorino

If it is decided to incorporate the Charter of Fundamental Rights in the Treaty: how should this be done and what would be the consequences? What would be the implications of accession by the Community/Union to the European Convention on Human Rights?

Introduction

The purpose of this note is to give an initial summary of the substantive questions which should be dealt with by the Working Group on "Incorporation of the Charter/Accession to the European Convention on Human Rights (ECHR)". On the basis of this summary, I shall in due course put forward a detailed analysis of the questions mentioned in order to guide discussions within the Working Group.

There are two aspects to the Working Group's mandate:

- The procedures for and consequences of any incorporation of the Charter into the Treaties
- The consequences of any accession by the Community/Union to the European Convention on Human Rights (ECHR).

These aspects need to be addressed by the Working Group separately and in turn. I wish to state from the outset that the two aspects are complementary and not alternatives, since incorporation of the Charter in no way lessens the importance of any accession to the ECHR or vice versa.

Finally, in the case of both aspects, one point should be borne in mind regarding discussion in the Working Group: as it is the general wisdom that working groups should concentrate on more targeted matters and not duplicate the political debates of plenary meetings, the Working Group should not get involved in discussion of the major political questions (*whether* the Charter should be incorporated or *whether* there should be accession to the ECHR). It should rather focus on examining the more specific matters outlined below, on the assumption that the two questions will meet with a positive political response.

I. Procedures for and consequences of any incorporation of the Charter into the Treaties

1. Preliminary remark: the content of the Charter as an *acquis*

In my view, a wise initial position would be that the *content* of the Charter as negotiated by the earlier Convention constitutes a common *acquis* which should be maintained.

However, should the Convention advocate changing the current structure or designation of the Treaties, it might prove necessary to make certain adjustments to the Charter of a purely drafting nature or to hold a discussion on maintaining Article 52(2)¹ of the Charter if the Convention wished to establish a hierarchical distinction between a new basic Treaty and the rest of existing primary law.

2. Examination of possible techniques for incorporation and certain related questions

One of the Working Group's key tasks will be to examine the various possible techniques for incorporating the Charter (incorporation of the Charter's articles into the EU Treaty or a new basic Treaty, Protocol annexed thereto, reference in an article such as the present Article 6(2) of the TEU, etc.). That examination will have to consider various aspects such as the precise legal effect and the political profile which are to be conferred on the Charter. It will also have to consider the general question of the future structure of the Treaties. The Working Group will also have to look at certain questions relating to the technique of incorporation, in particular what is to happen to the preamble to the Charter, whether to keep a reference – of the kind currently in Article 6(2) of the TEU – to common constitutional traditions and the ECHR – and the relationship between some of the Charter's articles and the provisions of the present EC Treaty which they repeat (in particular concerning citizens' rights).

3. The question of appeals to the Court of Justice

The Working Group may also have to address two topics which, although not arising directly from possible incorporation of the Charter, are nevertheless often raised in connection with the protection of fundamental rights within the Union:

¹ Article 52(2) reads as follows: "Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties."

- firstly, the Working Group will have to decide whether to amend the fourth paragraph of Article 230 of the EC Treaty in order to extend the scope of direct appeals by individuals to the Court of Justice, or indeed to introduce a new form of appeal for the protection of fundamental rights, or whether it considers it preferable to maintain the existing system and leave it to case-law to refine it.
- secondly, the Working Group will have to take note of the question of a possible extension of the Court of Justice's competence in JHA matters. It should be pointed out that problems in this area go beyond the issue of fundamental rights and affect the more general debate to be conducted in plenary on the future development of this policy. The Working Group should therefore avoid prejudging that debate; it could nevertheless usefully make a limited contribution by examining criticisms to the effect that the current provisions should be revised with regard to the protection of human rights.

II. Implications of any accession by the Community/Union to the ECHR

The Working Group's discussion of this aspect will depend to a greater extent on the questions raised by its members. I shall not, for my part, encourage the Working Group to rehearse again in detail all the familiar arguments *for* and *against* accession by the Community/Union to the ECHR. I shall concentrate rather on a technical examination of the extent to which accession can be reconciled with the principle of autonomy of Community law. If, however, members of the Working Group wish to raise other points sometimes made against accession, I am prepared to see that it looks for satisfactory answers.

Moreover, the Working Group should consider the form which might be taken by any legal basis for accession to the ECHR in the Treaties. It could also address the question of whether that legal basis could also explicitly enable accession to other international human-rights agreements.

In addition, the Working Group will be informed of ongoing discussions within the Council of Europe on the technical consequences of any accession by the EU/EC for the Strasbourg system. I will, however, recommend the Working Group not to deal with those issues – which would be a matter for possible negotiations between the Union and the Council of Europe – unless the latter regards some of them as important for accession.

Finally, if members of the Working Group so request, it may also examine the advantages and disadvantages of approaches sometimes suggested as alternatives to accession in order to ensure consistency between Union law and that of the ECHR, e.g. the introduction of a procedure whereby the Court of Justice can refer to or consult the European Court of Human Rights.

THE EUROPEAN CONVENTION

THE SECRETARIAT

**Brussels, 14 June 2002 (26.06)
(OR. fr)****CONV 77/1/02
REV 1****REVISED COVER NOTE**

from :	Praesidium
to :	Convention
Subject:	Composition of the Working Groups

Members of the Convention will find attached the definitive composition of the Working Groups.

Working Group 1 "SUBSIDIARITY"**Chair: Iñigo MENDEZ DE VIGO**

AVGERINOS Paraskevas
BONDE Jens-Peter
BÖSCH Reinhard
BROK Elmar
CHABERT Josef
CHEVALIER Pierre
COSTA Alberto
DALGAARD Per
DAMMEYER Manfred
DINI Lamberto
FIGEL Jan
FOGLER Marta
FRERICHS Göke
GABER Slavko
GIBERYEN Gast
HAIN Peter
HALLENGREN Lena
HAMZIK Pavol
KREITZBERG Peeter
KROUPA Frantisek
LOPES Ernani
MARINHO Luis
MEYER Jürgen
PAVILIONIS Rolandas
SERRACINO-INGLOTT Peter
SEVERIN Adrian
SPRINDZUKS Maris
TEUFEL Erwin
TIMMERMANS Frans
VANHANEN Matti
VALTCHEV Daniel
VITORINO Antonio
WALLS-CUSHNAHAN John
ZAPLANA Eduardo

Working Group 2 "CHARTER"**Chair: Antonio VITORINO**

ANDRIUKAITIS Vytenis Povilas
ARABADJIEV Alexander
BADINTER Robert
BIRZNIECE Inese
CISNEROS Gabriel
CRAVINHO João
DI RUPO Elio
ECKSTEIN-KOVACS Peter
FAYOT Ben
FINI Gianfranco
HASOTTI Puiu
HELLE Esko
HELVEG PETERSEN Niels
KAVAN Jan
KELEMEN Andras
KOCAOGLU Emre
KUTSKOVA Neli
LOBO ANTUNES Manuel
LOPEZ GARRIDO Diego
MacCORMICK Neil
MARTINI Claudio
MATSAKIS Marios
MAVROU Eleni
McDONAGH Bobby
PACIOTTI Elena
RACK Reinhard
SCOTLAND OF ASTHAL Baroness
SEBEJ Frantisek
SIMSIC Danica
SVENSSON Ingvar
TRZCINSKI Janusz
van der LINDEN René

Working Group 3 "LEGAL PERSONALITY"**Chair: Giuliano AMATO**

ABITBOL William

ALMEIDA GARRETT Teresa

CARNERO Carlos

DU GRANRUT Claude

EINEM Caspar

GRABOWSKA Genowefa

IOAKIMIDIS Panayotis

JINGA Ion

KOHOUT Jan

KRASTS Gundars

KUNEVA Meglena

KVIST Kenneth

MACLENNAN OF ROGART Robert Adam Ross (Lord)

MIGAŠ Juraj

MUSCARDINI Cristiana

NAGY Marie

NAHTIGAL Matjaz

PALACIO Ana

PLEUGER Gunter

PONZANO Paolo

SCHMIT Nicolas

SZÁJER József

TAJANI Antonio

TÄRNO Ülo

TIILIKAINEN Teija

UZUN Nezrin

van EEKELEN Wim

VIMONT Pierre

VOGGENHUBER Johannes

Working Group 4 "NATIONAL PARLIAMENTS"**Chair: Gisela STUART**

AZEVEDO Eduarda
BARNIER Michel
BARRAU Alain
BASILE Filadelfio
BELOHORSKÁ Irena
BERGER Maria
CRISTINA Dolores
DE ROSSA Proinsias
DEMETRIOU Panayotis
DUFF Andrew
DYBKJAER Lone
ESER Kürsat
HAENEL Hubert
INGUANEZ John
KELAM Tunne
KILJUNEN Kimmo
KRISTENSEN Henrik dam
KUTRAITE-GIEDRAITIENE Dalia
KURZMANN Gerhard
LEKBERG Sören
MAIJ-WEGGEN Hanja
MAIOR Liviu
MICHEL Louis
MLADENOV Nikolai
OLEKSY Jozef
PETERLE Aloiz
QUEIRO Luis
SIGMUND Anne-Maria
STILIANIDIS Evripidis
TEKIN Ali
van BAALEN Hans
VASTAGH Pál
WAGENER Renée
ZAHRADIL Jan

Working Group 5 "COMPLEMENTARY COMPETENCE"**Chair: Henning CHRISTOPHERSEN**

ALTMAIER Peter
ATTALIDES Michael
BREJC Michael
de CASTRO Osvaldo
DUHAMEL Olivier
FARNLEITNER Hannes
FREDO Michael
GIANNAKOU Marietta
HÄNNI Liia
HEATHCOAT-AMORY David
HELMINGER Paul
HJELM-WALLEN Lena
JUSYS Oskaras
KELTOSOVA Olga
KIRKHOPE Timothy
LAMASSOURE Alain
LICHTENBERGER Evelin
MARTIKONIS Rytis
MARTONYI Janos
MEDALINSKAS Alvydas
PELTOMÄKI Antti
PIETERS Danny
PONZANO Paolo
SEFFF Wolfgang
SKAARUP Peter
SPERONI Francesco
SZENT-IVÁNY István
THORNING-SCHMIDT Helle
TOMLINSON John Edward (Lord)
VASSILIOU Androula
WITTBRODT Edmund
WUERMELING Joachim

Working Group 6 "ECONOMIC GOVERNANCE"**Chair: Klaus HÄNSCH**

BARNIER Michel
BASTARRECHE Carlos
BERÈS Pervenche
BORRELL Josep
BRIESCH Roger
BRUTON John
de BRUIJN Thom
DE GUCHT Karel
FOLLINI Marco
GABAGLIO Emilio
GLOTZ Peter
GOTTFRIED Péter
HOLOLEI Henrik
HÜBNER Danuta
IDRAC Anne-Marie
JACOBS Georges
KATIFORIS Georges
KAUFMANN Sylvia-Yvonne
KAUPPI Pia-Noora
KORHONEN Riitta
LENARČIČ Janez
LENNMARKER Göran
McAVAN Linda
McSHARRY Ray
MOSCOVICI Pierre
NAZARÉ PEREIRA Antonio
PUWAK Hildegard
SANTER Jacques
SPINI Valdo
STOCKTON Alexander (The Earl of)
TUSEK Gerhard
van LANCKER Anne
YILMAZ Ayfer
ZIELENIEC Josef
ZILE Roberts

THE EUROPEAN CONVENTION
THE SECRETARIAT

Brussels, 19 June 2002 (21.06)
(OR. fr)

CONV 124/02

INFORMATION NOTE

from : Secretariat
to : Convention
Subject : **Working Groups**

Members of the Convention will find below a table summarising information on the work of the working groups.

Working Groups

		Mandate	Deadline	Chairman (Secretariat)	Dates/Times	Venue
I	Subsidiarity	How can verification of compliance with the principle of subsidiarity best be ensured? Should a verification mechanism or procedure be introduced? Should such a procedure be political and/or judicial in character? (CONV 71/02)	September	Mendez de Vigo (Arpio, de Poncins)	7 June 2002 / 13.00 - 17.00 17 June 2002 / 10.00 - 18.30 25 June 2002 / 15.00 - 18.30 10 July 2002 / 10.00 - 12.30 22 July 2002 / 10.00 - 18.30 29 July 2002 / 10.00 - 18.30 PHS 7C50 6 September 2002 / 10.00 - 18.30 19 September 2002 / 10.00 - 18.30 (with Group IV)	European Parliament PHS 7650 ASP 1G2 PHS 7C50 PHS 7C50 (TBA) ¹ (TBA) ¹
II	Charter	If it is decided to include the Charter of Fundamental Rights in the Treaty: how should this be done, and what would be the consequences thereof? What would the consequences be of accession by the Community/Union to the European Convention on Human Rights? (CONV 72/02)	November	Vitorino (Ladenburger, Bartol)	25 June 2002 / 14.30 - 17.00 12 July 2002 / 14.30 - 18.30 23 July 2002 / 10.00 - 18.30 16 September 2002 / 11.00 - 18.30 17 September 2002 / 09.30 - 18.30 (poss. 7 or 8 September) 4 October 2002 / 14.30 - 18.30	Commission CCAB - 1D CHAR S/4 CHAR-S/4 CHAR S/4 (TBA) ¹ CHAR S/4

		Mandate	Deadline	Chairman (Secretariat)	Dates/Times	Venue
III	Legal personality	What would the consequences be of explicit recognition of the legal personality of the EU, and of a fusion of the legal personalities of the EU and the European Community? Might they contribute to simplification of the Treaties ? (CONV 73/02)	November	Amato (Passos, Bribosia)	18 June 2002 / 15.00 - 18.30 25 June 2002 / 18.00 - 19.30 10 July 2002 / 10.00 - 13.00 18 July 2002 / 10.00 - 13.00 5 September 2002 / 10.00 - 13.00 11 September 2002 / 10.00 - 13.00 26 September 2002 / 10.00 - 13.00 17 October 2002 / 14.30 - 18.00	Council J.L. J.L. J.L. J.L. J.L. J.L. J.L.
IV	National Parliaments	How is the role of national Parliaments carried out in the present architecture of the European Union? What are the national arrangements which function best? Should new mechanisms/procedures be envisaged at national or European level? (CONV 74/02)	November	Stuart (Van den Heuvel, Peyron)	26 June 2002 / 09.00 - 12.00 10 July 2002 / 09.30 - 16.00 18 July 2002 / 09.30 - 16.00 11 September 2002 / 09.30 - 13.00 19 September 2002 / 10.00 - 18.00 (with Group I) 26 September 2002 / 09.30 - 13.00 10 October 2002 / 14.30 - 18.00 17 October 2002 / 14.30 - 18.00 22 October 2002 / 14.30 - 18.00	Commission CCAB 1A CHAR S/4 CHAR S/4 CHAR S/4 (TBA) ¹ CHAR S/4 CHAR S/2 CHAR S/4 CCAB/-1D
V	Complementary competence	How should " complementary " competence be treated in future? Should Member States be accorded full competence for matters in which the Union at present has complementary competence, or should the limits of the Union's complementary competence be spelled out? (CONV 75/02)	October	Christophersen (Martinez, Schiavo)	17 June 2002 / 11.00 - 18.00 9 July 2002 / 11.00 - 18.00 17 July 2002 / 11.00 - 18.00 6 September 2002 / 11.00 - 18.00 7 October 2002 / 11.00 - 18.00 30 October 2002 / 11.00 - 18.00	Council J.L. J.L. J.L. J.L. J.L. J.L.

		Mandate	Deadline	Chairman (Secretariat)	Dates/Times	Venue
VI	Coordination of economic policies	The introduction of the single currency implies closer economic and financial cooperation . What forms might such cooperation take? (CONV 76/02)	October	Hänsch <i>(Pilette, Milton)</i>	7 June 2002 / 13.00 - 17.00 19 June 2002 / 15.00 - 18.00 24 June 2002 / 20.30 - 22.00 10 July 2002 / 10.00 - 13.00 17 July 2002 / 10.00 - 17.00 29 August 2002 / 10.00 - 17.00 13 September 2002 / 13.00 - 16.00 18 September 2002 / 15.00 - 18.00 27 September 2002 / 10.00 - 13.00	European Parliament ASP IEZ PHS 7C50 PHS 7C50 PHS 7C50 PHS 7C50 PHS 7C50 PHS 7 C50 PHS 7 C50

¹ TBA = to be announced

THE EUROPEAN CONVENTION**Brussels, 19 June 2002 (21.06)**

THE SECRETARIAT

CONV 121/02**WG II 2****AGENDA**

for : meeting of the Working Group on Incorporation of the Charter/Accession to the ECHR
on : Tuesday 25 June 2002

I. AGENDA

1. Work programme and timetable
 2. Procedures for and consequences of any incorporation of the Charter into the Treaties
– initial discussion (CONV 72/02 and CONV 116 WG II 1)
 3. Other business
- II. The meeting will take place in CCAB (Albert Borschette Centre): Room CCAB 1/A, 36 rue Froissart, 1040 Brussels, from 14.30 to 17.00.
- III. Members of the Working Group are asked to inform Ms Amelia Fernandez Navarro (amelia.fernandez-navarro@consilium.eu.int) of the name of the person accompanying them as their assistant.

THE EUROPEAN CONVENTION

THE SECRETARIAT

Brussels, 28 June 2002 (05.07)
(OR. fr)**CONV 164/02****WG II 4****NOTE**

from: Secretariat

to: Working Group II

Subject : **Summary of meeting on 25 June 2002**

The first meeting of Working Group II (Charter) was held on 25 June 2002 from 14.30 to 16.30 with Commissioner Antonio Vitorino as Chairman.

I. Work programme and timetable

1. The work **timetable** was approved:

12 July 2002	14.30 – 18.30
23 July 2002	10.00 – 18.30
17 September 2002	10.00 – 18.30
4 October 2002	14.30 – 18.30
29 October 2002	14.30 – 18.30

7 or 8 or 18 October (reserve dates)

2. **Work programme:** The Chairman mentioned the Group's two main topics (incorporation of the Charter and accession to the ECHR), as covered in the discussion paper CONV 116/02, which he intended to submit for examination by the Group later on. Towards the end of its discussions, the Group would also cover access to the Court of Justice and the Court's competences, a question linked to the two aforementioned main topics and also covered in the discussion paper.

3. **Hearings.** Given the nature of the subjects to be covered, the Group agreed that it would hear representatives of the Court of Justice of the European Communities and of the European Court of Human Rights. At the request of a member of the Group, the Chairman undertook also to make arrangements with a view to hearing the Directors-General of the Legal Services of the Commission, Council and European Parliament.

Furthermore, the Chairman announced that he would convene an additional meeting of the "human rights" contact group, a meeting in which all the members of the Working Group would be invited to take part, so that they could hear representatives of civil society.

4. **Working languages.** It was agreed that, purely as a result of technical constraints, interpreting could only be provided in French and English for working groups. If a group member indicated an imperative need to speak in another language, the Secretariat would explore the practical possibilities.
5. **Access to meetings.** The Chairman announced that, in the interests of conducting proceedings efficiently, access to the Group's meetings would for the time being be restricted to members of the Convention (members of the Group and others) and to collaborators designated by the members. It remained possible that access might be extended to the public at a later stage.

II. Procedures for and consequences of any incorporation of the Charter into the Treaties – initial discussion

6. The Group held an initial exchange of views on the above subject. The following points in particular were mentioned:
 - The positions of certain governments on the political issue of incorporating the Charter were still hesitant, irrespective of the Group's technical examination of the procedures for this.

- By general agreement, it had to be acknowledged that the Charter's content had been drafted by the previous Convention and that it would not now be appropriate to rewrite it.
 - In that context, several members referred to the legitimacy and representative nature of this prior Convention and felt that what was needed now was to concentrate on examining the procedures for integrating the Charter into a basic treaty or a Constitution. Others, however, maintained that there were differences between adopting the Charter as a political declaration and the idea of giving such a text the force of law. In the latter case certain questions would arise, such as, in particular, whether it might give rise to new rights for individuals, or to new competences for the EU, or again what the relations would be between the Charter, the Treaty and the ECHR. In that connection, some wondered whether the present horizontal clauses were sufficient; others were doubtful of the value of debating those clauses again.
 - One difference between the earlier Convention and the present one was that the candidate countries had not taken part, even if they had been consulted in a hearing. From that point of view, it was suggested that it might be appropriate to examine or explain the solutions reached in the earlier Convention.
 - The Group could examine whether it was possible to provide a mechanism for review of the Charter in the future.
 - The role of the Court of Justice and its relationship to national courts if the Charter were incorporated should be examined.
7. The Chairman concluded by stressing that this first debate had confirmed that henceforth, taking a pragmatic approach, the various technical points addressed in CONV 116/02 should be examined, as should certain additional questions that had been raised, which would be discussed in connection with those technical points as the work of the Group progressed.

THE EUROPEAN CONVENTION

THE SECRETARIAT

**Brussels, 3 July 2002 (05.07)
(OR. fr)****CONV 172/02****WG II 5****AGENDA**

for : meeting of the Working Group on Incorporation of the Charter/Accession to the ECHR
on : Friday 12 July 2002

I. AGENDA

1. Procedures for and consequences of any incorporation of the Charter into the Treaties:

- Possible techniques for incorporation of the Charter;
- The question of the current Article 6(2) of the EU Treaty (relationship between the Charter and the ECHR on the one hand and the common constitutional traditions on the other);

(on the above points see CONV 116/02 WG II 1, Part II, Sections 1 and 2)

- The Charter and the competences of the Union
(on this point see working document from the Chairman of the Working Group, to come)

2. Other business

II. The meeting will take place in the CHAR building, Room S4, 170 rue de la Loi, 1040 Brussels, from 14.30 to 18.30.

III. Members of the Working Group are asked to inform Ms Amelia Fernandez Navarro (amelia.fernandez-navarro@consilium.eu.int) of the name of the person accompanying them as their assistant.

THE EUROPEAN CONVENTION

Brussels, 12 July 2002

THE SECRETARIAT

SUMMARY OF CONCLUSIONS

**Subject: Meeting of the Praesidium
Brussels, 10 July 2002**

POINTS SETTLED**1. Preparation of the Convention session of 11-12 July and Working groups****- External Action and Defence**

The Praesidium noted that the descriptive document on EU External Action had been circulated to members of the Convention (CONV 161/02) and that the questions contained in it should assist in structuring the debate.

- Working groups

As to working groups, the Praesidium confirmed its agreement on the setting up of four new working groups, the first on 'security and justice' (for which the mandate had already been circulated in doc 179/02), the second on 'external relations', the third on 'defence policy' and the fourth on 'simplification of legislative procedures'. Two suggestions for further working groups were put forward by members of the Praesidium : one on 'culture and linguistic differences' and the other one on 'good governance' : it was concluded that the former, and perhaps the latter, subject would be covered in working group V, chaired by Mr. Christophersen.

- Introductory statement

The Praesidium agreed that the Chairman should make an introductory statement before the start of the debate on External Action. The purpose of this statement would be to ensure that the Convention understood the Praesidium's thinking on working groups, and the Praesidium's "building block" approach, together with their plan to prepare, in the light of reports from the working groups on legal personality and the Charter, a framework for a constitutional Treaty, which would be put forward at the end of October.

This framework would then be fleshed out with the contributions emerging from the second wave of working groups and would then constitute the basis for the work on the Convention from the beginning of next year.

- Proposal by certain members of the Convention

As to the proposal put forward by certain members of the Convention to invite the Commission to prepare a draft constitutional treaty (item 4 of the session's agenda), the Praesidium unanimously agreed that the proposal was unacceptable since it would imply that the Convention would shirk its own responsibilities.

2. Mr. Avgerinos' letter to the Chairman and revised draft reply

The Praesidium approved the draft reply (circulated then in doc. 185/02).

3. Autumn Plenary Debates

The Praesidium agreed that the subjects for the first autumn Convention Plenary debates should be "simplification" (of the legislative procedure) on 12-13 September, and "subsidiarity" on 3-4 October. Mr Mendez de Vigo agreed to give the Convention on 12-13 September an oral preview of the likely recommendations of the subsidiarity working group, and confirmed that the groups report would be available before 3-4 October. In addition, Vice-president Amato agreed to give a similar oral preview on the issue of legal personality on 12-13 September, and Mr Vitorino agreed to give a similar presentation on the Charter on 3-4 October.

II. OUTSTANDING ISSUES

4. Working groups Chairs

Since Ms Palacio was not present, the Praesidium agreed to postpone to its next meeting decisions on the chairs of the four new working groups.

5. Strategy discussion

The Praesidium had a preliminary exchange of views on the implications of the various options for the simplification of Treaties. It agreed to revert to this issue; some members mentioned the usefulness of hearing legal opinion on this subject.

6. Secretariat paper on public relations and visibility

The Praesidium agreed to discuss this issue at its next meeting.

* * *

The next Praesidium meeting will take place on 18 July, at 15h00
in Palais d'Egmont and will last until 22h00.

THE EUROPEAN CONVENTION**Brussels, 15 July 2002**

THE SECRETARIAT

CONV 196/02**WG II 6****PROVISIONAL AGENDA**

for : Meeting of the Working Group on Incorporation of the Charter/Accession to
the ECHR
on : Tuesday 23 July 2002

I. AGENDA

1. Modalities and consequences of possible incorporation of the Charter into the Treaties
 - The question of "replication" ("dédouplements") in the Charter
 - Examination of certain technical adjustments in the provisions of the Charter

(see, on these points, doc. CONV 116/02 WG II 1, part II, sections 4 and 5, as well as a working document by the President of the Group, to be distributed)

2. Hearings of:
 - Mr. Johann Schoo, Director, Legal Service of the European Parliament
 - Mr. Jean-Claude Piris, Jurisconsult, Director-General of the Legal Service of the Council
 - Mr. Michel Petite, Director-General of the Legal Service of the European Commission.
3. Any other business

- II. The meeting will take place at the CHAR building, room S4, rue de la Loi 170, 1040 Brussels, from 10:00 h to 18:00 h (with a break from 13:00 h to 15:00 h). Item 1 of the agenda will be taken up in the morning, and items 2 and 3 in the afternoon.
- III. In view of the wide variety of issues that may be addressed during the hearings (item 2) and that may include *all* topics covered by the mandate of the Group, Members of the Group who wish to do so have the possibility to communicate to the Secretariat (clemens.ladenburger@consilium.eu.int), preferably by Thursday evening (18 July), questions which they intend to raise during the hearings; these questions will be forwarded to the three experts.
- IV. Members are kindly requested to communicate to the Secretariat (amelia.fernandez-navarro@consilium.eu.int) the name of the assisant who will accompany them to the meeting.

THE EUROPEAN CONVENTION

THE SECRETARIAT

Brussels, 18 July 2002 (23.07)**(OR. fr)****CONV 203/02****WG II 7****NOTE**

from :	Secretariat
to :	Working Group II
Subject :	Summary of the meeting held on 12 July 2002 chaired by Commissioner Antonio VITORINO

The second meeting of Working Group II (Charter) was held on 12 July 2002 between 14.30 and 17.30 under the chairmanship of Commissioner Antonio Vitorino.

I. Timetable of meetings

1. The following dates for forthcoming meetings were confirmed:

- 23 July (all day)
- 17 September (all day)
- 4 October (afternoon)
- 7/8 October (dates in reserve)
- 21 October as the date of the final meeting – instead of 29 October as originally planned; this would enable the Group to conclude its proceedings before the plenary session of the Convention at the end of October, with a view to the presentation of an initial architecture for the Treaty as announced by the Chairman of the Convention, Mr Valéry Giscard d'Estaing.

II. Procedures for and consequences of any incorporation of the Charter into the Treaties

– Possible techniques for incorporation of the Charter

2. The Chairman opened a preliminary discussion on the subject, stressing that the Group would return to this crucial issue during its proceedings. He also highlighted:

- the relationship between the idea of a basic treaty and its length, and the choice of options (as presented in CONV 116/02), none of them being *a priori* incompatible with this idea;
- the various possibilities for combining the options presented;
- the question of the preamble, which had to be borne in mind in this context.

3. A majority of speakers favoured the insertion of the full body of the Articles of the Charter in a new basic treaty (option (f)), particularly because of expectations concerning the visibility and transparency of the fundamental rights of the Union, as expressed in particular by civil society and by the Youth Convention; the fundamental importance of a catalogue of such rights at the beginning of a basic treaty or constitution; and the "normative" character of the Charter, drafted "as though" it were destined to appear in the treaty.

4. Other speakers variously pointed out that:

- the concern to abide by the fundamental rights which were already in existence and to preserve the position of the Member States were (given the Group's approach of not modifying the Charter) arguments in favour of options (a) or (b), and that the benefits of this text as a declaration should not be under-estimated;
- the final choice between these options would be a political decision to be taken later, but depending on the answers to certain technical questions to be examined by the Group;

- there might be possibilities for an intermediate solution, as for example a protocol (option (e)), combined with a reference to the Charter in an article of the basic Treaty;
- that the choice of technique should also respect the desire not to weaken the pan-European ECHR system.

5. A number of speakers stressed that the preamble to the Charter, which was an essential part of it, had been drafted in such a way that, besides fundamental rights, it more generally encompassed the values and foundations of the Union. In the opinion of these members, the preamble could therefore be used (possibly with additions) as the preamble to a new basic treaty.

6. The Chairman concluded by stressing that, when the choice of technique for incorporating the Charter was made, several concerns had to be addressed including the political visibility and importance of fundamental rights, and also legal certainty. He also reminded members of the two facets of the compromise concerning the Charter, pointing out that at the time of its adoption, consensus was reached on a political declaration, but that the text had a legal profile as it had been drafted "as though" it was to be incorporated into the Treaties.

- The question of the current Article 6(2) of the EU Treaty (relationship between the Charter and the ECHR on the one hand, and the common constitutional traditions on the other).

7. Some members of the Group were in favour of deleting of Article 6(2) of the EU Treaty if the Charter were incorporated as a fully binding text, given that the Charter included the rights in the ECHR and was already considered by the Court of First Instance as an interpretation of the common constitutional traditions; in any case it contained references to both these sources in its preamble. However, others were in favour of maintaining Article 6(2) of the EU Treaty or a similar provision. Those members pointed out that the Charter did not contain all the rights guaranteed in the ECHR and its protocols, and that a provision such as Article 6(2) could favour an interpretation of the Charter in the light of common constitutional traditions. What is more, it would make the system open to future developments, enabling the Court of Justice to take account of new constitutional features which might emerge amongst the Member States.

8. The idea was also put forward that since common constitutional traditions had served as a third major source for the Charter (besides the rights in the ECHR and the EC Treaty), the desire to establish harmony between these three sources argued in favour either of the addition of a horizontal provision on constitutional traditions similar to those relating to the other two sources, or of the addition in Article 6(2) of the Treaty of an element which met this concern. If such an addition were not made, there would be a risk that the incorporation of the Charter would give too much political power to the Community court. However, others remarked that the Court of Justice's margin of discretion was greater nowadays, in the context of a definition of Community fundamental rights purely through case-law. They added that it was very difficult to define common constitutional traditions and the Court would not necessarily be able to deduce rights identical to those existing in all the constitutions of the Member States, nor only retain the lowest common denominator.

9. Some members commented that the question of Article 6(2) of the EU Treaty should be revisited after the Group had discussed accession to the ECHR. The Chairman confirmed this approach, stating that he saw scope for maintaining the references in Article 6(2), but that in any case the impact of any decision on accession to the ECHR on their wording would have to be examined.

– *The Charter and the competences of the Union*

The Chairman introduced the debate, presenting his working document, and stated that he himself saw no contradiction between the Charter and the limited competences of the Union.

10. All speakers stressed the importance, already highlighted by the previous Convention, of the principle that the incorporation of the Charter should not affect the distribution of competences between the Union and the Member States, and welcomed the significant clarification contained in the Chairman's working document (WD 03) in this respect. It was noted that the previous Convention wanted to draft a complete list, in the desire to give visibility to all the common values of the Union, particularly in the context of its international relations.

11. Several speakers felt that editorial amendment to Article 51(2) of the Charter would be useful if option (f) were chosen, as suggested in the Chairman's working document (clarifying that the Charter, incorporated into the Treaties, did not modify the competences and tasks defined by *the other* provisions of the Treaties).

12. Following requests from the Group, the Chairman Mr Vitorino undertook to submit a working document on possible editorial amendments to Articles 51(2) and 52(2) of the Charter, and to the "replications" in the Charter.

THE EUROPEAN CONVENTION

THE SECRETARIAT

Brussels, 31 July 2002 (05.08)**(OR. fr)****CONV 223/02****WG II 8****NOTE**

from :	Secretariat
to :	Working Group II
Subject :	Summary of the meeting held on 23 July 2002 chaired by Commissioner Antonio VITORINO

The third meeting of Working Group II (Charter) was held on 23 July 2002 between 10.00 and 12.15 and between 15.00 and 18.00 under the chairmanship of Commissioner Antonio Vitorino.

I. Modalities and consequences of incorporation into the Treaties of the Charter

- *The question of "replication" in the Charter*
- *The examination of certain technical adjustments in the provisions of the Charter*

1. The Chairman presented the agenda, explaining that the subjects to be discussed were covered by CONV 116/02 and explored further in the working document (WD 09). He said it was evident from those documents that if the Group opted for the incorporation of the full body of the articles of the Charter into a new basic Treaty (option (f)), then at this stage two technical adjustments would be necessary, concerning Articles 51(2) and 52(2) of the Charter, as explained in working document No 9. The aim of those adjustments would be not to change but to safeguard and clarify the meaning and scope of those Articles.

2. Regarding the question of the "replication" of the rights which already appeared in the EC Treaty and were repeated by the Charter, the Chairman raised two issues: the concern for legal certainty which had led to the drafting of Article 52(2) of the Charter, and which had to be guaranteed whatever option the Group chose; and the presentation and intelligibility of the new Treaty, which was a question which would notably arise in relation to the combination in any new basic Treaty of the articles of the Charter and those of the EC Treaty on the citizenship of the Union.
3. All the members of the Group welcomed the Chairman's working document No 9 and were particularly pleased with the proposal for the editorial clarification of Article 51(2). There was consensus on the principle that the incorporation of the Charter should not lead to any "inadvertent" extension of the competences of the Union; if the Convention wanted to propose extensions of competences it should do so by means of clear provisions in other parts of the Treaty.
4. So as to be certain of achieving this aim, several members asked that the Group should also examine the possible clarification of the second sentence of Article 51(1) of the Charter, concerning the obligation on those to whom the Charter was addressed to "promote the application thereof"; other members felt that the current wording of this clause already indicated sufficiently precisely that this obligation existed for the Union only within the framework of its competences.
5. Regarding the "replication" of rights which already appeared in the EC Treaty and were repeated in the Charter, all the members of the Group stressed the need for proper coordination in the interests of legal certainty, so that none of the current legal aspects of those rights, including any limitations on them, would be lost if the Charter were to be incorporated. It was generally recognised that Article 52(2) of the Charter would serve to guarantee this principle of legal coordination, but it was difficult at this stage to foresee what precise form any editorial adjustments to the clause might take, since this would depend on the future structure of the Treaties.

6. In this context it was argued that it would be difficult to incorporate the Charter by means of option (f), while retaining a referral clause such as the current Article 52(2), since this clause would result in the subordination of the Charter to the EC Treaty. However, this argument was challenged by several other members, who proposed that the relationship between the Charter and the EC Treaty should be characterised rather by a principle of "compatibility" or "specification" or "explanation" (of the rights of the Charter by the articles of the EC Treaty); appropriate legal solutions to ensure those principles could be designed, once the future structure of the Treaties was known.
7. For some members, an essential question in this area was whether a hierarchy would be established between a new basic Treaty and the rest of current primary law. The Chairman remarked that the idea of a basic Treaty did not necessarily presuppose the establishment of such a hierarchy, and the Group did not have a mandate to prejudge the Convention's approach to this question.
8. Members of the Group generally recognised that the "replication" between the Charter and the current EC Treaty should be accepted, given that the provisions of that Treaty also included legal bases which had to be preserved, and that a number of rights, particularly the freedom of establishment or of movement, which were enshrined in the EC Treaty in a very detailed fashion, could not be reproduced in full in the Charter.
9. Several members of the Group commented that the definition of citizenship (Article 17 of the TEC) and a provision on its future development (Article 22 of the TEC) should be incorporated into a future basic treaty, whereas the details of the rights of citizens could continue to appear in the second part of primary law. These members felt that this approach, and the combination of those articles with the articles of the Charter (incorporated into the basic treaty in accordance with option (f)) would not raise problems of a political nature. Various possibilities were suggested regarding the place to be set aside for the above two provisions in a basic treaty: either in a chapter of the treaty on democracy or the democratic system, or in the framework of the Charter's articles on citizenship.

10. Concluding this discussion, the Chairman invited members of the Group to submit written suggestions, if they so wished, concerning possible drafting adjustments to the horizontal articles of the Charter.
- II. Hearings of Mr Schoo, Director, Legal Service of the European Parliament, Mr Piris, Jurisconsult, Director-General of the Council Legal Service, and Mr Petite, Director-General of the Legal Service of the European Commission
11. The introductory presentations by the three experts¹, which will be distributed to members of the Group as working documents, dealt *inter alia*, with the following main themes:
- The Charter and the competences of the Union: The three experts confirmed the existing distinction between the limited competences of the Union on the one hand, and the fundamental rights to be respected by its institutions on the other. However, according to Mr Piris, the current wording of the second sentence of Article 51(1) of the Charter, which stipulated an obligation to "promote..", could give rise to ambiguities of interpretation as regards the rights in the Charter relating to areas in which the Union did not have legislative competence. Mr Piris therefore recommended that certain minimal technical amendments should be made to Article 51 of the Charter so as to avoid any uncertainty about the principle that the Charter did not extend the competences of the Union. Mr Schoo and Mr Petite believed that this principle emerged sufficiently clearly from the current Article 51, but that a technical adjustment would be necessary to Article 51(2) of the Charter, if the Charter were to be incorporated using option (f). Mr Petite explained that in practice the Commission was already careful to ensure that the Charter was not used to justify competences for the Union.
 - The Charter and the EC Treaty: According to Mr Piris, the fact that articles in the Charter repeated rights already enshrined in the EC Treaty but without expressly reproducing all the conditions and limits laid down in the Treaty would jeopardise the full understanding of those rights by citizens. He therefore recommended that either all the conditions and limits in the current EC Treaty should be copied over into the Charter, or that the Charter should include references to the relevant articles of the EC Treaty.

¹ Mr Piris indicated that he was speaking purely in his personal capacity.

Mr Petite explained that the previous Convention had had to make an "aesthetic" choice between two possible courses, either repeating the limits on the rights in each of the articles of the Charter, or stipulating them once and for all by means of the referral to the conditions and limits of the Treaty found in Article 52(2) of the Charter. Legally, the result – namely to make applicable the conditions and limits of the Treaty – was identical either way. Mr Petite concluded, as did Mr Schoo, that Article 52(2) satisfactorily regulated relations between the Charter and the EC Treaty. However he recognised that, if the Charter were to be incorporated by means of option (f), and depending on the new structure for the Treaties, a technical adjustment to Article 52(2) might be necessary to clarify to which legal text the clause referred. Mr Piris also recognised the necessity for Article 52(2), because in its absence the Charter would lead to a drastic modification to the EC Treaty on certain points; he then remarked that, if the Charter were to be incorporated into the Treaty, legal certainty and clarity would argue either for its deletion, provided that the conditions and limits laid down by the EC Treaty were included in the Charter, or for its clarification by an explicit reference to compliance with the conditions and limits laid down by the provisions of other parts of the Treaties.

- The Charter and the European Convention on Human Rights (ECHR): Mr Petite and Mr Schoo said that the Charter had found a satisfactory compromise by reconciling several premises, given that the ECHR was only a minimum standard and that there was a need to reflect and preserve in the Charter those advances which had already been made in Community law and case-law (these two points were also mentioned by Mr Piris), but also that the harmonious development of the two European legal systems and their two Courts should be ensured, while respecting the principle of the autonomy of Community law.

While recognising that there was no legal necessity to amend the Charter if incorporated, if it was understood that the Charter offered more protection on some points than the ECHR, Mr Piris felt that legal uncertainty could result from the fact that the articles of the Charter had not reproduced the limits laid down in the ECHR, and that since Article 52(3) was not completely clear on this subject it would be for the Court of Justice to say whether those limits were applicable. According to Mr Petite, it was evident that the reference in Article 52(3) to the "meaning and scope" as conferred by the ECHR also included the ECHR's clauses on limits, and that the Court of Justice could not mistake this. With Mr Schoo, he did not see any legal uncertainty here.

- The importance of the horizontal clauses of the Charter: The three experts agreed on the essential role of the horizontal clauses of the Charter and on the need to retain them. Mr Piris and Mr Petite indicated that (in the case of incorporation according to option (f)), some adjustments which were purely a matter of legal form should be made to those clauses, but would in no way modify the substantive contents of the Charter.

- Accession by the EC/EU to the ECHR: The three experts were in favour of accession by the EC/EU to the ECHR, from a legal point of view. They all said that this would be the ideal solution to guarantee the harmonious development of the case-law of the two European Courts. In particular, the absence of a means for citizens to appeal to the Strasbourg Court against acts by the institutions constituted an anomaly (Mr Piris); accession would be of benefit even after the incorporation of the Charter, since it would establish an external control to which all the Member States were already subject (Mr Schoo and Mr Piris); the principle of the autonomy of Community law did not present an obstacle to accession (Mr Schoo and Mr Petite); and legal problems were currently posed for the EC/EU since the Court of Strasbourg was called on to take decisions on Union law without the Union being able to defend itself (Mr Petite). Mr Piris raised the possibility of "functional accession" if accession pure and simple would lead to political problems. Mr Petite stressed that one risk, feared by some, namely that accession could lead to an increase in the Union's competences as regards human rights, could easily be countered by technical clauses clarifying that accession would not have this concomitant effect.

12. Other issues explored in one or other of the individual contributions included the following:
- Mr Petite explained the degree to which the Charter, when incorporated into the Treaties, would bind the Member States. He stressed that the wording of Article 51(1) of the Charter on this point would only reproduce current case-law on the application of Community fundamental rights to the acts of the Member States, and that the very cautious line followed to date by the Commission and the Court would therefore continue to apply after the Charter had been incorporated. As a result, the Charter would only cover a very narrow area amongst the vast range of legislative or administrative acts by the Member States. This also meant that the provisions of the Charter would only be invoked very exceptionally with "direct effect" before the national courts.
 - Regarding the rights of the Charter found in sources other than the ECHR and the EC Treaty, Mr Petite observed that it would be difficult to draft a "referral clause" similar to those in Articles 52(2) and (3) of the Charter, as there was no single written reference text; in relation to those rights the Court had used a multitude of sources of inspiration which left it with a wide margin of discretion. It would be illusory to believe that the Court could define those rights with a meaning identical to that enshrined in each of the fifteen national constitutions. Mr Piris noted that some rights in the Charter had not yet been enshrined in the constitutions of all the Member States. On the other hand, Mr Petite commented that the Court of Justice had already in the past taken inspiration from international conventions, notwithstanding the fact that some Member States had entered reservations regarding them, and the fact that the Charter had been inspired by such instruments did not mean that it incorporated them as such into Union law.
 - Mr Piris commented that some provisions of the Charter lacked precision, since although the Charter explicitly contained "rights", "freedoms" and "principles", it did not state which provisions of the Charter fell into each of these three categories, which could lead to risks of legal uncertainty and the creation of legitimate expectations.

- Mr Schoo explored the consequences of the incorporation of the Charter for legal remedies before the Court of Justice, proposing an adjustment to Article 46(d) of the current TEU concerning the Court's control – as already exercised – over the acts of the Member States when they are implementing Union law. In principle, the Court of Justice should exercise its role as constitutional court in relation to justice and home affairs in the same way as it does for classic Community law. Mr Schoo also wondered whether it would be necessary to amend the conditions for direct appeal by individuals (fourth paragraph of Article 230 of the TEC) to allow them easier access to the courts, without this leading to open public recourse.

13. In the Group's discussions with the experts, the following points were raised:

- The three experts confirmed that the reference in Article 52(2) of the Charter to the conditions and limits defined by the Treaties included the implementing provisions of secondary law, without these needing to be expressly mentioned.
- When questioned about the usefulness of retaining Article 6(2) of the current EU Treaty in the case of incorporation of the Charter and accession to the ECHR, the three experts stated that this was a political question; Mr Piris and Mr Petite felt that a reference to constitutional traditions common to the Member States could remain useful, while Mr Schoo commented that there would be some ambiguity in the system if Article 6(2) of the TEU was retained.
- Regarding the idea of a hierarchy between the basic treaty and the rest of primary law, the three experts pointed out that such a hierarchy had never been established amongst the elements currently making up primary law, that it did not arise automatically from the idea of a basic treaty, and that it could only result from a political choice which would have to be clearly expressed.
- Mr Petite and Mr Piris confirmed that if the Charter were to be incorporated, then the national reservations entered by the Member States with regard to international human rights conventions would remain applicable, as they had done to date, as regards the autonomous action of those States.

- Asked – as an example of the consequences of the Charter – about its effects on the recognition of single sex unions, Mr Schoo pointed out that this question had already arisen in Community law independently of the Charter, but said that Article 9 of the Charter confirmed the competence of the national legislator on this subject. The Chairman of the Group referred on the one hand to the judgment by the Court of Justice last year, handed down after the Charter had been proclaimed, and following the conclusions of the Advocate-General who had examined the Charter, in which the Court confirmed the different situation of marriages and such unions; and on the other hand to a very recent judgment by the European Court on Human Rights which contained a liberal reading of the right to marry concerning transsexual persons.

III. Other business:

14. One member of the Group wondered if it would perhaps be useful to have a Working Group on the judicial architecture of the Union. The Chairman indicated that this subject had been noted in his document setting out the mandate for the current Group and in CONV 116/02, but said that he would also bear it in mind in future discussions in the Praesidium.



**THE EUROPEAN CONVENTION
THE SECRETARIAT**

Brussels 5 September 2002

Working Group II

Working document 13

Working group II "Incorporation of the Charter/accession to the ECHR"

from : Secretariat
to : Working Group II
Subject: Auditions of MM. Schoo, Piris and Petite, on 23 juillet 2002

Members of the Working Group will find enclosed the speaking notes of the interventions of Mr Schoo, Director-General of the Legal Service of the European Parliament, Mr Piris, legal consultant and Director-General of the Council's Legal Service, and Mr Petite, Director-General of the European Commission's Legal Service, during the audition of 23 July

THE CHARTER OF FUNDAMENTAL RIGHTS

Comments

by Mr Johann SCHOO
Director in the Legal Service
of the European Parliament

Brussels, 23 July 2002

I. Introduction

Your working party's task is to deal with the following two issues:

- the ways in which the Charter might be incorporated into the treaties and the implications of such a step, **and**
- the implications of any accession by the EU to the European Convention on Human Rights (ECHR).

I am certainly not going to deal with the political issue, i.e. **whether** the Charter should be incorporated; Parliament's views on the matter were clear before, during and after the proceedings of the first Convention. Furthermore, that Convention drew up its text **as though** the Charter were to be incorporated wholesale.

II. Ways in which the Charter might be incorporated into the treaties and the implications of such a step

The question which concerns us here is that of deciding whether or not the Charter – with its existing substance and structure – is suitable for incorporation.

Arguing against such incorporation is a whole series of reservations which may be grouped under three main criticisms:

- (1) the Charter contains fundamental rights which do not fall within the EU's area of competence;
- (2) the Charter contains provisions which appear in a different form in the treaty or in the ECHR;
- (3) the general clauses of the Charter are not sufficient to enable the latter to be incorporated into the treaties.

First criticism

- (1) As regards the fundamental rights which lie outside the EU's area of competence, the following three points may be made:

Firstly:

- (a) The task of the Convention on the Charter was to bring fundamental rights together in a single text, drawing on various sources, in particular the constitutional traditions common to the Member States and their common general principles. That text therefore reflects the wealth of the fundamental rights recognised by the Member States, irrespective of the current applicability thereof.
- (b) Although some of those rights are not applicable at first sight and as things currently stand, this does not mean that they will not be so in future (particularly in view of the way in which Union law is evolving within the third pillar and under Title IV of the EC Treaty **and** Articles 54 to 58 of the Schengen Agreement). In any event the inclusion of virtual (or dormant) fundamental rights is not a problem, since Article 51(2) stipulates that the Charter does not establish any new power or task and, pursuant to Article 52(2), the fundamental rights recognised are based on the treaties, i.e. they are exercised solely within the context of Community law.
- (c) It is still difficult to define exactly which fundamental rights lie outside the EU's area of competence. To give an example: no-one would have thought that the right to freedom of religion would be a fundamental right falling within that area. However, Case 130/75, PRAIS (ECR 1976, 1589) - a staff case - teaches us quite the opposite. It is not therefore impossible that other fundamental rights which do not currently appear to be a matter for the EU may in future be taken into consideration by the Court of Justice.

Second criticism

- (2) The Charter contains provisions which appear in a different form in the treaty or in the ECHR

As regards consistency of the Charter provisions with the EC Treaty, there are a number of issues to be discussed:

- (a) the scope of the general cross-reference contained in Article 52(2) of the Charter,
- (b) duplication of those provisions, and
- (c) the specific case of the relationship between Article 21(1) of the Charter and Article 13 of the EC Treaty.

re (a) In our opinion the cross-reference clause contained in Article 52(2) of the Charter adequately clarifies the relationship between the fundamental rights detailed in the Charter and the treaty provisions concerned with the same subject, by stating that rights recognised by the Charter shall be exercised under the conditions and within the limits defined by the Treaties. At one and the same time this clause elegantly acts as an inherent limit on each fundamental right and thereby avoids constant repetition of the limits in each article.

re (b) As regards the duplication of provisions, it should first of all be pointed out that the number of provisions involved is very small (the freedoms laid down in the EC Treaty, the rights stemming from citizenship, and non-discrimination).

The cross-reference clause contained in Article 52(2) of the Charter also removes any ambiguity which may arise as a result of there being two identical provisions.

However, it must not be forgotten that the treaty provisions to which the Charter refers often serve a purpose which goes beyond that of creating a right: they contain legal bases and objectives to be achieved, and they should therefore remain in force.

re (c) As regards the specific case of non-discrimination referred to in Article 21(1) of the Charter and Article 13 of the Treaty, there is - in our opinion - no incompatibility, given that the two provisions pursue different aims:

- Article 13 of the EC Treaty is primarily a legal basis authorising the EC to combat discrimination by means of legislative measures applicable to individuals. Article 21 of the Charter, on the other hand, is a fundamental right directly applicable and binding on the Community bodies and institutions and, to a certain extent, on the Member States (Article 51(1) of the Charter).
- Furthermore, the rather unusual two-paragraph structure of Article 21 is the result of the fact that the drafters of the Charter had to abide by and incorporate the principle of non-discrimination between EU citizens, as laid down in Article 12 of the EC Treaty. For this reason, discrimination based on nationality is no longer mentioned in the first paragraph of Article 21 of the Charter. The Member States and the EU are therefore free to practise a degree of differential treatment in favour of EU citizens.

To conclude as regards these points

- There is no uncertainty, therefore, regarding the way in which the Charter provisions are to be interpreted by comparison with the Treaty articles on the same topic. The cross-reference clauses contained in Article 52 of the Charter have enabled relationships to be clarified.
- The same approach has been adopted in the case of the Charter articles which incorporate the guarantees contained in the ECHR: Article 52(3) serves to ensure that the rights laid down in both texts are applied in the same way, whilst allowing the EU to provide more extensive protection.

Third criticism

- (3) The general clauses (Articles 51 to 54) are not sufficient to enable the Charter to be incorporated into the Treaty

It is considered in certain quarters that the general clauses - Articles 51 to 54 of the Charter - are not sufficient to enable the Charter to be incorporated into the Treaty, either because they constitute a source of ambiguity at a time when the articles of the Charter have the same legal value as those of the Treaty, or because they would

undermine legal certainty in so far as they are designed to prevent conflicts between the Charter and the corresponding provisions of the ECHR.

- (a) In our opinion, there would be no fear of either ambiguity or legal uncertainty if the Charter were to be incorporated into the Treaty - quite the contrary. As has already been said, the cross-reference clauses serve to clarify the relationship between the Charter and the Treaty and the ECHR, with a view to making that relationship binding. Such clauses would be superfluous in the case of a Charter with mere political value but they are, on the other hand, essential to the proper application of fundamental rights which are part of primary legislation.

At the risk of repeating myself:

- Although the Charter and the Treaty are on an equal footing, the cross-reference clause contained in Article 52(2) of the Charter states unequivocally that the fundamental rights concerned are exercised under the conditions and within the limits defined by the Treaties. The only editorial change to be made would be to replace the reference to 'Community Treaties' and to the 'Treaty on European Union' by a wording which takes into account the way in which the Charter would be incorporated into the Treaty.
 - It should also be pointed out that the current Treaty also contains cross-references to provisions of equal status, and that this has not created any ambiguities (e.g. Articles 19 and 21 of the EC Treaty on citizenship which refer to Articles 190, 194 and 195 on participation in elections to the European Parliament and on the right to petition to the European Parliament or to apply to the Ombudsman).
- (b) As regards the alleged legal uncertainty stemming from the relationship between the Charter and the ECHR which - according to some authors - has not been resolved by means of the cross-reference clause contained in Article 52(3) of the Charter, suffice it to say that the purpose of that clause is to ensure that the corresponding rights are applied and interpreted identically. Since the ECHR lays down only a minimum standard, the clause takes account of the fact that, as applied by the Court of Justice,

Community law has already gone well beyond this minimum standard and will certainly continue to do so.

There are several examples of higher levels of protection under Community law than are provided by means of the ECHR:

- Article 47 of the Charter - right of access to justice - extends to all the rights guaranteed under EU law and is not restricted solely to civil or criminal-law rights as provided for in Article 6 of the ECHR.
- Article 50 of the Charter - the principle of *non bis in idem* - is not restricted to a single State - (as in the case of the ECHR) but covers the entire territory of the EU.

In this connection there is a second ground for criticism: the risk of differing interpretations by the EU Court of Justice and the Court of Human Rights. However, Article 52(3) of the Charter does not affect current relations between the two courts, which remain quite separate as they interpret the law which is placed before them for their examination.

Any differences of interpretation will be excluded if the EU acceded to the ECHR. This would be an ideal arrangement leading to perfect harmony between the two bodies.

But even as the relationship between the two courts currently stands, any difference of opinion is largely theoretical since the Court of Justice, when referring to Court of Human Rights case law, has never refused to apply that law.

What is more, the relationships between the Member States' constitutional courts and the Court of Justice are not based on subordination either, but rather - as stated by the German Federal Constitutional Court in its 'Maastricht' judgment of 12 October 1993 - on cooperation. This same relationship should provide a framework for the Court of Justice and the Court of Human Rights as they seek to interpret the fundamental rights which fall within their area of competence.

□□□

I should also like to deal briefly with other issues which are included within your working party's terms of reference and which, if need be, may subsequently be considered in greater detail at the hearing. These issues are:

- (III) The technical arrangements for the incorporation of the Charter into the Treaty,
- (IV) The effects which such incorporation would have on appeals procedure, and
- (V) The value of accession to the ECHR following incorporation of the Charter.

□□□

III. Technical arrangements for the incorporation of the Charter into the Treaty

In the basic document drawn up by your working party you have already listed the six technical options for incorporation of the Charter, ranging from appending it to the treaties in the form of a Solemn Declaration to including the full text in a title or chapter of the EU Treaty or even of a constitutional treaty.

The choice between these various options is undoubtedly a political one.

What is important from the legal point of view is that the rights should be binding. This would be achieved only if the Charter were to be incorporated into the Treaty, either in a Protocol appended to the Treaty or, at least, by means of a direct reference in the Treaty to the Charter as something incumbent upon the various bodies and institutions and, to a certain extent, upon the Member States.

If we opt for wholesale incorporation of the Charter into the EU Treaty or into a constitutional treaty (which is the best option as regards visibility and the one which is most in accordance with most of the Member States' constitutional traditions), a number of legal problems will arise.

1. The question of deleting Article 6(2) of the EU Treaty which refers to the external sources of fundamental rights, namely the constitutional traditions common to the Member States and the ECHR.

There is nothing to prevent this provision from being deleted, since the rights laid down in the ECHR have already been incorporated into the Charter, which is already recognised (by the Court of First Instance and the Advocates-General of the Court) as being the best distillation of the Member States' common constitutional traditions as regards fundamental rights (Case T-54/99, Court of First Instance judgment of 31 January 2002, max-mobil).

2. Another problem concerns the preamble to the Charter, which could be kept in its existing form if the Charter became a Protocol, but which would have to be incorporated into the preamble of a new treaty and constitute the first part thereof if the Charter were to be incorporated.
3. There is still the issue of the 'duplication' of treaty articles in the Charter. This issue has already been dealt with briefly in connection with the cross-reference clauses.

If we examine this aspect more closely, we could draw a distinction between two types of duplication:

- on the one hand, the treaty articles which are not just fundamental rights but which also provide a legal basis upon which the legislator is authorised to act (e.g. Articles 12, 13, 141, 39 and 40 of the EC Treaty). The two bodies of text should therefore continue to coexist.
- on the other hand, the treaty articles which contain only citizens' rights (such as Articles 18 and 19 of the EC Treaty) and which are a mere repetition of the rights contained in the Charter, could be deleted.

IV. The effects of Charter incorporation on appeals procedures

Should the Charter be incorporated into primary law and be made binding, this would have a number of effects as regards the powers of the Court of Justice.

1. Article 46(d) of the EU Treaty

First of all, I entirely agree with the idea contained in your first working memo, in which it is suggested that Article 46(d) of the EU Treaty should be amended in order to enable the Court of Justice to carry out judicial review for the purpose of ensuring that actions by EU bodies and institutions are in accordance with the Charter, as are those of the Member States when the latter implement EU law. This minimal adjustment is needed in order to bring the Treaty into line with the case law established by the Court which, since the Amsterdam Treaty came into force, has included the Member States in monitoring observance of fundamental rights when they act within the scope of Community law.

2. Extending the Court's powers to the third pillar

Consideration should likewise be given to whether and how the Court of Justice should play its role as a constitutional court in respect of justice and internal affairs (third pillar) and in Title IV of the EC Treaty. This should in principle be done in the same way as under traditional Community law.

This concerns the amendment to Article 35 of the EU Treaty and Article 68 of the EC Treaty.

I shall merely point this out, since the details of such a revision should be considered in the context of the general design of the new treaty and within the working party on justice and home affairs.

3. Improvements to the procedure for appeals by individuals

To round off this chapter, consideration should be given to the ways in which those who enjoy fundamental rights (i.e. private individuals or legal persons) are able to assert their rights before the courts.

There are at least two possibilities:

- either through the creation of a new appeals procedure based on the German model of a constitutional appeal ('Verfassungsbeschwerde')
 - or by means of an amendment to the terms and conditions of the existing Article 230(4) of the EC Treaty.
- (a) Given the current state of Community law and taking into account existing appeals procedures, the first option strikes me as excessively ambitious. A constitutional appeal (which would require other means of redress to be exhausted) would further prolong the duration of procedures. Furthermore, matters relating to fundamental rights may usefully be dealt with in appeals to national courts with the possibility of a reference for a preliminary ruling or in direct appeals lodged by individuals.
- (b) As regards Article 230(4) and the Court's highly restrictive interpretation of the criterion '*of direct and individual concern*', it may usefully be considered whether or not the terms and conditions should be amended so as to allow private individuals and legal persons easier access to a judge, although without opening the door too wide and thereby allowing mass appeals.

This question is of topical interest: in his conclusions of 21 March 2002, Advocate-General Jacobs called for a degree of openness and acknowledged that an individual had a right of appeal '*where, to a significant extent, a measure is, or may be, damaging to his interests*'.

We still need to wait until the day after tomorrow (until 25 July, when the Court is to issue its judgment in the above-mentioned case) in order to know whether or not there has been any development in case law or whether a revision of Article 230(4) of the EC Treaty will have to be envisaged.

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V. Accession to the ECHR

The final question is that of deciding whether or not, once the Charter has been incorporated into Community primary law, there will still be a need for accession to the ECHR. A reply in the affirmative has been received from the recognised authorities (such as the Presidents of the two Courts concerned) and also from the European Parliament.

It is broadly agreed that the two options – the adoption of a binding Charter **and** accession to the ECHR – are complementary to one another and are not alternatives.

A number of legal questions need to be answered before such a statement can be made.

1. First of all, what is the point of accession if more extensive protection is available under EU law?

Answer: even if that is the case, the Court of Justice could arrive at a restrictive interpretation which would require a means of external review (to which, incidentally, all the Member States and their constitutional or supreme Courts are already subject).

2. Secondly, would accession to the ECHR not be incompatible with the autonomy of Community law and, in particular, with that of the Court of Justice (which is the highest body entitled to interpret EU law)?

Answer: the Court of Justice's monopoly on interpretation is not affected by accession to the ECHR. In its opinion 1/94 on conformity between the EEA and the EC Treaty, the Court was in favour of setting up another court whose task would be to interpret and apply the rules drawn up under the agreement.

EU accession to the ECHR is a comparable situation and, therefore, does not therefore undermine the Court's autonomy.

In any case, following EU accession the Court of Human Rights will not become a supreme court vis-à-vis the Court of Justice, just as it has not become so vis-à-vis the Member States' supreme courts. Its area of competence will continue to be restricted

to monitoring observance of the fundamental rights laid down in the ECHR. It will not be allocated any other power. The Court of Justice will retain sole responsibility for settling disputes both between the Member States and between the Member States and the institutions.

The advantages of accession are obvious: the EU will subject itself to the same external judicial review as its Member States whilst, at the same time, there will be uniform interpretation of the ECHR provisions (which is already envisaged in Article 52(3) of the Charter).

3. As regards the technical arrangements for accession, it is clear that the Treaty should provide a specific legal basis for that purpose in the wake of Opinion 2/94 of the Court of Justice (which took the view that Article 235 [now 308] is not adequate as a legal basis for accession).

The alternative arrangements imaginable (ranging from a referral mechanism to a right of appeal to the Court of Human Rights without accession) strike me as neither appropriate nor in accordance with Community law.

VI. Conclusion

The first Convention on the Charter was a success: it provided a complete text of the fundamental rights derived from the constitutional traditions and the international obligations common to the Member States.

It was designed – thanks in particular to the general and final provisions – as though it were to be incorporated into a constitutional treaty.

From Parliament's point of view there is nothing to prevent it from being incorporated as it stands, subject to a few purely technical adjustments to the cross-reference clauses, depending on the way in which the Charter is to be incorporated into a constitutional treaty.

SPEAKING NOTE

Speech by Jean-Claude PIRIS¹ to the Convention Working Group on the Charter of Fundamental Rights of the EU (23 July 2002)

Taking account of the mandate of the Working Group², and of the Note from the Praesidium³, I shall mainly address the question of the procedures required for integrating the Charter into the Treaties. My comments will be based on the political hypothesis of the Charter being incorporated either into the TEC, or into a unified TEU ("constitutional Treaty") embracing the current TEC. I will also address the question of possible EU/EC accession to the European Convention on Human Rights.

INTRODUCTORY COMMENTS:

The aim of the Charter, as laid down by the European Council⁴, is neither to create new fundamental rights, nor to free existing rights from the conditions and limits imposed on them by legal texts currently in force, nor to address the Member States directly. As the preamble to the Charter points out, its aim is to make fundamental rights "*more visible*" and to "*reaffirm*" those rights "*with due regard for the powers and tasks of the Community and the Union*".

The "*Text of the explanations*" relating to the Charter⁵, which played a decisive role in making it possible for certain Member States to adopt the Charter, and which was approved by the Praesidium

¹ Mr PIRIS, Legal Adviser to the Council of the European Union, Director-General of the Council Legal Service, stated that he was speaking in a purely personal capacity.

² CONV 72/02 of 31 May 2002.

³ SN 2565/02 of 10 June 2002.

⁴ Presidency conclusions of the European Council held on 3 and 4 June 1999, paragraph 44: "*The European Council takes the view that, at the present stage of development of the European Union, the fundamental rights applicable at Union level should be consolidated in a Charter and thereby made more evident*".

⁵ CHARTE 4473/00 CONVENT 49 of 11 October 2000.

of the previous Convention, sets out the origin of each of the rights reaffirmed by the Charter. It also recalls the conditions and limits attached to those rights by the TEC, the ECHR or by case-law⁶.

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My comments will be divided into two main parts:

I. Would straightforward incorporation of the Charter into the Treaties, without any modification, give rise to risks of legal uncertainty and a lack of clarity?

II. Are Articles 51 to 53 of the Charter sufficient to overcome those risks and, if not, what technical arrangements would it be appropriate to make to ensure greater clarity and legal certainty, while fully respecting the substantive content of the Charter?

I will then say a few words on the legal implications of options other than incorporation of the Charter into the Treaties, and I will end by considering the question of possible EU (EC) accession to the ECHR on the same basis as a State, or its functional accession.

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⁶ Given the clarifications which it contains, it would be sensible to examine the possibility of taking over this text in an appropriate fashion, for example as a declaration annexed to the final act of the IGC which decides to incorporate the Charter into the Treaty.

I. WOULD INCORPORATION INTO THE TREATY OF THE CHARTER AS CURRENTLY FORMULATED GIVE RISE TO RISKS OF LEGAL UNCERTAINTY AND INSUFFICIENT CLARITY?

As stated in the mandate of the Working Group and the Note by the Praesidium, the Charter should be considered as adopted, without amendment to its substantive content. The final provisions of the Charter, particularly Articles 51 and 52, are an essential part of that substantive content:

under **Article 51(1)**⁷, the Charter is not addressed to the Member States acting in the framework of their national competences. It is addressed exclusively to the Union's institutions. It is only addressed to the Member States when they are implementing the law adopted by those institutions of the Union.

under **Article 52(2)**⁸, the rights enshrined in the Treaty and reflected by the Charter shall be exercised under the conditions and within the limits defined by the Treaty.

under **Article 52(3)**⁹, the meaning and scope of the rights guaranteed by the ECHR and reproduced in the Charter shall be the same as those conferred by the ECHR.

⁷ *"The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers".*

⁸ *"Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties".*

⁹ *"Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection".*

These provisions constituted a condition for the approval of the Charter. To be certain of complying with them when incorporating the Charter into the Treaty, there is a need for a thorough legal scrutiny of the Charter. This examination shows that the Charter contains some differences in relation to the provisions of the TEC and the ECHR ¹⁰.

I would like to make four comments on this subject:

(1) ***Some provisions of the Charter relate to areas in which the Treaties have not conferred competence on the EC***

Some provisions of the Charter relate to areas where the Community does not have competence, which is reserved to Member States by virtue of the principle of the allocation of competence (see first paragraph of Article 5 of the TEC). In this respect one might mention Article 28 of the Charter on the right of collective bargaining and action, which includes the right to strike, whereas this right is expressly excluded from the Community's competence by Article 137(6) of the TEC. Article 2(2) of the Charter on the death penalty, Article 4 prohibiting torture, Article 14 on the right to education, Article 34 on the entitlement to social security benefits and social assistance, and indeed Articles 48, 49 and 50 on criminal law, might also be cited.

¹⁰ On this subject, see the matching results of the studies presented by Mr Rodriguez Bereijo on "The protection of fundamental rights" during the seminar on the "Present and future of the Court of Justice of the European Communities" held in Madrid on 25 October 2001, and the studies presented at the colloquy organised by the Commission on 15 and 16 October 2001, as below:

Professor Grainne De Burca: "Human Rights: the Charter and beyond"

Professor Jacqueline Dutheil de la Rochère: "Droits de l'homme : la Charte des droits fondamentaux et au-delà" ("Human Rights: the Charter of Fundamental Rights and beyond").

Professor Christopher McCrudden: "The future of the EU Charter of Fundamental Rights".

The obligation to respect fundamental rights is not to be placed on the same level as competence to legislate, since the latter depends on the existence of a legal basis in the Treaty. That said, Article 51(1) imposes an obligation on the institutions and bodies of the Union not only to respect the provisions of the Charter but also to promote its application. The text states that they should do so "in accordance with their respective powers". But how? Could they promote the application of rules relating to matters where they have no competence? How can an article prohibiting torture be justified in a text which is only addressed to the institutions of the EU/EC and not to the Member States except when they are implementing Union law? There is a constant ambiguity in the text in that it appears to be addressed directly to the Member States, or to enlarge the existing competences of the European institutions, or to do both of these, when in fact each of these three hypotheses has in principle been ruled out.

(2) **Some provisions of the Charter draw on provisions in the TEC or the ECHR, but modify them**

Some articles of the Charter, which deal with an area covered by the TEC and the ECHR, contain provisions which differ from those texts. This is the case with the principle of non-discrimination¹¹: drawing on Article 13 of the TEC and Article 14 of the ECHR, Article 21(1) of the Charter¹² provides for the prohibition of any discrimination based "on any ground such as " a range of examples, whereas Article 13 of the TEC¹³ confers competence on the Community to take appropriate action to combat discrimination based on a smaller number of matters, which are not just quoted as examples (sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation).

¹¹ This also applies to the right to marry: compare Article 9 of the Charter with Article 12 of the ECHR.

¹² In the "Text of the explanations" of the Charter (4473/1/00 REV 1), Article 21 of the Charter is not mentioned either amongst those articles of the Charter whose meaning and scope are the same as the corresponding articles of the ECHR, or amongst those where the meaning is the same but the scope wider.

¹³ The text of Article 14 of the ECHR, supplemented in 2000 by Protocol No 12 to the ECHR, differs from the other two. However, it should be remembered that the ECHR is a "minimal" instrument: one can do more or better, but not less or worse. Hence, the fact that the Charter offers more protection than the ECHR is not a legal obstacle to its incorporation into the Treaties.

However, it might be queried whether the differences between Article 21(1) of the Charter and Article 13 of the TEC could give rise to uncertainty over the interpretation to be given to Article 13 of the TEC: in the cases of non-discrimination referred to in Article 21 of the Charter but not recognised by Article 13 of the TEC, such as colour, language, or membership of a national minority, would the Council be able to intervene on the basis of Article 13?

(3) **Some provisions of the Charter reproduce the wording of a right recognised by the TEC or the ECHR, but without reproducing the conditions and limits**

In the case of the TEC, this applies to the provisions on citizenship, for example Articles 39 and 40 of the Charter on the right to vote and to stand as a candidate at elections to the European Parliament and municipal elections respectively. Article 39 of the Charter lays down in a brief and apparently clear manner that: "*Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State*". Although this article corresponds to the right guaranteed by Article 19(2) of the TEC, it does not reproduce the limits to the exercise of that right which are expressly laid down in the latter: "*This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State*". These arrangements have been adopted by the Council in a Directive which will obviously have to be taken into account in determining the scope of the right referred to in Article 39 of the Charter, as would the national laws adopted to implement the Directive.

Thus, after becoming aware of his right by reading Article 39 of the Charter, the citizen would then have to refer to Article 51(2) of the Charter, then to Article 19(2) of the TEC, then to the Directive and finally to the national law relating to it, to discover that the extent of his right was not that apparently conferred by Article 39.

The same problem arises for other articles of the Charter, such as Article 40 on the right to vote and to stand as a candidate at municipal elections (see Article 19(1) of the TEC), Article 42 on the right of access to documents (Article 255 of the TEC), Article 43 on the Ombudsman (Article 195 of the TEC), Article 44 on the right to petition (Article 194 of the TEC), and Article 46 on diplomatic and consular protection (Article 20 of the TEC), which do not contain the limits and conditions laid down in the corresponding articles of the TEC, and which do not refer to them.

The reading of the articles of the Charter could therefore risk giving rise to legitimate expectations and infringing the principle of legal clarity: citizens are given to understand that they have some right, the possibility to obtain some benefit, or the power to exercise some competence or other, without specifying in a clear and utterly transparent fashion that that right, benefit or competence is subject to conditions and limits.

In the case of the ECHR, one might cite as an example the short Article 6 of the Charter on the right to liberty and security ("*Everyone has the right to liberty and security of person*"). The rights laid down in this Article correspond to those guaranteed by Article 5 of the ECHR, but Article 6 of the Charter does not reproduce the exceptions listed in Article 5 of the ECHR. The same applies to other articles of the Charter, which simply replicate the wording of the rights stated in the ECHR, without mentioning the exceptions and limits given there: Article 5(2) on forced labour (Article 4(3) of the ECHR), Article 7 on respect for private and family life (Article 8(2) of the ECHR), Article 10 on freedom of thought, conscience and religion (Article 9(2) of the ECHR), Article 11 on freedom of expression and information (Articles 10(1) and (2) of the ECHR) and Article 12 on freedom of assembly and of association (Article 11(2) of the ECHR). Article 15 of the ECHR, on the possibility of taking measures derogating from obligations under that Convention in time of war or other public emergency, is not reproduced in the Charter. Is the political choice that the exceptions, limits and derogations provided for in the ECHR will not apply within the EU, which is legally possible? But Article 52(3) of the Charter is ambiguous in this respect. It begins by stating that the meaning and scope of the rights contained in the Charter which correspond to rights guaranteed by the ECHR shall be the same as those laid down by the Convention, but adds that "*this provision shall not prevent Union law providing more extensive protection*". If the Charter were to be incorporated into the Treaty, it would therefore be difficult to determine what the legal situation would be.

(4) **Some provisions of the Charter reproduce rights which stem neither from the TEC nor the ECHR and have not yet been recognised in all the Member States**

This applies for example to Article 3 (origin: Council of Europe Convention on Human Rights and Biomedicine, not yet ratified by all the Member States; the fourth indent of Article 3(2) goes beyond that Convention, with the prohibition on the reproductive cloning of human beings); Article 10 (conscientious objection: origin – the constitutions of certain Member States); Article 24 (origin: United Nations Convention on the Rights of the Child; some Member States entered reservations when they concluded it).

(5) **Some provisions of the Charter lack precision**

Although, according to its preamble, the Charter contains "*rights*", "*freedoms*" and "*principles*", it does not state which provisions of the Charter contain respectively "*rights*", "*freedoms*" or "*principles*", nor what are the consequences of this division into three categories. With the incorporation of the Charter into the Treaty, this lack of distinction between those provisions of the Charter which contain "*rights*" and those which contain "*freedoms*" or "*principles*" could lead to risks of legal uncertainty and the creation of legitimate expectations. This might be the case, for example, with Article 25 ("*the Union recognises and respects the rights¹⁴ of the elderly to lead a life of dignity and independence and to participate in social and cultural life*") and Article 33(1) ("*the family shall¹⁴ enjoy legal, economic and social protection*"), where the wording seems to indicate that this is a question of rights and not of principles.

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¹⁴ My underlining.

I now come to the second stage of my analysis, in which I will endeavour to answer the following question:

II. ARE THE GENERAL PROVISIONS OF THE CHARTER (ARTICLES 51 TO 53) SUFFICIENT TO OVERCOME THESE RISKS AND, IF NOT, WHAT MINIMAL TECHNICAL ARRANGEMENTS COULD BE MADE TO ENSURE GREATER LEGAL CLARITY AND CERTAINTY, WHILE FULLY RESPECTING THE CONTENT OF THE CHARTER?

(1) Articles 51 and 52 of the Charter are intended to avoid conflicts between the provisions of the Charter and those of the TEC, but are insufficient to guarantee that:

Article 51(2) of the Charter states that *"This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties"*.

Article 52(2) states that *"Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties"*. These two provisions appear to be necessary since, in their absence, the Charter would result in drastic modification to the Treaty on a number of points. It ensues that each article of the Charter containing rights stemming from the TEC should be read and interpreted as "**subordinate**" to the latter: the "substantive" provisions of the Treaty would prevail over those of the Charter. However, Articles 51(2) and 52(2) would risk lacking clarity if the Charter were to be incorporated into the Treaty, since the substantive articles of the Charter would have legal force equivalent to that of the other articles of the Treaty.

With legal certainty and clarity in mind therefore, a case could be argued either for clarification of these two articles (by an explicit reference to compliance with the conditions and limits laid down in other provisions of the Treaties, i.e. those which confer competence on the EC), or for the deletion of those articles, on the express condition, however, that:

every provision of the Charter is examined;

the minimal technical amendments are introduced which are necessary to ensure that none of

the provisions implies a modification to the competence conferred by the TEC; and

the conditions and limits provided by the TEC are included for those rights (e.g. Articles 39 and 40 of the Charter and Article 19 of the TEC).

Neither of these options, which are purely a matter of legal form, would modify the substantive content of the Charter. One would achieve exactly the result sought by the previous Convention, but with more clarity and legal certainty.

(2) Articles 52(3) and 53 of the Charter are intended among other things to avoid conflicts between the provisions of the Charter and of the ECHR, but their content is not clear

Article 52(3) states that: *"Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection"*.¹⁵

Article 53 states that: *"Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions"*.¹⁶

¹⁵ In connection with this provision, the text of the explanations contains a list of articles of the Charter whose meaning and scope are the same as the corresponding articles of the ECHR, and another list of articles whose meaning or scope are not the same as the corresponding articles of the ECHR.

¹⁶ This provision deals in an identical fashion with categories of law (international law and national laws) which do not have identical relations with Community law, which leads some people to believe that this article could be interpreted as going against the principle of the primacy of Community law as developed by the Court of Justice of the European Communities (judgment of 17.12.1970 in Case 11/70 *Internationale Handelsgesellschaft* [1970] ECR p. 1125, and judgment of 11.1.2001 in Case C-285/98 *Kreil*), and implicitly recognised by paragraph 2 of the Protocol on the application of the principles of

The apparent intention of these provisions is that, insofar as the rights of the Charter "correspond" to those guaranteed by the ECHR, their meaning and scope (including, a priori, **their conditions and limits**), should be the same as those provided by the ECHR. However, the same article provides that this provision "*shall not prevent Union law providing more extensive protection*", which corresponds to the fact that the ECHR constitutes a minimum standard. Since all the articles of the Charter would effectively, by dint of being incorporated into the Treaty, constitute "*Union law*", there would be an ambiguity: would the conditions and limits laid down by the ECHR apply or would they not? The Court of Justice in Luxembourg would have to decide on the matter. Insofar as the rights listed in the Charter correspond to rights guaranteed by the ECHR but are not identical, there would be a risk of divergent interpretations emerging from the two Courts.

(3) **Since Articles 51 to 53 prove insufficient, minimal technical amendments to the Charter would therefore seem appropriate**

It emerges from the legal analysis which I have just set out that Articles 51 to 53 of the Charter would only be sufficient if the Charter maintained its current status, or if the status conferred on it were subordinate to the other provisions of the Treaties; but they would not be sufficient to establish full legal clarity and certainty if the Charter were to be incorporated as currently worded into the Treaty, thus giving all its articles a binding legal force identical to that of all the other articles of the Treaty. This incorporation would infringe the principle of legal certainty and the objectives of simplification and visibility¹⁷. Minimal technical

subsidiarity and proportionality which provides that "*the application of the principles of subsidiarity and proportionality...shall not affect the principles developed by the Court of Justice regarding the relationship between national and Community law..*". Some feel that if the last part of Article 53 of the Charter were to be incorporated into the Treaties it would highlight the significance of the differences between the wording relating to fundamental rights in Union law and the constitutions of the Member States, thus increasing the risk of conflict between the Court of Justice of the EC and national supreme courts (see Ms Dutheil de la Rochère, 15.10.2001).

¹⁷ The incorporation of the Charter into the Treaty would have the effect of rendering applicable the provisions of the TEC relating to the Court of Justice. The Court could have violations of the Charter referred to it, either in the form of requests for a preliminary ruling from national courts (depending on which provisions of the TEU or TEC applied) or directly from the institutions, the Member States or

amendments to the Charter or to the Treaty would therefore seem appropriate if the Charter were to be incorporated into the Treaty.

As regards the ECHR, there would be no legal necessity to amend the Charter if the Convention and the future IGC were to decide that the Treaty (including the Charter) would offer even more protection than the ECHR than it does already in certain areas. In any case, reproducing in the Charter the full provisions of the corresponding articles in the ECHR would pose political difficulties in relation to those provisions of the Charter which represent a "step forward" in certain areas: see Article 3(2) (cloning), Article 8 (data protection), Article 9 (right for persons of the same sex to marry), Article 10(2) (right to conscientious objection), etc. If the Convention and then the Member States (at the IGC) were to confirm their desire to go further than the ECHR on these points, clear provisions to this end would have to be included in the Treaty.

As regards the EC Treaty, two avenues might theoretically be considered:

- Amendment to the Treaty: this possibility has been set aside by Article 51(2) of the Charter, according to which the Charter does not establish any new power or tasks for the Community or the Union, and does not modify the powers and tasks defined by the Treaties. This was, moreover, excluded by the Cologne European Council.
- Amendment to the Charter: if this path is followed, the Convention might wish to avoid any substantial amendment which risked calling into question the delicate compromise achieved when the Charter was being drawn up¹⁸. If this is the case, some minimal technical amendments would have to be envisaged:

Article 51(1): after "*promote the application thereof in accordance with their respective*

individuals under the conditions laid down by the Treaty. Since fundamental rights form part of the principles of law with which the Court must ensure compliance, the Court already verifies compliance with fundamental rights by the Communities and by the Member States when they are implementing Community law.

¹⁸ It would remain the case that some provisions, such as those quoted on page 4 above as well as the ambiguity mentioned on page 5, would contradict the fundamental principle stated in Article 51(1) of the Charter.

powers" add "and respecting the limits of the competences of the EC as conferred on it by other parts of this Treaty";

Articles 39, 40, 42, 43 and 44: the proposal which I made a moment ago would be the clearest, namely to include the conditions and limits laid down in the TEC when addressing the rights concerned. Otherwise, in each article, one could add "*under the conditions and limits set by Article (19), (20), (255), (194), (195) of (this Treaty/the TEC) [respectively]*". Another solution would be to replicate the conditions and limits and to delete the corresponding articles of the current TEC.

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III. WHAT WOULD BE THE LEGAL EFFECT OF OPTIONS OTHER THAN THE INCORPORATION OF THE CHARTER INTO THE TREATIES?

It might prove politically impossible to amend the text of the Charter, even in a limited fashion. If so, and as always when two different texts deal with the same question, the only reliable solution to ensure legal certainty would be to stipulate a hierarchy between the two texts, i.e. to make one have legal force **subordinate** to that of the other. At least five options are possible.

(1) The Charter could be included in the preamble to the Treaty

The text of the Charter would be reproduced, either in the preamble to the TEU, or in that of the "constitutional treaty" (in the case of a merger of the Treaties and the establishment of a "constitutional treaty"). However, according to case-law, the preamble to a Community act cannot be contrary to its enacting terms, at the risk of infringing the principle of legal certainty¹⁹. The basic principles on which this case-law is founded are equally valid for texts of primary law. The observations made earlier are therefore also applicable in this

¹⁹ See the judgment of 24.1.1995 (Case T-5/93 [1995] ECR p. II-0185), in which the Court of First Instance judged that: "*A contradiction in the statement of the reasons on which a decision is based constitutes a breach of the obligation laid down in Article 190 of the Treaty such as to affect the validity of the measure in question if it is established that, as a result of that contradiction, the addressee of the measure is not in a position to ascertain, wholly or in part, the real reasons for the decision and, as a*

case, to ensure legal clarity. Furthermore, the current form of the Charter, which is drafted in binding form (use of "shall" and wording expressing compulsion) is not appropriate for the text of a preamble.

(2) **The Charter could be "attached" ²⁰ to the Treaty in the form of a solemn declaration**

Attaching the Charter in this way would present no legal difficulty. It would reinforce the status of the Charter and its high symbolic and political value. The development of its legal force would probably be encouraged and accelerated.

(3) **Article 6(2) of the TEU could refer to the Charter**

In this case it would not be necessary to amend the text of the Charter, if it were mentioned in Article 6(2) of the TEU in terms which avoided conferring binding legal force on it. The European Parliament suggested (in 4804/00) to the IGC 2000 that reference should be made to the Charter in Article 6(2) of the TEU, using the following wording: "2. *The Union shall respect the Charter of Fundamental Rights of the European Union and fundamental rights.....*". Since this wording would confer binding legal force on the provisions of the Charter ("*The Union shall respect..*"), it would present the same difficulties as those raised by straightforward incorporation of the Charter into the Treaties. It would be possible to imagine appropriate wording by using the right vocabulary ("reflection", "confirmation", etc.).

(4) **The Charter could be both reproduced in a solemn declaration attached to the Treaty and mentioned in Article 6(2) of the TEU**

This option, which would combine the two possibilities described above, would strengthen the status of the Charter. Its status as a declaration attached to the Treaties would be reinforced by the explicit reference to it in Article 6(2) of the Treaty. Politically, one would be very close to "incorporation" into the Treaties. Legally, the development in the status and

result, the operative part of the decision is, wholly or in part, devoid of any legal justification". See also the judgment of 30.3.2000 (Case T-65/96 [2000] ECR p. II-1885).

²⁰ It would be preferable to use the verb "attach" rather than "annex" in order to avoid any ambiguity with the terms of Article 311 of the TEC.

value of the Charter would be facilitated, making it possible in future for all those involved, including the Court of Justice, to take account of the Charter, without actually conferring the force of positive law on those of its provisions which went beyond the conditions and limits provided by the TEC and the ECHR.

(5) **The Charter could maintain its current status**

What would be the consequences of maintaining its status? It would be inaccurate to say that the Charter currently lacks any legal significance, and that maintaining the status quo would deprive it of any legal force. The Charter already has great political value and a certain legal status which is likely to develop.

Firstly, the Charter already constitutes a political reference point for the implementation of Article 6 of the TEU ²¹.

Secondly, it is a highly symbolic text which is invested with definite legitimacy. The institutions are politically bound by the Charter, as their practice demonstrates. The President of the European Parliament has declared that "*.. the Charter will be the law of the assembly*". The Commission has decided ²² that any proposal for a legislative act will be scrutinised for compatibility with the Charter, and that any proposal for an act which has a specific link with fundamental rights will contain a recital specifying that the act complies with the Charter. The Council and the Parliament, as co-legislators, adopt such recitals ²³.

Thirdly, Advocates-General at the Court of Justice have already invoked the Charter, as has the Court of First Instance ²⁴.

²¹ See the Three Wise Men's report on Austria, which refers to Article 21 of the draft Charter: "*In the new Draft Charter of Fundamental Rights of 28 July 2000, Art. 21 prohibits any discrimination based on sex, race.....*"

²² SEC (2001) 380/3.

²³ There is an example of such a recital in Regulation No 1049/2001 of 30 May 2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents.

²⁴ See the conclusions of Advocate-General Tizzano in Case C-173/99, Advocate-General Léger in Case C-353/99, and Advocate-General Jacobs in Case C-377/98. See also paragraph 48 of the judgment of the

In its communication of 11 October 2000 on the Charter, the Commission considers that *"it can reasonably be expected that the Charter will become mandatory through the Court's interpretation of it as belonging to the general principles of Community law"*.²⁵ Without going that far, it ensues in any event from the above that the Charter can already be regarded as constituting a sort of "soft law" which is likely to acquire more authority in future, even if its status is not explicitly altered.

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CONCLUSION

The incorporation of the Charter of Fundamental Rights into the Treaty will be an essential step in European construction. This incorporation should be carried out in such a way as to respect the imperatives of legal clarity and certainty so as to avoid any ambiguity or divergence in interpretation.

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Court of First Instance of 30 January 2002 in Case T-54/99 *MaxmobilTelekommunikation Service GmbH v. Commission*, not yet published, and paragraphs 41 and 42 of the judgment of the Court of First Instance of 3 May 2002 in Case T-177/01 *Jégo-Quéré et Cie SA v. Commission*, not yet published.

²⁵ Commission communication of 11 October 2000 (COM(2000) 644 final).

ANNEX**ACCESSION OF THE EU TO THE ECHR**

The question of possible EU accession to the ECHR has been on the table for over twenty years, since the first Commission proposal to that effect. It has hitherto encountered obstacles of a legal nature (the present TEC does not permit accession: see Opinion 2/94 of the ECJ, of 28 March 1996¹) and a political nature (ensuring increase in EC competence, fears regarding the autonomy of its judicial system, problems posed by the arrangements for full EC participation in an institutional system designed for States, etc).

The fact that no solution has been found to this problem has so far been of limited practical significance, given the protection afforded to the rights of Union citizens (through the case-law of the ECJ or indirectly through that of the European Court of Human Rights). The potential for conflict between the two European courts in Luxembourg and Strasbourg is at present low-level. However, it would increase if the Charter were to be incorporated into the Treaty. In addition, the question has considerable symbolic importance in the political terms. It is anomalous that citizens cannot complain to the European Court of Human Rights regarding a possible breach of the European Convention on Human Rights by an EC institution. This anomaly will become painfully obvious and will increase the risks of disparities between the case-law of the two European Courts of Justice if it is decided to incorporate the Charter into the Treaty.

¹ [1996] ECRI-1759.

There are two main ways of putting an end to this anomaly². The solution has so far been sought in the form of straightforward EU accession, on the same basis and hence with the same rights as a State Party to the European Convention on Human Rights. Consideration could be given to another option, involving functional accession of the EC or the EU to the Convention. In accordance with the principle of subsidiarity, provision would be made for accession to be merely functional, i.e. only insofar as it proves necessary in order to deal with the questions I have just raised, avoiding some of the political obstacles mentioned above which would ensue if the EU were to accede on the same basis as a State.

² The reasons why the other options that have sometimes been mentioned would be inappropriate (requests for preliminary rulings from the ECJ to the European Court of Human Rights, creation of a special EU court or special chamber at the ECJ, etc.) would exceed the bounds of this brief summary.

A. FIRST OPTION: ACCESSION OF THE EC/EU TO THE ECHR ON THE SAME BASIS AS A STATE

MEANS

- Would require a revision of the Treaty (ECJ Opinion 2/94, 28.3.1996) and a revision of the European Convention on Human Rights, followed by negotiation of an agreement between the EU/EC and the Council of Europe.

MAIN CONSEQUENCES

- (1) Would permit citizens to seize the European Court of Human Rights in Strasbourg if they considered that an act of an EU (EC) institution had been adopted in breach of the provisions of the European Convention on Human Rights (under conditions similar to those existing at present for the States Parties: exhaustion of domestic remedies including appeals to the Court of Justice or the Court of First Instance etc.),
- (2) Would permit the EU (EC) institutions whose acts have been called into question to defend their legality before the European Court of Human Rights in Strasbourg.
- (3) Would resolve the problem posed by possible incompatibilities between the text of the Charter and that of the European Convention on Human Rights, as well as the problem of conflicts possibly arising between the case law of the two Courts, the ECJ in Luxembourg and the ECHR in Strasbourg, the risk of which could well increase if the EU Charter of Fundamental Rights were to be given binding legal force.

RELATED CONSEQUENCES

- (4) Would put the EU (or the EC) on the same level as the States Parties to the ECHR and therefore give them the same rights and obligations vis-à-vis the ECHR; thus the effect of revising the EU (EC) Treaty to allow accession to the ECHR on the same basis as a State would be to extend EU (EC) competence to all areas of fundamental rights, as it would be able to participate in revising the European Convention on Human Rights on the same basis as a State.
- (5) By aligning the EU-EC with the States Parties, the effect of revising the European Convention on Human Rights would be to enable the EU (EC) institutions to participate on an equal footing in the Strasbourg institutional system: participation in the Council of Ministers, voting rights, election of judges, etc.

B. SECOND OPTION: FUNCTIONAL ACCESSION OF THE EU/EC TO THE ECHR**MEANS**

- After the introduction of an enabling article into the EU or EC Treaty and appropriate revision of the ECHR, would involve the conclusion of a Protocol annexed to the European Convention on Human Rights which would have effects identical to those of a straightforward accession for points 1, 2 and 3 above.

MAIN IDENTICAL CONSEQUENCES

- (1) EU citizens would be entitled to seize the European Court of Human Rights in Strasbourg if they considered that an act of an EU (EC) institution had been adopted in breach of the European Convention on Human Rights.
- (2) The EU (EC) institutions whose acts have been called into question would be able to defend their legality before the European Court of Human Rights in Strasbourg.
- (3) The questions raised above (possible incompatibilities between the Charter and the ECHR and possible conflicts between the case-law of the ECJ and that of the ECHR), would be settled in the same way.

LACK OF RELATED CONSEQUENCES

- (4) Functional accession would not in itself³ have any effect on EU (EC) competence.
- (5) Functional accession would not involve the EU (EC) institutions participating on an equal footing with the States Parties in the Strasbourg institutional system (participation in the Council of Ministers, voting rights under the same conditions as a State Party, election of a judge, having the same competences as the other judges⁴, participation in proceedings before the Strasbourg Court even when those institutions were not involved in a case, etc.).

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³ Naturally, extension of EU (EC) competence could perfectly well be provided for by the Convention/IGC, although as a separate issue and not as a natural consequence of the solution to the problem that concerns us here.

⁴ Article 29 of the Rules of Procedure of the ECHR, which provides for the possibility of designating "ad hoc judges" could be amended if deemed necessary, to allow the appointment of a judge for cases concerning Community/EU law. The possibility of a full-time EC/EU judge would not necessarily be excluded by functional accession.

Hearing of Michel Petite ¹
Convention Working Party
on the Charter of Fundamental Rights of the EU
and accession to the ECHR
(Brussels, 23 July 2002)

Your Convention Working Party has discussed all the aspects of the Charter in depth. I should like to return simply to the core questions that you have already gone into at length:

1. Would the Charter extend the powers of the Union?
2. The question of the application of the Charter to measures taken by the Member States;
3. The "direct effect" of rights under the Charter;
4. The relation between the Charter and its "three main sources":
 - the Charter and the rights already enshrined in the EC Treaty;
 - the Charter and the European Convention of Human Rights;
 - the Charter and the constitutional traditions common to the Member States.

My conclusion is that, if the Charter is incorporated in the Treaty, it is vital to preserve its "horizontal" provisions, with very minor drafting amendments.

¹ Director-General, Legal Service, European Commission.

1. Would the Charter extend the powers of the Union?

- The importing thing here is to bear in mind the distinction between the powers of the Union (which are limited) and the duty of the institutions to respect fundamental rights when they act. This duty applies equally to rights such as the right to strike or the freedom of religion that the institutions could well affect indirectly by their measures, even if they cannot legislate on them.²
- This traditional distinction is recognised in the Court of Justice Opinion 2/94 (on accession to the European Convention)³ and in the practice of the institutions;⁴ it is particularly clear in working paper No 3 by your Working Party's Chairman. On this basis, it seems perfectly suitable that the Charter was designed as a *full* catalogue of all the fundamental rights that the Union must respect in its action, and Article 51(2) of the Charter seems to me to state beyond a shadow of a doubt that the Charter creates no new powers and amends none of the powers conferred by the Treaties.⁵

² And there have been certain more recent extensions to the powers of the Union, in particular in the field of criminal law, introduced by the Union Treaty ("third pillar"). In particular, the double jeopardy rule in Article 50 of the Charter is already laid down in Articles 54 to 58 of the Schengen Convention, Article 7 of the Convention on the protection of the financial interests of the Communities and Article 10 of the Convention on the fight against corruption (Council Conventions under the EU Treaty). This example clearly illustrates how useful it was to include the essential guarantees in criminal matters which must be respected in third-pillar law in Articles 48–50 of the Charter.

³ See paras 27–35 of the Opinion.

⁴ See, for example, Case 130/75 *Vivien Prais v Council* [1976] ECR 1589, concerning a Council recruitment competition organised on a Jewish holiday, where the Court of Justice recognised freedom of religion as a Community fundamental right; Council Regulation (EC) No 2679/98 on the functioning of the internal market in relation to the free movement of goods among the Member States (Article 2: "This Regulation may not be interpreted as affecting in any way the exercise of fundamental rights as recognised in Member States, including the right or freedom to strike...", and 4th recital: "Whereas such measures [i.e. those that Member States are obliged to take with a view to facilitating free movement of goods on their territory] must not affect the exercise of fundamental rights, including the right or freedom to strike"); and the mandate for the current negotiation of an agreement with the United States on legal judicial assistance in criminal matters which excludes extradition of persons running a serious risk of the death penalty.

⁵ See also J.-P. Jacqu , La d marche initi e par le Conseil europ en de Cologne, *Revue universelle des droits de l'homme*, 2000, No 1/2, p. 6; J. Dutheil de la Roch re, "La Charte des droits fondamentaux et au-del ", conference organised by the Commission on 15 and 16 October 2001, pp. 15/16.

- If the Charter itself were incorporated into one of these Treaties (your option "f"), a drafting amendment could make clear that the Charter does not affect the system of powers as defined elsewhere in the Treaty.
- The Commission already interprets the Charter in this way: it systematically vets legislative proposals for conformity with the Charter, and in appropriate cases it mentions this in a recital and in the explanatory memorandum to the proposal.⁶ But we ensure that these references to the Charter in the recital and the explanatory memorandum do not specifically support a power to legislate but merely give an assurance that the proposed measure respects fundamental rights.
- Is this result contradicted by the famous formula of Article 51(1) of the Charter, which requires the institutions and the Member States, when they implement Union law, to "respect the rights, observe the principles and *promote* the application thereof"? The answer is clearly no; in particular because the full text goes on to say "... promote the application thereof in accordance with their respective powers". The Charter shows therefore clearly here that the Union is under an obligation to "promote" only where it has powers to act in the first place.

2. Application of the Charter to measures taken by the Member States

- Article 51(1) of the Charter provides that it is addressed to the institutions and bodies of the Union, "*and to the Member States, only when they are implementing Union law*". The excellent "Explanations" of the Presidium of the Charter specify that this Article merely reproduces the case-law of the Court on this point.⁷

The legitimate question here is how far a Charter, integrated into the Treaties, *would bind the Member States?*

⁶ Cf. SEC (2001) 380/3.

⁷ The "Explanations" established by the Presidium of the Charter Convention (Document CONVENT 49, Charter 4473/00, 11 October 2000), to which this statement refers several times, give useful and important indications for a good understanding of the Charter, even if they do have no legal value. The Advocates-General at the Court of Justice already quote them when interpreting the Charter. See, for example, the opinion of the Advocate-General Mischo of 21 February 2001 in Case C-122/99 P, *D v Council*, quoting the point made in the "Explanations" that Article 9 of the Charter neither prohibits nor imposes the granting of marriage status to unions between persons of the same sex and concluding that this confirms the difference between a marriage and a same-sex union and that the Community legislature (acting in this case under the Staff Regulations of Officials) would not therefore be bound by the Charter to treat the two situations on the same footing.

- The Commission, as guardian of the Treaties, is well placed to answer this, because it is already regularly confronted with these problems in handling answers to citizens' complaints, infringement proceedings and requests for preliminary rulings in the Court of Justice.
- The existing case-law of the Court has acknowledged that Community fundamental rights are applicable to measures taken by the Member States – and its review of respect for these rights – in two cases only:
 - 1) when the Member State *applies or implements* Community law (examples: administrative measures implementing a EC agricultural Regulation; transposing a Directive) – the "*Wachauf*" rule;⁸
 - 2) when the Member State acts on the basis of a provision of derogation of the EC Treaty (such as Articles 46 and 55) allowing it to restrict the *fundamental freedoms* of establishment and services on grounds of public policy, public security or public health – the rule in "*ERT*".⁹ The philosophy is that these derogations must themselves respect fundamental rights.
- To designate these two situations, the Court of Justice has sometimes used the admittedly rather general formula that the Member States must respect Community fundamental rights when they act "within the scope of Community law". But in practice, the Court does limit the application of this to the two situations. In particular, in *Annibaldi* (1997),¹⁰ it held that, to make Community fundamental rights applicable, it is not enough for a Member State to act in a field, like agriculture or the environment, where the Community has powers or which are connected in one way or another with Community law; the decisive element was that the measure in question was not a specific measure transposing or implementing a Community provision.

⁸ Judgment of 13 July 1989 in Case 5/88 [1989] ECR 2609.

⁹ Judgment of 18 June 1991 in Case C-260/89 [1991] ECR I-2925; also see judgment of 26 June 1997 in Case C-368/95 *Familiapress* [1997] ECR I-3689, concerning restrictions on free movement of goods (Article 30 of the EC Treaty).

¹⁰ Judgment of 18 December 1997 in Case C-309/96 [1997] ECR I-7493.

- It is therefore important to understand that in practice the two situations referred to in the case law cover a very narrow field within the wide range of legislative and administrative measures taken by the Member States.
- This limitation is confirmed by the Charter itself, which in Article 51(1) uses the formula "when Member States implement Community law", sometimes also used by the Court of Justice,¹¹ and is more comprehensible and especially less susceptible of a broad interpretation.
- In the past the Commission has often been faced with requests to apply Community fundamental rights to the Member States. In most cases, it could immediately deny its power because it was obvious that the problem did not constitute any form of implementation of Community law (examples: the law on sects in France, the alleged violations of freedom of press in Austria or Italy, the religious freedom of Buddhist communities in Greece, the law of a Spanish autonomous Community concerning the use of a regional language).
- Some more recent cases were more delicate, because there was a certain link with Community law:
 - the alleged violation of fundamental rights by projects part-financed by the Structural Funds;
 - the issue of broadcasting licences to radio or television channels;
 - data recorded on a national identity card.

But in these cases the Commission took a very cautious line and concluded that Community scrutiny *did not apply*, the protection of the rights being therefore a matter to be governed by national powers. If the Charter is incorporated into the Treaties, therefore, one must think that the Commission and the Court of Justice will interpret Article 51(1) in the same way, applying it only in clear and specific cases of implementation of Community law by the Member States.

- The fear that the Charter could have an impact on broad fields of the Member States' national legislation and that the slightest indirect link with Community law or powers would suffice to make it applicable therefore strikes me as unfounded.

¹¹ For example in the judgment of 13 April 2000 in Case C-292/97 *Karlsson* [2000] ECR I-2737, para 37.

3. **The question of "direct effect" of the Charter rights**

- Certain members of the group have asked whether Charter rights, several of which are formulated as "positive duties", could have "direct effect" and be capable of being pleaded directly in the national courts. This concern relates particularly to the social Articles. I can understand their concern, but I do not believe it is warranted, for the same reasons as I mentioned a moment ago in connection with the application of the Charter to the Member States.
- The concept of "direct effect" in Community law refers to Treaty provisions which can be pleaded directly in the national courts, against national administrative authorities or even private individuals, without the need for secondary legislation to give effect to them (e.g. Article 141 of the EC Treaty on equal pay for men and women, or the four fundamental freedoms).
- But the fundamental rights under the Charter, according to Article 51(1), have limited scope: they are binding on the *institutions*, but they cannot normally be relied on in a national dispute against an administrative authority or against a private individual. The Charter, and particularly the social Articles, quite apart from the fact that it often provides for principles which are "to be observed" by the Community legislature without conferring subjective rights,¹² can therefore apply only *exceptionally* in the national context, namely when, as previously, there is a piece of Community legislation and a specific national measure implementing it.

4. **The relationship between the Charter and its "three main sources"**

a) The relationship between the Charter and the rights already enshrined in the EC Treaty

¹² It is clear from the Charter that a distinction is made between rights and principles [see last sentence of the preamble, and Article 51(1)]. It was also a major element for the compromise on the "social" chapter of the Charter. The approach followed in the Charter was to reflect this distinction when drafting the individual Articles. But the Convention instructed to write the Charter consciously chose not to formulate a horizontal clause distributing the Articles of the Charter into the two categories of "rights" and "principles", because it considered that the courts would be better placed to determine this case by case, having regard to developments in the academic writings. If it is now suggested that this decision should be reviewed, that is a political matter, and probably a very delicate one, rather than a legal matter.

- As you have already observed, the horizontal clause of Article 52(2) of the Charter is clear: those rights which are already enshrined in the EC Treaty and were simply reproduced in the Charter, such as citizens' rights (right to vote, to petition, to movement, etc), are governed legally by the relevant provisions of the EC Treaty. Article 52(2) is therefore a conventional referral clause.
- Admittedly, it would have been possible to restate that each of the relevant rights in the Charter applies "subject to the conditions and limits" laid down by the EC Treaty; to tell the truth, one could even have added "and the provisions for their implementation". That goes without saying, and the point is basically an aesthetic one. I quite understand the authors of the Charter, who wanted to avoid tedious repetitions. Legally, it boils down to exactly the same thing if we say it once and for all in Article 52(2).

Moreover, it is the technique used by numerous catalogues of fundamental rights in our national constitutions: the simplicity of the statement comes at a price, which is that the reader does not immediately see the full extent of the rights, including their conditions and limitations, without referring to other provisions of primary law.

- Nor do I see any *legal* incompatibility between the Articles of the Charter and the rights conferred by the Treaty. I will take the most commonly cited example of the relationship between Article 21(1) of the Charter and Article 13 of the Treaty, both relating to non-discrimination but formulated in different ways. The fact is that these two provisions have a very different scope and purpose: Article 13 of the Treaty creates a legal basis for legislative "anti-discrimination" measures applying as between private individuals. Article 21(1) of the Charter contains a directly applicable ban on discrimination, comparable with Article 14 of the Convention and with Protocol No 12 to it, but binding only on the Union institutions and bodies (and, of course, the Member States when they implement Union law). It is therefore logical that the Charter set forth all the non-discrimination criteria registered in Article 14 of the European Convention in order to fully respect the *acquis*. It is also understandable that, in the hope of providing total protection, the Charter added the criteria of Article 13 of the Treaty that are not in the European Convention.¹³

¹³ See also J. Dutheil de la Rochère, *op cit.*, p. 15.

For example, the institutions are banned from discriminating on the basis of language (Article 21 of the Charter), as they are under the current law,¹⁴ even though the Union has no power under Article 13 of the Treaty to legislate in these matters. It is difficult to see how this extremely simple situation could raise doubts as to the interpretation to be given to the legal basis of Article 13 of the EC Treaty.

- At the end of the day, I think it is very important for certainty as to the law to keep such a referral clause in Article 52(2), even if "full" incorporation of the Articles of the Charter in a new Basic Treaty (option "f") could entail a drafting change to make it clear to *which* legal text(s) the clause refers. The question whether or not the Charter, following incorporation into the Treaties, would have the same legal status as the Treaties is of no importance here as long as the "direction" of the referral is sufficiently clear.¹⁵

b) The Charter and the European Human Rights Convention

- Here the picture is a little more complex, as several premises have to be reconciled by the Charter:
 - first, since the Convention is a minimum standard (see Article 53), the Charter was free, like any national Constitution, to formulate rights differently, to grant better protection, in particular because of the developments in society since 1950;
 - second, there was the concern to ensure harmonious development between the two European legal orders and their two Courts;

¹⁴ If it is accepted as a starting point that the Union institutions are already required by the case law of the Court of Justice to adhere to ECHR standards *de facto* as if it formed part of Union law, then the institutions could not practise language-based discrimination, for example, without violating Article 14 of the ECHR. This does not, of course, preclude differences in treatment which are "justified on objective grounds" for the purposes of the case-law of the Strasbourg Court, such as the organisation of a recruitment competition for officials of a specific language to meet a specific need.

¹⁵ In relation both to Article 52(2) and to Article 51(2) of the Charter, the argument according that such referral clauses could not function if the Charter had a legal status equal to the Treaties (options "e" or "f") is erroneous. This point is illustrated by the fact that in the existing Treaties, there are already numerous referrals made by a part of the Treaties to others, even if all the Articles of the Treaties have identical legal status: thus, although Articles 21 and 194 and 195 of the EC Treaty on the right to petition and the right to refer a matter to the mediator are of identical legal status, it is clear that Article 21 is merely a referral clause and that the contents of the rights are actually defined by Articles 194 and 195.

- then, the importance of the principle of the autonomy of Community law;
 - and finally, the aim of reflecting and preserving in the Charter the "progress" already made in Community legislation and case law in relation to the standard of protection offered by the European Convention.
- The compromise found by the previous Convention met with a broad consensus and was also considered satisfactory by the representatives of the Council of Europe. This compromise is reflected in Article 52(3) of the Charter, which puts forward three principles:
 - first: the European Convention represents in any case a minimum standard which must be respected in the interpretation of all the Articles of the Charter;
 - second: those Articles of the Charter which were taken over from the Convention and therefore "correspond" to it have the same meaning and scope as in the European Convention. As the Explanations of the Presidium stress, the word "meaning" also naturally includes the limitations included in the various specific clauses of the Convention. Here again, out of a concern to avoid making the catalogue of rights difficult to read, the Charter preferred not to repeat all these individual clauses but to include them by reference in the horizontal clause of Article 52(3).¹⁶ To me it is unthinkable that the Court of Justice might be misled on this point and deduce from the Charter, for example, that no limitation of the freedom of expression was possible in the interest of preventing crime or protecting the rights of others;
 - third: Union law can go further than the European Convention. It goes without saying for the legislature. But it also applies to certain rights of the Charter itself, which go beyond the standard of the Convention because Community law is already ahead of it. Examples include: the right to a fair trial (Article 47 Charter),¹⁷ the double jeopardy rule (Article 50),¹⁸ or Article

¹⁶ The fact that Article 15 of the ECHR, allowing derogations from rights in the event of war or of other public dangers threatening the life of the nation, does not appear in the Charter is not problematic. The Charter does not bind the Member States in their autonomous action, and the ECHR does not therefore limit their possibilities of using the Article 15 derogation. A corresponding clause in the Charter might be thought superfluous, because national defence in the event of war and the maintenance of law and order are the responsibility of the Member States, and the Union institutions, to which the Charter is primarily addressed, have no power to take such measures or to prevent the Member States from doing so (Article 297 of the EC Treaty).

¹⁷ See the judgments of the Court of Justice in Case 222/84 *Johnston* [1986] ECR 1651, para 18 Case 222/86 *Heylens* [1987] ECR 4097, para 14 and C-97/91 *Borelli* [1992] ECR I-6313, para 14, which recognise the "right to a fair trial" whether the case is at civil law (Article 6 of the ECHR) or public law (as the opinion of Advocate General Ruiz-Jarobo Colomer stresses in Cases C-65 and 111/95 *The Queen v Secretary of State for the Home Department, ex parte Shingara and Radiom* [1997] ECR I-3343, para 75).

21 of the Charter, which combines the non-discrimination catalogues of both the Convention and Article 13 of the Treaty.

- Finally, the Presidium Explanations list the Charter rights which correspond, at the present time, to the European Convention. The Charter did not include this list in Article 52 itself, in order to avoid solidifying the situation and prejudging future developments in the Treaties, the secondary legislation and the case law. That seems reasonable to me; who, after all, wishes to anticipate the development of the European Convention and Union law 30 years hence?

- In light of all these elements, I really do not see how Article 52(3) could be repealed or how parts of it could be withdrawn or amended without calling into question the overall balanced solution that I have just described.

But then, of course, the question arises whether incorporating the Charter might lead to differences of case law between Strasbourg and Luxembourg: but it must be admitted that Luxembourg judgments, like judgments given by national constitutional courts, can already be contradicted by a judgment given in Strasbourg; historical instances already exist. On the other hand I know of no case where the Court of Justice disregarded an earlier judgment from Strasbourg. Having read Article 52(3) and the reference to the two Courts in the Preamble to the Charter, I think it unlikely that the Court of Justice will change its mind in the future, and the two Courts will feel that their cooperative approach has been upheld.

- Of course, Union accession to the Convention would be the ideal way of securing perfect consistency, because an applicant who felt that a Luxembourg judgment was not compatible with a Strasbourg decision could have the point checked directly; but that applies whether or not the Charter exists.

¹⁸ See the references to the Schengen Convention and other Conventions, *supra*.

c) The Charter and common constitutional traditions

- You have also considered the status of the rights of the Charter which are not based on the Treaty or the European Convention but on the common constitutional traditions of the Member States: is the Charter sufficiently clear on those rights, bearing in mind that it contains no referral provision comparable with those concerning the Articles coming from the Treaty and from the European Convention?¹⁹
- Could we also imagine a clause referring to the "common constitutional traditions" in the horizontal clauses of the Charter?
- We could think about it. But this clause would not be easy to draft, since there is no single written text of reference for the "common constitutional traditions" but a variety of sources of inspiration. The Court of Justice has admittedly used these sources, but with a wide margin of discretion; it is illusory to believe that it could define these rights with an identical meaning and scope to those of the Constitutions of the 15, one day 27, Member States; if it tried to do so, all it could produce would be a rather mediocre lowest common denominator.
- One last point: the Court of Justice regularly refers not only to the European Human Rights Convention and the common constitutional traditions but also to other sources, and in particular to other international conventions such as the European Social Charter,²⁰ the UN International Covenant on Civil and Political Rights²¹ and International Labour Organisation Conventions.²² According to its traditional formula, it "*draws inspiration from ... the guidelines supplied by*

¹⁹ But note that Article 52(1) of the Charter contains a rule concerning *limitations* of fundamental rights which accurately restates the formula used in the case law of the Court of Justice. In particular, the requirement in Article 52(1) that "the meaning and scope of those rights" should always be respected is not a "Strasbourg import" but a longstanding feature of Luxembourg case law; cf., for recent confirmation, the judgment given on 13 April 2000 in Case C-292/97 *Karlsson* [2000] ECR I-2737, para 45 (judgment mentioned in the Presidium Explanations).

²⁰ Case 149/77 *Defrenne* [1978] ECR 1365, para 20; Case 24/86 *Blaizont* [1988] ECR 379, para 20.

²¹ Among numerous examples, see Case 374/87 *Orkem* [1989] ECR 3283, para 18; C-249/96 *Grant* [1998] ECR I-621, paras. 43-47.

²² Among numerous examples, Case 149/77 *Defrenne* [1978] ECR 1365, para 20; Case C-158/91 *Levy* [1993] ECR I-4287.

international treaties for the protection of human rights on which the Member States have collaborated or to which they are signatories" (Opinion 2/94, para. 33).

- What matters here is that the Court of Justice does not feel inhibited from seeking inspiration in such agreements solely because certain Member States expressed reservations against them. This is normal because its case law concerns only the fundamental rights to be respected in the application of Community law and therefore leaves intact the autonomous action of the Member States. The line of the Court of Justice is in addition without alternative, since certain Member States even expressed reservations with regard to the European Convention and its protocols; the Court of Justice never agreed to implement a version of the Convention "reduced" by the amount of all the national reservations made by all the Member States to this text, which would considerably reduce the protection offered by Community fundamental rights.
- The Charter proceeded in the same way as the Court of Justice: it was inspired for example by the Convention on the Rights of the Child or Article 2 of the Protocol to the European Convention on the Right to Education, despite the reservations entered by certain Member States against them. In taking over the rights of the European Convention, it certainly could not have incorporated all the national reservations expressed by each of the fifteen Member States with regard to each Article of the Convention. However, this means neither that the Charter incorporates all these instruments as they stand in Union law²³ nor that it impacts on existing national reservations; these preserve their current scope, which results from the autonomous action of the individual States.

5. Summary: essential to keep the horizontal provisions

- To summarise, I have set out to show that it is very important, not to say essential, to preserve the Charter's horizontal provisions, because they are central to its comprehension and its smooth incorporation into the primary legislation. And our experience at the Commission already shows us that without these clauses it would be difficult for us to explain to citizens who write to us why the Charter does not apply in their dispute with a national authority, or why it does not

²³ The New York Convention on the rights of the child contains 46 Articles, but Article 24 of the Charter is merely inspired by it to formulate, in three short paragraphs, the few most fundamental elements on which there was a consensus in the "Charter" Convention, without making any reference to the New York Convention, which could have been interpreted as incorporating the Convention in the Charter without more. The same applies to the relationship between Article 3(2) of the Charter and the Oviedo Convention on human rights and biomedicine.

replace their own Constitution.²⁴ These clauses could in theory remain the same under any mode of incorporation of the Charter which preserved it as a technically separate instrument (i.e. reference or protocol). If the Articles of the Charter were incorporated in a new Treaty or the Union Treaty, minor drafting changes would be needed in Article 51(2) and (2).

6. Accession to the European Convention

- Lastly, by way of codicil, I would like to add a few legal points on the subject of Union accession to the European Convention, without of course giving an opinion on the political question for or against accession.
- In my opinion, the principle of the autonomy of Community law is no legal obstacle to accession. The various arguments were well presented in CONV 116/02; in particular, review by the Strasbourg Court covers only respect for international law obligations, which the Court of Justice already admitted in Opinion 1/91 on the draft EEA agreement²⁵ (para 40: "The Community's competence in the field of international relations and its capacity to conclude international agreements necessarily entails the power to submit to the decisions of a court which is created by such an agreement as regards the interpretation and application of its provisions").
- Here I would like rather to stress the problems which arise currently from the fact that the Union is not involved in the Strasbourg system. The Member States are increasingly frequently held indirectly liable in Strasbourg in cases which really concern the Union institutions. The argument is that States could not, by transferring sovereign powers to Brussels, escape their obligations under the Convention.

²⁴ It seems that it is especially for this kind of political and symbolic reasons that Article 53 of the Charter stresses that it neither limits nor affects human rights recognised, in their respective fields of application, by international conventions and the Member States' constitutions. At the same time, the formula "in their respective fields of application" in Article 53 of the Charter makes it possible to exclude any interpretation of this clause jeopardising the principle of the primacy of Community law, because it follows precisely from the case-law of the Court relating to this principle that provisions of national law which conflict with a provision of Community law (including the Charter incorporated in the Treaties) in a given case in point *cannot be applied*. See J.-P. Jacqué, in *Revue universelle des droits de l'homme*, 2000, No 1/2, p. 49.

- This reasoning is already recognised by the Strasbourg Court for provisions of primary law²⁶ and for the indirect control of Directives.²⁷ Currently, in *Senator Lines*, a case pending in Strasbourg, the 15 Member States are required to defend themselves against an application which concerns exclusively a Commission competition Decision upheld by the Court of Justice.²⁸ Admittedly the Member States, and the Commission as "third party"(!), pleaded that the application was inadmissible, but it is not certain that the Strasbourg Court will in future refrain from any form of review. In all these cases, it is problematic that the Strasbourg Court has to rule indirectly on Union measures without the Union being able to defend itself and without its legal system being represented by a judge in the Court.
- Finally, some have expressed concern that accession to the European Convention might create new Union powers as regards fundamental rights, as the EC or the Union would be a contracting party and could therefore take part in negotiations for amendments to the Convention. This question is easily settled: the status of contracting party to the Convention does not inevitably mean that the Union would acquire general power as regards fundamental rights, including for legislation at internal level. The aim of EC or Union accession being only to submit the institutions to the fundamental rights of the Convention and to external review by the Strasbourg Court, it is not obvious how a legal basis in the Treaty confined to this end would create such a general power. In any case, techniques to clarify that a legal basis in the Treaties allowing accession does not have this side-effect are easy to devise. An example might be a statement – similar to that made in the context of the Convention on the Law of the Sea – clarifying that the powers of the EC/EU are limited.
- In any case, straightforward EU/EC accession to the Convention appears by far preferable to the alternatives that have sometimes been put forward.²⁹ In particular, only accession by the EU/EC as a contracting party to the Convention would give it the same rights as the other parties to participate in the legal system in Strasbourg (in particular to elect a full-time rather than just an

²⁵ [1991] ECR I-6079.

²⁶ See the judgment of the Strasbourg Court of 18.2.1999 in case 24833/94 *Matthews v The United Kingdom*, concerning the Act of 1976 concerning the elections to the European Parliament, from which Annex II excluded Gibraltar.

²⁷ See the judgment of the Strasbourg Court of 15.11.1996 in case 17862/91 *Cantoni v France*.

²⁸ Case 56672/00 *DSR Senator Lines v the 15 Member States*.

²⁹ Without being able to study the subject in greater detail here, it will be noted that the proposal to set up a procedure for reference or consultation of the Strasbourg Court of Justice by the Luxembourg Court is

ad hoc judge representing Community law, full rights of participation in procedures in the Court, participation in the Ministerial Committee when it supervises execution of judgments). This would reflect the fact that the Community (or the Union in future) has separate legal personality from the Member States and that it has developed its own legal order which must be represented in the judicial system of Strasbourg.³⁰ On the other hand, the hypothesis of a special status, with the EC/EU institutions subject to review by the Strasbourg Court without the Community or the Union acceding formally to the Convention as a contracting party, is questionable: would a such regime guarantee adequate representation and participation of the EU/EC in the Strasbourg system? And would it even be compatible with the nature of the review by the Strasbourg Court, which extends only to respect for international law obligations by the contracting parties?³¹

problematic for a number of reasons, in particular because it would considerably delay the resolution of disputes.

³⁰ It should be noted that recommendations in the recent study by the Council of Europe Human Rights Steering Committee (see working 08 paper of Mr Vitorino) follow the same lines.

³¹ Cf. Article 19 ECHR.

THE EUROPEAN CONVENTION

THE SECRETARIAT

Brussels, 9 September 2002**(OR. EN)****CONV 244/02****WG II 9****AGENDA**

for : meeting of the Working Group on Incorporation of the Charter/Accession to the ECHR
on : Tuesday 17 September 2002

I. AGENDA

1. Modalities and consequences of possible accession of the EC/EU to the ECHR
- First debate (*see doc. CONV 116/02, part III*)
 2. Hearing of Mr. Marc Fischbach, Judge, European Court of Human Rights
 3. Modalities and consequences of possible incorporation of the Charter into the Treaties
- examination of certain technical adjustments in the horizontal provisions of the Charter (continued)
 4. Hearing of Mr. Vassilios Skouris, Judge, European Court of Justice
 5. Any other business
- II. The meeting will take place at the CHAR building, room S4, rue de la Loi 170, 1040 Brussels, from 10:00 h to 18:30 h (with a break from 13:00 h to 14:30 h). Items 1 and 2 of the agenda will be taken up in the morning, and items 3 and 4 in the afternoon.
- III. The attention of Members is drawn to the fact that, as decided by the group, the meeting originally foreseen for 16 September is cancelled, and that, in addition to the meeting scheduled for 4 October, a supplementary meeting will be held on 7 October (all day). The final meeting of the group is scheduled for 21 October, 9:30 h to 13:00 h.
- IV. Members are kindly requested to communicate to the Secretariat (amelia.fernandez-navarro@consilium.eu.int) the name of the assisant who will accompany them to the meeting.

THE EUROPEAN CONVENTION**Brussels, 13 September 2002**

THE SECRETARIAT

SUMMARY OF CONCLUSIONS

**Subject: Meeting of the Praesidium
Brussels, 11 September 2002**

I. POINTS SETTLED**1. Handling of the Plenary session of 12-13 September**

The President informed the Praesidium of the opening statement that he intended to make stressing that there are two parallel exercises, simplification of treaties and simplification of instruments and procedures, recalling the working method with the building blocks emerging from the Working Groups' reports, and confirming that the Praesidium would put forward at the end of October a first draft for a Treaty framework.

In this perspective and given the advanced stage of the work of the Amato Working Group on Legal Personality, it was agreed that Mr. Amato would give at this session an oral presentation, after the presentation by M. Mendez de Vigo of the likely report of his Working Group on Subsidiarity, and that both Working Groups' reports would be debated in the Plenary session on 3-4 October.

2. Work programme and calendar for 2003

The Praesidium approved the work programme for the Autumn as set out in Annex, Mrs Stuart having agreed that her Working Group on National Parliaments could complete its work on the new, accelerated timing. There would thus be two one-day Plenary debates on Working Group reports at each remaining session this year. The Praesidium however thought it best not to circulate the work programme to the Convention at this stage: the President would instead describe it, up to end October in his opening remarks.

The Praesidium approved the revised calendar for 2003, which was then circulated to the Convention (doc. CONV 262/02).

3. Working Groups

a) Composition

The lists of members of the four new Working Groups were approved and then circulated to the Convention (see doc. CONV 243/02).

b) “Final product” of Working Groups

It was agreed that Working Groups should produce synthetic reports containing recommendations or options, as precise as possible, but should refrain from drafting Treaty articles, since, in order to ensure consistency, those should only be drafted by the Praesidium in the light of the outcome of Plenary debates on all the building blocks, as well as on the Treaty framework.

II. OUTSTANDING QUESTIONS

4. Treaty simplification

The Praesidium continued its discussion about Treaty simplification. It agreed to pursue this issue at its next meetings with a view to the establishment of its first draft of a Treaty framework. The meeting of 17 October would start at 9 a.m. and end around 2 p.m., and would be held at Val Duchesse.

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Next meeting will take place on 26 September at 15h00.

AUTUMN PROGRAMME OF WORK

September 12-13 :

- Simplification of Procedures and Instruments
- Oral presentation by Mendez de Vigo on Subsidiarity
- Oral presentation by Amato on Legal Personality

October 3-4 :

- Debate on Legal Personality on the basis of working group report
- Debate on Subsidiarity on the basis of the working group report
- Oral presentation by Vitorino on the Charter
- Oral presentation by Ms Stuart on National Parliaments

October 28-29 :

- Presentation by Praesidium of first outline Treaty framework
- Debate on the Charter on the basis of the working group report
- Debate on National Parliaments on the basis of the WG report
- Oral presentations by Christophersen on Complementary competences and Hänsch on Economic Governance

November 7-8 :

- Debate on Complementary competences on the basis of the working group report
- Debate on Economic Governance on the basis of the working group report
- Oral presentation by Amato on Simplification of procedures and instruments
- Oral presentation by Bruton on Security and Justice

December 5-6 :

- Debate on Security and Justice on the basis of the working group report
- Debate on Simplification of procedures and instruments on the basis of the working group report
- Oral presentation by Dehaene on External Action
- Oral presentation by Barnier on Defence

December 20-21 :

- Debate on External Action on the basis of the working group report
- Debate on Defence on the basis of the working group report

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Deadlines for Working Groups

Working Group I	Subsidiarity : September
Working Group II	Charter : October
Working Group III	Legal personality: end September
Working Group IV	National Parliaments: November
Working Group V	Complementary competences : October
Working Group VI	Economic Governance : October
Working Group VII	External Action : early December
Working Group VIII	Defence : early December
Working Group IX	Simplification of instruments and procedures : November
Working Group X	Security and Justice : November

THE EUROPEAN CONVENTION

THE SECRETARIAT

**Brussels, 18 September 2002 (19.09)
(OR. fr)****CONV 163/02****WG II 3****NOTE**

from : Secretariat
to : Working Group on the Charter

Subject : Timetable of meetings

Timetable of meetings – Working Group on the Charter**Chairman: António VITORINO**

Date	Time	Place
4 October (Friday)	14.30 – 18.30	CHAR S4
7 October (Monday)	10.00 – 18.30	CCAB Room 1D
21 October (Monday)	09.30 – 13.00	CHAR S4

Meeting rooms:

CCAB: Centre Albert Borchette, rue Froissart 36

CHAR: Charlemagne building, rue de la Loi 170

LA CONVENTION EUROPÉENNE
LE SECRÉTARIAT

Brussels, 27 September 2002

Working Group II

Working document 19

"Working group II "Incorporation of the Charter/ accession to the ECHR"

du : The Secretariat

au : Working Group II

Objet: Hearing of Judge Mr. Vassilios Skouris - 17 September 2002

The members of the Group will find attached speaking points of Judge V. Skouris for the hearing of 17 September 2002.

SPEAKING NOTE

of Judge Vassilios Skouris

Hearing of 17 September 2002

INTRODUCTION

1. The Court of Justice attaches great importance to respect for fundamental rights within the Community legal order and follows the work of your Group with great interest. That is why I am happy to have an opportunity of answering your questions today.

2. However, I have to point out that, even though there have been some discussions within the Court on certain questions covered by your Group in its work, those discussions have not yet given rise to an official position on the part of the Court. Consequently my replies to your questions must be taken as representing my own views, not necessarily those of the Court.

3. In dealing with the written questions that have been submitted to me, I have decided to arrange them in the following three groups:

- a first group concerns the impact of the integration of the Charter of fundamental rights of the European Union into the (future) Treaty;

- a second group concerns the consequences if the EC (i.e. the EU) decides to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) or, on the other hand, decides not to accede;

- a third group concerns a possible improvement in judicial protection so as to give full respect for fundamental rights within the Community legal order irrespective of the outcome of the discussions on integrating the Charter into the Treaty or whether the EU accedes to the ECHR.

I. THE EFFECTS OF INTEGRATING THE CHARTER INTO THE (FUTURE) TREATY

The written questions in this area that have been submitted to me concern the following three points:

(a) the impact of the integration of the Charter into the Treaty on the allocation of powers between the EU and the Member States (Mr van der Linde, first part of the second question);

(b) the impact of the integration of the Charter on the current wording of Article 230. Should a right of action be provided for individuals (natural persons or NGOs) against a regulatory act that infringes a fundamental right? (Mr Ben Fayot, second question);

(c) the impact of the integration of the Charter on court rulings in the context of the third pillar in cases brought by individuals (Mr Ben Fayot, third question).

(a) I do not believe that the integration of the Charter into the Treaty will alter the allocation of powers between the EU and the Member States if an appropriate amendment is also introduced into the horizontal clauses in Articles 51(2) and 52 (2) of the Charter.

On this point I refer to the views put forward by Mr Vitorino in Working Document No 9 of 18 July 2002 (see Working Document No 9, 1-3 and 5-6).

(b) My observations on this point break down into the following two classes:

- regarding the law as it stands: the Court of Justice in its judgment of 25 July 2002 in Case C-50/00 P *Unión de Pequeños Agricultores* ruled that the current arrangements for judicial review of the lawfulness of the acts of the institutions are in accordance with the general principles of law, which include fundamental rights. However, it also indicated that, while it is admittedly possible to envisage a system of judicial review of the legality of Community measures different

from that established by the founding Treaty, it is for the legislature to introduce any reform of this nature;

-regarding the reforms that might be introduced: I have to observe that, as our legal cultures and traditions show, historically all recognition and embodiment of a substantive right has always been accompanied by a procedural counterpart, i.e. a remedy to protect that right. It is therefore reasonable to foresee that the integration of the Charter into the Treaty will produce the same effect and bring about a change in the current rules. The risk of increasing the number of cases brought before the Court cannot form a criterion for determining whether to change those rules. In any event this risk would exist even if the current rules were maintained despite the integration of the Charter into the Treaty. If individuals do not enjoy a direct right of action against acts of the Community, it is very likely that there will be a considerable increase in the number of references made for preliminary rulings on the validity of those acts.

I will now consider the approach we should take here.

It has often been suggested that a Community *Verfassungsbeschwerde* should be introduced. I do not feel this is the best solution. First, in practice it is difficult to draw a clear distinction between grounds of action relating to the protection of fundamental rights and other grounds of action for challenging the lawfulness of a Community act. Second, determining the court with jurisdiction to take cognisance of a Community *Verfassungsbeschwerde* would remain an issue. With any jurisdiction other than the Court of Justice, there would be reason to fear a conflict of jurisdiction. If the Court of Justice were to have jurisdiction, the introduction of a new remedy would complicate and lengthen the procedure before it.

Nor do I feel it is desirable to resolve this difficulty by granting individuals the right to challenge rules simply because there is no appropriate remedy at national level. As the Court of Justice has pointed out in its judgment in *Unión de Pequeños Agricultores*, at paragraph 43, a major stumbling block with that approach is that it requires the Court to be judge and interpreter of national procedural rules, which would go beyond its jurisdiction when reviewing the legality of Community measures.

Lastly, I would like to point out (and here I am replying more or less directly to the second question put by Mr Ben Fayot) that, if Article 230 were to be amended to allow individuals a direct right of action to challenge a Community rule, it would be impossible to restrict the initiation of actions

solely to cases where there has been an infringement of a fundamental right. This is so because, as I have already pointed out, the experience with Germany has shown that it is impossible in practice to distinguish the grounds for that action for annulment from the other grounds available under Article 230. It follows that any amendment to Article 230 would have to allow individuals a direct right of action before the Court of Justice to challenge a provision on all of the grounds made available in Article 230, obviously including the ground of infringement of a fundamental right.

(c) I can be relatively brief regarding the last point, the impact the integration of the Charter would have on the review by the Court of Justice of decisions adopted within the context of the third pillar. Although it is desirable that there should be uniform conditions for the Court in carrying out a judicial review of the acts of the institutions irrespective of the field in which they have been adopted, it is not appropriate for a Member of the Court to put forward suggestions to the constituent on this issue. In any event, it is difficult to accept that, if the Charter becomes binding law or if the EU accedes to the ECHR, it will be possible to maintain the restricted judicial review provided for within the context of the third pillar.

II. THE CONSEQUENCES IF THE EU DECIDES TO ACCEDE TO THE ECHR OR OTHERWISE

The questions that have been put to me on this issue involve the following four points:

(a) the impact of an accession to the ECHR on the allocation of powers between the EU and the Member States (Mr van der Linden, first part of the second question);

(b) whether the accession would involve a conflict with the autonomy of Community law (Mr Vitorino, third question) and what its consequences would be for the current role of the Court of Justice (Mr van der Linden, first and third questions, Mr Ben Fayot, first question);

(c) whether a "functional accession" would create difficulties (Mr van der Linden, fourth question);

(d) whether a problem would be created by double standards of protection of fundamental rights if the EU did not accede to the ECHR (Mr van der Linden, fifth question).

(a) In keeping with what I have already said on the integration of the Charter into the Treaty, I do not think that the allocation of powers between the EU and the Member States will be affected if the EU accedes to the ECHR provided that the legal basis to be introduced into the Treaty is restricted solely to resolving the issue of the accession to the ECHR, for example by amending Article 303 of the EC Treaty.

(b) There will not in general be a conflict involving the autonomy of the Community legal order if the EU accedes to the ECHR. All the rules of Community law, with the exception of those of the ECHR, will continue to be adopted by the Community institutions and applied by the EU administration or the authorities of the Member States. Moreover, the application and interpretation of those rules will remain within the jurisdiction of the national courts and the Court of Justice, as is laid down in the Treaty as it stands. However, with respect to the matters covered by the ECHR, accession will represent a limitation to the autonomy of Community law. Regarding the Court of Justice in particular, it will effectively lose its sole right to deliver a final ruling on the legality of Community acts where a violation of a right guaranteed by the ECHR is at issue. In my view, there is nothing shocking in this: the position is the same when the constitutional courts or supreme courts of Member States test the constitutionality or legality of acts within their domestic legal systems.

Moreover, I do not feel that, as has been argued in some quarters, settling disputes involving the validity of a Community act for infringement of a fundamental right would allow the European Court of Human Rights to determine other issues of Community law, particularly those involving the allocation of powers between the Union and the Member States. In any case, technical solutions have been proposed (see CONV 116/02 of 18 June 2002, p. 22, footnote 2) to avoid such a situation, if fears exist that this might be the outcome (a mechanism allowing the EU to intervene on behalf of a Member State and vice versa, acting as joint defendant with joint and several liability, and a declaration to be lodged emphasising that only the EU and the Member States are entitled to determine the allocation of powers in accordance with their own internal procedures).

I should point out that the prospects of an external control, carried out by the European Court of Human Rights in cases where national and Community remedies have been exhausted, can only intensify the European Court of Justice's own control of fundamental rights. The risk of conflicts between decisions of the Court of Justice and of the European Court of Human Rights must not be over-estimated. The Court of Justice has always paid close attention to the decisions of the European Court of Human Rights and will naturally continue to do so; my view is that this makes

the risk very small. When new issues arise that are not covered by the case-law of the European Court of Human Rights, the Court of Justice will have to settle them appropriately itself.

For those reasons I think that if the EU becomes a party to the ECHR it will be unnecessary to determine the respective roles of the Court of Justice and of the European Court of Human Rights or to regulate relations between the two courts, even if the Charter becomes binding law. The suggestion that the Court of Justice should refer such cases to the European Court of Human Rights would involve an unreasonable complication and slow down the procedure for the former court, the more so if the reference to the European Court of Human Rights were made in the context of a reference for a preliminary ruling to the Court of Justice.

(c) The remarks I have made concerning a pure and simple accession to the ECHR also apply to the hypothesis of a "functional accession" as advocated by Mr Piris in his intervention in your Group (Working document No 13, p. 37).

(d) Lastly, if the EU does not become a party to the ECHR, it is impossible to exclude that a double standard of protection will develop as a result of the different, or even conflicting, rulings given by the Court of Justice and the European Court of Human Rights. Even though such an occurrence will be relatively rare because, as I have explained, the Court of Justice follows the rulings of the European Court of Human Rights closely, it is impossible to exclude it entirely given the absence of an external control by the Court of Strasbourg.

III. IMPROVEMENT OF THE SYSTEM OF JUDICIAL PROTECTION

In this section I shall discuss the following two points:

(a) the approach of the Court of Justice to the constitutional traditions common to the Member States (Mr Vitorino, first question) and the issues that will arise if the Charter is integrated (amendment of Article 6(2) of the Treaty on European Union; introduction of a horizontal clause into the Charter for rights that are not based on the EC Treaty or the ECHR);

(b) the improvements that could be introduced into the judicial review to provide greater protection for fundamental rights in the context of the current three pillars of the European Union (Mr Vitorino, second question).

(a) According to the settled case-law of the Court of Justice, as most recently embodied in its judgment in Case C-50/00 P *Unión de Pequeños Agricultores* (paragraphs 38 and 39), fundamental rights form an integral part of the general principles of law that are upheld by the Court of Justice. In discerning those general principles of law, the Court is guided by the constitutional traditions that are common to the Member States. It should be borne in mind that common constitutional traditions do not form a direct source of Community law and the Court of Justice is not bound by them as such; they constitute a source of inspiration for it in discerning and defining the scope of the general principles of law that apply in the Community legal order. It follows that it is not the Court's duty to discern, and, as it were, mechanically transpose into the Community legal order, the lowest common denominator of constitutional traditions common to the Member States. The Court draws inspiration from those traditions in order to determine the level of protection appropriate within the Community legal order and for that very reason appreciates them more freely.

This approach has enabled the Court of Justice to provide a high level of protection for fundamental rights. It suffices to indicate at this point that, if the Court had determined to adopt the common denominator of the constitutional traditions common to all Member States, it could not have recognised and protected within the Community legal order the right to pursue a trade or business,¹ which, I understand, is recognised and protected only by the German Constitution.

However, the issue arises whether, if the Charter is integrated into the Treaty, it will still be necessary to refer to the common constitutional traditions and to the ECHR in order to discern the general principles of law, as is laid down in Article 6(2) of the Treaty on European Union.

My feeling is that, from the point when the EU develops a binding set of fundamental rights, it will no longer be necessary to refer to the general principles of law and consequently to the common constitutional traditions and the ECHR as a parallel or "concurrent and equivalent" source for fundamental rights; these will merely form a subsidiary and complementary source. Accordingly,

¹ See Case C-280/93 *Germany v Council* [1994] ECR I-4973, paragraph 78 and Case C-200/96 *Metronome Musik* [1998] ECR I-1953, paragraph 21.

the Court of Justice would have recourse to the general principles of law only in order to make good any lacunae in the text of the Charter. In my view, a consequential amendment would have to be introduced into Article 6(2) of the Treaty on European Union.

(b) Regarding the improvements that might be desirable for the arrangements on judicial review for the full protection of legal protection of fundamental rights within the context of the current three pillars of the Union, I would refer, with regard to consideration of any amendment to Article 230, to the observations I have set out on this point in the first section of my talk.

In conclusion, I can only repeat my point that, although it is desirable to attain uniformity in the protection provided by the Court within the context of the current three pillars, it is not appropriate for a Member of the Court to put forward suggestions on this matter to the constituent .

**THE EUROPEAN CONVENTION**

THE SECRETARIAT

Brussels, 26 September 2002 (02.10)
(OR. fr)**CONV 295/02****WG II 10****NOTE**

from :	Secretariat
to :	Working Group II
Subject :	Summary of the meeting held on 17.09.02 chaired by Commissioner António VITORINO

The fourth meeting of Working Group II (Charter/ECHR) was held on 17 September 2002 between 10.00 and 13.00 and between 14.30 and 18.30, and was chaired by Commissioner António Vitorino.

- I. Modalities and consequences of possible accession by the EC/EU to the ECHR
– First debate (*see CONV 116/02, Part III*)

All speakers expressed their support for accession by the European Union (given the Convention's general approach of enshrining a single legal personality for the Union) to the European Convention on Human Rights (ECHR) or, at the very least, emphasised the arguments in favour of such an accession. In particular, it was said that accession would guarantee citizens the same degree of protection of fundamental rights as they enjoy already vis-à-vis Member States, that the arguments for accession could be even stronger in the case of a binding Charter, as it would help to ensure the harmonious development of the case-law of the two European Courts, and that it would serve as a link between the "core" and the "wider" Europe by preserving the political importance of the Council of Europe in this area.

A majority of speakers stressed the fact that accession to the ECHR should not be an alternative to incorporation of the Charter into the Treaties, but rather a complementary step, adding to the protection afforded by the Charter and the Court of Justice, with the external control provided by the European Court. The situation would then be similar to that of the law of all the Member States, which guarantee fundamental rights on the one hand by their Constitutions, and which have subscribed, on the other, to the international minimum standard set by the ECHR.

Two matters which require particular attention in this respect were, however, raised. On the one hand, several members emphasised that accession to the ECHR should not lead to an extension in Union competence in the area of human rights. In this respect, a number of speakers were satisfied that a legal basis in the Treaty confined to authorising the Union to accede to the ECHR could not have this effect; others felt that thought should in any case be given to technical solutions to rule out such an effect entirely. On the other hand, it was emphasised that accession should be without prejudice to national positions arising from the fact that certain Member States had not ratified all the Protocols annexed to the ECHR or had entered reservations on it.

At the end of the general discussion (which continued after the hearing of Mr Fischbach – see below – at the beginning of the afternoon), the Chairman concluded by pointing out the need to see the several layers to the issue: the Convention's task would be confined to examining the incorporation into the Treaty of a constitutional authorisation for the Union to accede to the ECHR. At this stage, it should be clarified that that would not lead to an extension of competence. Furthermore, there was a need to ensure compatibility between accession and incorporation of the Charter as a binding text; for that purpose, it seemed necessary to maintain Article 52(3) in the Charter. However, the question of to which Additional Protocols to the ECHR the Union should accede and what possible reservations it would enter upon accession to the ECHR, would not be of a constitutional nature and should not be addressed by the Convention; it would instead be the Council which could take a decision by unanimity at the appropriate time on the basis of the authorisation. The national reservations entered by Member States would in any case remain intact in the event of accession, as they concerned the implementation of national law, while the effect of accession was confined to the field of Union law.

In this context, the Chairman was sceptical with regard to the "functional accession" model, which was mentioned by a Group member but rejected by others (such a model would involve the negotiation, between Member States and the States of the Council of Europe, of special protocols to the ECHR and to the EC/EU Treaty under which the Union institutions would be subject to control by the European Court without the EC/EU itself acceding to the ECHR with its own legal personality (see explanation in CONV 116/02, pp. 25 and 26). The Chairman emphasised that he saw no advantage in the model, which was not envisaged by the Member States' legal experts meeting in the Council of Europe's CDDH (Steering Committee for Human Rights). Such a model instead presented disadvantages, as highlighted by Judge Fischbach, resulting in particular from the Union's absence from the Strasbourg system.

2. Hearing of Mr March Fischbach, Judge, European Court of Human Rights

The Group heard Mr Marc Fischbach, Judge at the European Court of Human Rights, who spoke in a personal capacity. In response to questions put by Group members, Mr Fischbach made, *inter alia*, the following comments:

Mr Fischbach felt that EC/EU accession to the ECHR would not affect the autonomy of Union law. The European Court's remit was confined to giving rulings on compliance with obligations arising from the ECHR. The Court did not interpret the national law of the contracting States; neither, therefore, would it intervene in the interpretation of Union law, for which the Court of Justice would remain the supreme arbiter. As for acts of contracting States, in the event of infringement of the ECHR, the Court would neither have the competence to annul Union acts, nor to prescribe or suggest specific measures to remedy the infringement observed, as the choice of remedy should only be for the institutions of the Union. Furthermore, in accordance with the subsidiarity principle, the European Court took care, in the application of the ECHR to specific cases, to leave Contracting Parties appropriate leeway, which would also enable them to take into account the specific nature of Union law.

The relationship between the European Court of Human Rights and the Court of Justice of the EC could not therefore in the case of accession be qualified in terms of a "hierarchy" between the two European Courts, as each of the two Courts would only give rulings within its own jurisdiction, without impinging on that of the other; the European Court would simply act as a more specialised jurisdiction exercising additional external control only with regard to compliance with the ECHR. Its role would leave the authority and importance of the Court of Justice fully intact, just as it did not reduce those of the national constitutional and supreme courts, which were very respectful of fundamental rights and were also free to exceed the minimum standard set by the ECHR.

Mr Fischbach believed that Union accession to the ECHR, which would enable the Court of Justice to apply the ECHR directly, could also reinforce the Court of Justice's role in developing the protection of fundamental rights in Europe and lead to increased influence for the Court over the case-law of the European Court of Human Rights.

While it seemed important to define the role of the Court of Justice in a future constitutional treaty of the Union, Mr Fischbach saw no reason, even in the case of accession to the ECHR, to reserve an express place for the European Court in the treaty, since the European Court is an institution outside Union law.

Mr Fischbach was satisfied with the current wording of Article 52(3) of the Charter and emphasised the importance of the wording, on the basis of which the Council of Europe observers were able to express their satisfaction with the text of the Charter in the previous Convention. He confirmed his view that the legal principles arising from this clause were sufficiently clear. Implementation would not for all that be without some difficulties, but these were inherent in any effort to ensure harmonious development of the case-law of the two Courts and therefore existed before the Charter. They could, however, increase further with the gradual extension of Union competence to areas which were especially sensitive in terms of fundamental rights, particularly under the third pillar. In

the face of such difficulties, which could arise now, in particular when the Court of Justice had to give a ruling before European Court case-law was formed on a particular matter, Union accession to the ECHR would work as a "safety net", making it possible to minimise possible case-law discrepancies and correct the effects. This solution seemed all the more advisable since incorporation of the Charter into the Treaties would mean that the number of cases brought before the Court of Justice and affecting fundamental rights was likely to increase following accession, as would the number of cases brought before the European Court. Mr Fischbach felt, however, that this increase, and the practical difficulties it could create, should not make us lose sight of the fact that they were merely the consequence of strengthened protection of fundamental rights. This strengthening would – because it took place under external control – help lend greater credibility to the Union system.

Mr Fischbach believed that Union accession to the ECHR would not in any way alter the allocation of competence between the Union and its Member States. Considering the competences to be a fact, the Strasbourg system would accept that allocation as it stood, as an internal matter for the Union and its Member States; the European Court would not intervene, as it was exclusively a matter of Union law. To resolve specific cases brought before the European Court and in which it was not certain whether the Union or one of its Member States was responsible for an alleged infringement of the ECHR, Mr Fischbach referred to a "co-defender" mechanism developed by the Council of Europe's Steering Committee for Human Rights (CDDH) (see working document No 8 by Mr Vitorino). By virtue of this mechanism, a defendant Member State would be able to invite the Union to join the proceedings as "co-defendant" if it felt that the case involved the Union's responsibility, and *vice versa*. In the case of infringement of the ECHR, the European Court's ruling would be given in respect of the two defendants taken together, without ruling on the allocation of responsibility between the two. Similarly, when complying with the judgment, it would be for the Union and the Member States alone to determine the allocation of responsibility between the Union and the defendant State.

Mr Fischbach had reservations concerning suggestions to introduce a referral or consultation procedure between the European Court and the Court of Justice, either in the case of accession or as an alternative to it. Among the disadvantages of such approaches, he mentioned in particular the considerable extension of deadlines for rulings in pending cases and the resulting imbalance which would be created between the Union and Member States, where supreme courts were not able to consult the European Court. Mr Fischbach also confirmed that informal information meetings were also held regularly between the European Court and the Court of Justice, but that he felt it was neither necessary nor appropriate to introduce consultation between the Courts with the aim of enabling the two Courts to agree on or influence each other on the rulings to be given on pending cases.

Mr Fischbach was asked about the suggestion to consider a "functional" accession (i.e. the negotiation, between the Member States and the States of the Council of Europe, of special protocols to the ECHR and to the EC/EU Treaty under which the Union institutions would be subject to control by the European Court *without the EC/EU itself acceding to the ECHR with its own legal personality*). He was unsure as to the advantages of the idea, feeling that it would be the source of disadvantages and complications, since it seemed so difficult to reconcile with the principles governing the Strasbourg system, particularly that of the collective guarantee. If the Union as such were not part of the system, there would be no Court judge elected on behalf of the Union and as a "representative" of Union law. However, in the Convention system, the presence of a "national" judge was essential, as it provided Court proceedings with expertise in the law challenged by the action. Such expertise was all the more crucial in the case of Union accession, in view of the specific nature of Community/Union law and the need to ensure harmonious development of this law with the ECHR. The absence in the Court of a judge elected on behalf of the Union could, therefore, cause a problem with regard to the authority and legitimacy of rulings against the Union. By the same token, in the case of "functional" accession, there would be no Union representation in the Committee of Ministers when it monitored compliance with rulings, even though such representation was necessary in order to exercise this function and, in the particular case of the Union, should also serve to inform the Committee on the Union's limited competences (see previous point).

3. Incorporation of the Charter into the Treaties:

– examination of certain technical adjustments to the horizontal provisions of the Charter

With regard to possible adjustments to Article 51(1) and (2), a consensus emerged in favour of recommending slight adjustments along the lines given in working document No 14 by Mr MacCormick and in the hearing of Mr Piris (see document No 13), in order to clarify beyond the slightest doubt that a Charter incorporated into the Treaties would not alter the allocation of competences between the Union and Member States.

By the same token, there was a consensus to keep a referral clause governing all Charter rights taken from the EC Treaty. The definitive wording of the referral clause, currently found in Article 52(2) of the Charter, could not be determined at this stage as it would depend on the architecture of the constitutional treaty to be drawn up by the Convention.

With regard to Article 52(3) of the Charter, it was requested that the meaning to be given to this provision and in particular the relationship between the first and second sentences be clarified in the final report. In this respect, some members of the Group, as well as the Chairman in his conclusion, indicated that if, in accordance with Article 52(3) of the Charter, the meaning and scope of the rights of the Charter corresponding to the rights of the ECHR were the same as those provided for in the Convention, the addition of the second sentence of Article 52(3) of the Charter was necessary to clarify that this Article did not prevent higher protection being afforded by Union legislation, as well as by the provisions of the Charter, which, although based on the ECHR, went further than it because the Union acquis was already an improvement on the ECHR (examples: Articles 47 and 50 of the Charter).

Lastly, it was requested that the Group seek to formulate an additional clause in Article 52 of the Charter which was currently lacking and which would govern those Articles of the Charter not taken from the Treaties or from the ECHR. It was thought that such a clause could be based on Court of Justice case-law relating to the constitutional traditions of Member States and also accentuate the distinction made in the Charter between rights and principles.

While, in response to that request, some members were generally prepared to examine ways of finding a formula concerning the relationship between the Charter and the constitutional traditions common to the Member States, a number of other speakers were not convinced of the existence of a lacuna in the horizontal provisions, pointing out in particular that the Charter was clearer than the source of constitutional traditions could ever be, that a referral clause would not be possible since there was no reference text, other than the Charter, which would summarise common constitutional traditions, and that it would be inadmissible to wish to change the meaning of the Charter by inserting an additional horizontal clause. The Chairman, concluding on this point, was open to seeking a solution. He stressed, however, that there was no room for conflict with the current practice of the Court, described by Judge Skouris, of basing itself freely on common constitutional traditions by rejecting the approach of the lowest common denominator. He added that it was also necessary to bear in mind fundamental rights based on other sources such as other legal instruments and that, while the difference between rights and principles was well established in the Charter, the previous Convention had decided not to stipulate in detail the legal consequences of the distinction but rather to leave it to case-law.

Some members requested that the Group's report also give a position on the usefulness of emphasising the importance of the explanations of the Praesidium in relation to the text of the Charter when it was incorporated.

4. Hearing of Mr Vassilios Skouris, Judge, Court of Justice of the EC

In his introductory presentation (see working document No 19) and in response to the questions put by the members of the Group, Mr Skouris – who spoke in a personal capacity, explaining that the Court had held some discussions on the matters concerning the Group but that no official position had yet been adopted – made, inter alia, the following comments:

Mr Skouris felt that incorporation of the Charter could not alter the allocation of competences between the Union and the Member States if care were taken to adjust properly the horizontal clauses of Articles 51(2) and 52(2) of the Charter as proposed in the Group.

Mr Skouris said that *de lege lata* the Court had recently ruled that the current system of appeals procedures for scrutinising the legality of acts of the institutions complied with the general principles of law. He added that *de lege ferenda* a modification of the current system could be envisaged. Judge Skouris felt that the establishment of a Community "Verfassungsbeschwerde" (special constitutional appeal) would not be the most suitable solution; neither would it be desirable to allow individuals to challenge a regulatory act only when there was no appropriate appeals procedure at national level. If an amendment were to be considered, it would be in Article 230(4) TEC, the strictness of which had been criticised, rather than in Article 234 TEC, as the preliminary referral procedure was working satisfactorily. Judge Skouris also specified that while the European Ombudsman fulfilled an extremely respected role, he was not a judicial body and could hardly therefore take on a role of "filtering" by submitting individual cases to the Court of Justice. Lastly, Mr Skouris considered it desirable that the conditions for Court control be uniform with regard to acts of the institutions, irrespective of the subject concerned, and that it would not be easy to accept that, in the case of either a binding Charter or accession to the ECHR, the restricted judicial control provided for under the third pillar be maintained, while emphasising that it was not for him as a judge to give the constituent authority suggestions on the matter.

Mr Skouris confirmed that accession to the ECHR did not, generally speaking, conflict with the autonomy of Community law. It would come as no shock to him if, following accession, the Court of Justice lost its monopoly over ruling on infringement of the ECHR by a Community act. Mr Skouris regarded the interpretation sometimes given of Court Opinion No 2/94 as a misunderstanding; in reality, the Court would have no problem with the external control which accession to the ECHR would establish.

Mr Skouris did not believe that EC/EU accession to the ECHR would affect the allocation of competences between the EC/EU and its Member States if the legal basis established for that purpose was confined to governing only the problem of accession. He felt that the Strasbourg Court would not, following accession, be asked to rule on other matters of Community law such as those affecting the allocation of competences; he referred to the technical solutions proposed to avoid such a situation.

Mr Skouris considered it necessary not to overestimate the risk of possible contradiction between the decisions of the two European Courts, given that the Court of Justice had always been, and would continue to be, very watchful of the Strasbourg Court's case-law. For that reason, Mr Skouris would not advocate setting out the respective roles of the two Courts in the treaty nor regulating the relations between them, even in the case of incorporation of the Charter; in this connection, Mr Skouris was opposed to introducing a referral by the Court of Justice to the Strasbourg Court, as it would make the procedure before the Court disproportionately complicated and cumbersome.

Mr Skouris confirmed that the Court based itself on the constitutional traditions common to the Member States in order to identify the general principles of law with regard to fundamental rights. He emphasised that common constitutional traditions did not constitute a direct source of Community law and so did not bind the Court as such; they were more a source of inspiration. It was not, therefore, a question of the Court identifying and mechanically transposing the lowest common denominator of the constitutional traditions common to the Member States into Community law, but rather of it drawing inspiration from them in a broader sense to establish the level of protection appropriate to the Community's legal order. In the case of incorporation of the Charter, Mr Skouris felt that there should no longer be recourse to general principles, and consequently the common constitutional traditions, as a "concurrent and equivalent" source of fundamental rights, but rather purely as a subsidiary and complementary source, enabling the Court to use it solely for the purposes of making good any lacunae in the text of the Charter.

Mr Skouris felt that Article 52(3) of the Charter, incorporated into the Treaty, would confirm the current Court of Justice practice of following the interpretation given to the ECHR by the European Court of Human Rights, and should not lead to a change in that satisfactory practice of the Court of Justice. With regard to Article 52(2) of the Charter, Mr Skouris believed that it identified the principle according to which rights already enshrined in the EC Treaty and taken up by the Charter would be governed by the EC Treaty as *lex specialis* and that existing case-law concerning those rights would remain in force. When questioned in general terms about whether the Charter was clearly enough worded, Mr Skouris replied that while there was always room for improvement, he could live with the current text of the Charter and that, while the current situation would undoubtedly give the Court of Justice greater freedom, he personally would feel more comfortable working with a written regulatory framework of fundamental rights as provided by the Charter.

THE EUROPEAN CONVENTION**Brussels, 30 September 2002**

THE SECRETARIAT

CONV 306/02**WG II 11****AGENDA**

from: The Secretariat

for: Working Group II

Subject: Agenda for the meeting on 4 October 2002 14h30 - 18h30

I AGENDA**1. Effective judicial remedies and access of individuals to the European Court of Justice**

see document CONV 116/02, Section II 6 (pp. 13 - 17), and a Working Document by the Chairman, to be distributed

2. (if time permits): Modalities and consequences of possible accession of the EC / EU to the ECHR

- in particular: Consequences of possible accession for the system of allocation of competences between the EC/EU and the Member States
- any remaining questions

see document CONV 116/02, Section III, in particular III 4 (pages 22 - 23)

3. Any other business**II. Members are kindly requested to communicate to the Secretariat (amelia.fernandez-navarro@consilium.eu.int) the name of the assisant who will accompany them to the meeting.**

THE EUROPEAN CONVENTION**Brussels, 1 October 2002**

THE SECRETARIAT

CONV 309/02**WG II 12****AGENDA**

from: The Secretariat
for: Working Group II

Subject: Agenda for the meeting meeting on 7 October 2002 10h00 to 18h30

I AGENDA

1. *(unless treated on 4th October)*: Modalities and consequences of possible accession of the EC / EU to the ECHR
 - in particular: Consequences of possible accession for the system of allocation of competences between the EC/EU and the Member States
 - any remaining questions*see document CONV 116/02, Section III, in particular III 4 (pages 22 - 23)*
2. Modalities and consequences of possible incorporation of the Charter into the Treaties
 - examination of certain technical adjustments in the horizontal provisions of the Charter (continued)
 - the question of current Article 6 § 2 of the EU Treaty
(see, on the latter, document CONV 116/02, Section II 2 (pages 9 - 10))
 - any remaining questions
3. Possible elements of the Group's final report
4. Any other business

II. Members are kindly requested to communicate to the Secretariat (amelia.fernandez-navarro@consilium.eu.int) the name of the assisant who will accompany them to the meeting.

III. Members are reminded of the meeting of the "Contact Group Human Rights" with non Gouvernamental Organisations on 8 October 9.00-12.00, CCAB-1D, at which occasion Mr. Victorino would welcome their presence.

THE EUROPEAN CONVENTION**Brussels, 16 October 20021**

THE SECRETARIAT

CONV 348/02**WG II 13****AGENDA**

from: The Secretariat

for: Working Group II

Subject: Agenda for the meeting on 21 October 2002 9h30 to 13h00

I AGENDA

1. Adoption of the Group's final report

(see WD 25 of the Chairman)

2. Any other business

II. The meeting will take place at the CHAR building, room S4, rue de la Loi 170, 1040 Brussels, from 9:30 h to 13:00 h.

III. Members are kindly requested to communicate to the Secretariat (amelia.fernandez-navarro@consilium.eu.int) the name of the assisant who will accompany them to the meeting.

THE EUROPEAN CONVENTION

THE SECRETARIAT

Brussels, 17 October 2002 (21.10)
(OR. fr)**CONV 350/02****WG II 14****NOTE**

from :	Secretariat
to :	Working Group II
Subject :	Summary of the meeting held on Friday 4 October 2002 chaired by Commissioner Antonio VITORINO

The fifth meeting of Working Group II (Charter/ECHR) was held on 4 October 2002 between 14.30 and 17.30 under the chairmanship of Commissioner Antonio Vitorino.

1. Effective judicial remedies and access to the Court of Justice of the European Communities for individuals

The Chairman drew the Group's attention to working document No 21, which summarised the question of judicial remedies and access to the Court of Justice for individuals on the basis of a number of proposals by members of the Working Group and other members of the Convention, in the context of the fundamental right to effective judicial protection. He pointed out that although the subject was linked to the general topic of fundamental rights, it was a separate issue from incorporation of the Charter into the Treaties or Union accession to the ECHR.

First of all the Group heard a presentation by the European Ombudsman, Mr Jacob Söderman, a Convention Observer, on his proposals for articles on remedies (judicial and other) for inclusion in the constitutional treaty (see CONV 221/02 CONTRIB 76). Mr Söderman suggested, amongst other things, that the treaty should place a duty on Member States – such as that which the Court of Justice had already deduced from Article 10 TEC – to ensure that their national courts provided effective protection for rights guaranteed by Union law. In addition, he proposed that the Ombudsman be empowered to bring proceedings concerning fundamental rights in the Court of Justice, and that a legal basis be established for harmonising common European principles of administrative law.

The Group's discussions focussed on the three options set out in the Chairman's working document No 21.

The vast majority of speakers were against creating a new judicial procedure specially for the protection of fundamental rights (along the lines of the "Verfassungsbeschwerde" or the "recurso de amparo", option "A" in working document No 21). It was pointed out that if the Charter were incorporated into the constitutional treaty, the legal remedies currently offered by the Union system through the fourth paragraph of Article 230 and through Article 234 TEC would also become available to Union citizens in respect of their rights under the Charter, which would be of great benefit in the protection of fundamental rights.

Some members commented that there were gaps in judicial protection, resulting in particular from the condition laid down in the fourth paragraph of Article 230 TEC that the disputed act had to be not only of direct but also individual concern to the applicant. These members therefore proposed limited redrafting of the fourth paragraph of Article 230 TEC in order to rectify these omissions (option "B" in working document No 21). Criticism was also levelled at the limitations on the jurisdiction of the Court of Justice in the current "3rd pillar" and the lack of protection against the acts of Union bodies such as Europol.

There were on the other hand a number of speakers who, while not denying that the current system did have a few shortcomings, were generally satisfied with the way it was working and warned against any major overhaul, in particular of the current "division of labour"

between national and Community courts. In particular, major changes might mean a substantially increased caseload for the Court of Justice, which would probably lead to longer procedural delays and thus prejudice the effective protection of citizens' rights. In a spirit of subsidiarity, some speakers expressed interest in the possibility that the Treaty might place a duty on Member States to provide effective legal remedies at national level in defence of rights guaranteed by Union law (option "C" in document No 21).

In conclusion, the Chairman felt that the question of revision of the fourth paragraph of Article 230 TEC and its institutional implications needed to be considered at the same time as other issues such as the limits on the Court's jurisdiction in matters affecting justice and home affairs or judicial review of subsidiarity. The Chairman's view was that the Group should not make any specific recommendations but should draw the Convention's attention to the issue and to the various contributions which members had made, for consideration in an appropriate context.

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THE EUROPEAN CONVENTION

THE SECRETARIAT

**Brussels, 17 October 2002 (22.10)
(OR. fr)****CONV 351/02****WG II 15****NOTE**

from :	Secretariat
to :	Working Group II
Subject :	Summary of the meeting on Monday 7 October 2002 chaired by Commissioner Antonio VITORINO

The sixth meeting of Working Group II (Charter/ECHR) was held on 7 October 2002 between 10.00 and 16.30, and was chaired by Commissioner Antonio Vitorino.

1. Modalities and consequences of possible accession by the EC/EU to the ECHR

The Chairman introduced this item by stating that his draft of the Group's report would follow the lines given in his oral statement to the plenary on 3 October. In particular, he proposed underscoring in the report the following two points:

- Accession to the ECHR would not result in any change to the allocation of competences between the Union and the Member States. The Group might recommend the use of certain tools to ensure this result, such as the insertion of clarification along these lines in the legal basis authorising accession and a provision or declaration on the limited competences of the Union to be included in the accession treaty. The result would be that the "scope" of accession would be confined to the sphere of the Union's current competences, and that any "positive obligations" could stem from the ECHR only within those limits.

- Accession would not affect Member States' national positions within the Strasbourg system. This would be guaranteed by a "step", whereby the Convention would discuss only the constitutional authorisation for accession, while leaving it to the Council, acting unanimously, to decide on the modalities of accession, on the moment in time for acceding to additional protocols and on any reservations by the Union. Reservations by Member States would continue to be unaffected by the Union's accession, as the latter would take effect only within the framework of Union law.

The Group expressed its agreement with the approach outlined by the Chairman.

2. Modalities and consequences of possible incorporation of the Charter into the Treaties

– examination of certain technical adjustments to the horizontal provisions of the Charter

The Chairman submitted to the Group his compromise proposals (see WD 23) concerning technical adjustments to the horizontal articles (Articles 51 and 52) of the Charter, on the assumption that the Charter would be incorporated as a binding text.

A large majority of speakers congratulated the Chairman on his compromise proposals. These speakers noted the great clarity and precision of the technical adjustments proposed, which would be such as to remove the legal ambiguities of the Charter hitherto criticised by some. At the same time, they pointed out that these adjustments would involve no change to the substance of the Charter. Several members pointed out that it would be much easier for them on this basis to convince their respective national governments and parliaments about incorporation of the Charter into the Treaties. Some members stressed that, from the viewpoint of the candidate countries which had not participated in the previous Convention, the proposed amendments would be of great assistance to those countries' national courts for future interpretation of the provisions of the Charter, should the latter become legally binding.

One member of the Group was opposed to the adjustments proposed by the Chairman, on the grounds that they would not respect the working method approved by the Group not to touch the text of the Charter, that they would not really add any useful legal points and that some of the clauses proposed, notably rules of interpretation, would not have their place in a constitutional text. The Chairman pointed out here that the examination of technical amendments to the horizontal provisions of the Charter had been understood from the outset as indeed being included in the Group's mandate.

Following some drafting work, based in particular on certain proposals for amendments made by one member, the members of the Group attending the meeting, with the exception of one member who upheld a reservation, agreed on a slightly amended version of the drafting adjustments to Articles 51 and 52 of the Charter as well as on some explanations of those adjustments to be included in the report. These adjustments would be recommended to the plenary in the form of an Annex to the Group's report.

The members of the Group also agreed that the explanations given in the Group's report concerning these adjustments should be added to the "Explanations" of the Praesidium of the previous Convention in order to have available "preparatory work" for the Charter as a whole.

– *The question of Article 6(2) of the EU Treaty in its present version*

Most of the speakers emphasised that at this stage, before having further details of the future structure of the Treaty, it was premature to give a final assessment of whether or not it was useful to retain the references to the two sources of inspiration as currently made in Article 6(2) TEU. The discussion showed that opinions, as already voiced at the Group's second meeting (see CONV 203/02 WG II 07), differed over this matter. The Group decided to refrain from making concrete recommendations on this matter, but to point this out to the plenary, which should discuss the matter together with the concrete form of incorporating the Charter.

3. Possible points for the Group's draft final report

The Chairman gave a detailed oral presentation of the points which he intended to include in his final report. The Group held a discussion during which members expressed their agreement to the inclusion of the points, provided some clarification of them and raised further points to be added to the report.

It was agreed that the Chairman would circulate his draft report to the Group by 16 October at the latest (but would do his best to do so by 15 October), and that members could forward their written reactions until 17 October. On the basis of those reactions, the Chairman would revise his draft and submit it for adoption at the meeting on 21 October.

THE EUROPEAN CONVENTION**Brussels, 23 October 2002**

THE SECRETARIAT

CONV 360/02**WG II 17****NOTE**

from:	The Secretariat
to:	Working Group
Subject:	Summary of the meeting held on 21 October 2002

The seventh and last meeting of the working group II (Charter/ECHR) was held on the 21st of October 2002 between 09h30 and 12h30 under the chairmanship of Commissioner Antonio Vitorino.

I. Adoption of the Group's final report

The Chairman introduced the subject by giving an overview of members' written reactions to the draft report distributed to the members of the group on the 14th of October (working document n°26).

The Chairman expressed his gratitude to the members for their support expressed by most of them as well as for their spirit of cooperation that allowed working in the perspective of a highly consensual report. The Chairman then presented a revised version of the report drawn up in order to take account of the written observations made by several members .

After thorough discussion all the members of the group agreed on the final version of the report (CONV 354/02) to be presented to the Plenary session of the European Convention in view of its next meeting on the 28-29 October 2002.

The Chairman reiterated his thanks to the members of the group, as well as to the secretariat, for their hard work and involvement in fulfilling the group's mandate.

THE EUROPEAN CONVENTION
THE SECRETARIAT

Brussels, 31 October 2002 (05.11)
(OR. en,fr)

CONV 378/02

NOTE

Subject : **Summary report of the plenary session**
– Brussels, 28 and 29 October 2002¹

I. OPENING OF THE SESSION

1. Presentation of the preliminary draft of the Constitutional Treaty by the Chairman

The Chairman presented the draft structure of the future Treaty drawn up by the Praesidium. He emphasised that this was a draft of a Constitutional Treaty, thus reflecting the wish of well-nigh the entire Convention. The approach adopted was based on the broad consensus which emerged during the debate at the last plenary in favour of the principle of a single legal personality, which paved the way for merger of the Treaties on the European Community and on the European Union. This single text would consist of three parts:

- Part One, containing provisions laying down the institutional architecture;
- Part Two, dealing with the Union's policies and action;
- Part Three, containing the final clauses and provisions on legal continuity usually found in this kind of constitutional act.

¹ The verbatim record of the plenary session may be found on the following website:
<http://european-convention.eu.int>

- (a) Part One, consisting of the fundamental provisions and which would therefore need to be particularly clear and sharply defined, would open with a preamble and then set down:
- what the Union is (its definition and legal nature);
 - why the Member States decided to come together (the values and goals bringing them together);
 - what it means to be a citizen of the Union and the fundamental rights of the Union;
 - the competences of the Union, specifying that the Union has only such competences as are conferred upon it. The principles of subsidiarity and proportionality would be set forth in detailed manner;
 - the institutions of the Union;
 - how the implementation of Union action is organised in an endeavour to achieve simplicity, transparency and efficiency;
 - the principles of the democratic life of the Union,
 - Union finances;
 - Union action in the world;
 - relations between the Union and its immediate environment;
 - the concept that the Union is open to all European States which respect its values and fundamental rights and accept its rules.
- (b) Part Two of the Treaty, on the Union's policies and action, would contain a large number of clauses from the existing treaties. Technical amendments would be made to the articles relating to Union policies – a necessary operation to ensure that Part Two was in line with Part One.
- (c) Part Three would consist of the final provisions and those on legal continuity. In the light of the overall draft – which meets the desire for a simplification of treaty structure – it would be logical and virtually inevitable to see the new Constitutional Treaty as supplanting the existing Treaties. Working on that assumption, the final provisions should include clauses guaranteeing legal continuity in relation to the Community and the European Union.

The second section of the document containing the draft Treaty (Convention 369/02) aims to outline the content of the provisions of the basic part of the Treaty. The outline sets out to illustrate the articulation of the draft Constitutional Treaty and to show where the various sections would appear in the text.

The Chairman remarked that some of these indications reflected tendencies beginning to emerge from the Convention's work; others embodied proposals which had been put forward on various sides but had yet to be discussed or developed. The matter of whether certain articles would be retained and their exact content would be addressed in future proceedings of the Convention.

The Chairman said that, in the first few months of 2003 and depending on the results of the plenary discussions on the recommendations in the Working Group reports, the Praesidium intended to present sections of the draft Treaty produced on the basis of elements put forward. That is how the building blocks would take their place in the constitutional structure and the Convention could attain its goal.

2. The role of national parliaments

- debate on the report of Working Group IV on the role of national parliaments, chaired by Ms Stuart (CONV 353/02)

The Chair of the Working Group, Ms Gisela Stuart, presented the conclusions reached by the Group, as set out in its final report (CONV 323/02). The Group had considered the role of national parliaments with respect to three main issues: oversight of the action of their governments in the Council, monitoring of the application of the principle of subsidiarity, and the role and function of multilateral interparliamentary networks or mechanisms.

The Chair recalled that the Group had concluded that the duty of national parliaments was first and foremost to hold their governments to account when they take decisions at a European level. It was generally agreed in the Group that an exchange of best practice on scrutiny models would be useful to improve national systems. The Group further considered that openness of the Council when it

legislates was crucial to allowing effective scrutiny by national parliaments. The Group had made a number of recommendations for enabling measures, including the strengthening of provisions in the protocol on the role of national parliaments annexed to the Amsterdam Treaty. On Subsidiarity the Group in general terms endorsed the conclusions of the Working Group chaired by Mr Mendez de Vigo. Finally, the Group made several recommendations regarding the structuring of relations between national parliaments and the European Parliament. The Chair underlined that the overall aim of the recommendations of the Group was to enhance the involvement of national parliaments in the EU, to encourage a sense of ownership, and to give them a real voice in a constructive way, without delaying the legislative process at the European level. The Chair stressed that while the Group had reached consensus on many issues, its members were of the view that a Plenary debate on institutional questions would be necessary before they could take firm positions on proposals for a new forum bringing together national parliaments and the European Parliament to debate, for example, the larger political orientations and strategy of the EU.

The general debate following the presentation revealed broad support among members of the Convention for the Working Group's report and recommendations. The following can be noted from the debate with regard to particular elements of the report:

There was widespread recognition of the importance of greater involvement of national parliaments in the activities of the Union: several members argued for specific recognition of their role in the future Constitutional Treaty. The role of national parliaments in bringing the Union closer to its citizens was underlined.

The recommended measures to facilitate improved national parliamentary scrutiny, while leaving the organisation of actual national scrutiny to each Member State in line with their Constitutional requirements and parameters arrangements, received broad support: permitting rapid access to both consultative documents and legislative proposals through their direct transmission to national parliaments were seen as an important step. The fact that the recommendations in the report were concrete and could rapidly be made operational was highlighted. A large number of speakers underlined the fact that full openness of the Council when exercising its legislative functions was essential to efficient parliamentary scrutiny of the action of governments in the Council, and expressed their support for the recommendations of the Working Group in this respect.

The Group's endorsement of the conclusions of the Working Group on Subsidiarity was welcomed by a large number of members, many of whom underlined the importance of involving national parliaments at an early stage of the legislative procedure. Several members welcomed the suggestions in the Working Group report to further enhance the subsidiarity mechanism. They referred in particular to the link between subsidiarity and proportionality and to the proposal not to restrict the right of appeal to those national parliaments which had issued a reasoned opinion at the early stage. Some members repeated their view that regions with legislative powers should have a right of appeal in areas within their scope of competence. One member recalled his doubts about an early-warning mechanism.

The importance of networking and exchange of good practice between national parliaments was underlined by several members, who saw this as a further means of increasing awareness in national parliaments of European Union activities and to enhance their capacity for efficient scrutiny. They considered that COSAC, possibly reformed and strengthened, could play an important role in this respect. Some advocated the creation of a small COSAC secretariat.

The recommendation of the Working Group to formalise, in the Treaty, the Convention method as a prior mechanism to consider future treaty changes met with a favourable response. Some suggested that Conventions need not necessarily be restricted to the preparation of future treaty changes and Intergovernmental Conferences, but could potentially have a wider remit.

Much of the debate was devoted to a discussion of ideas for involving national parliaments in EU debate on major strategic and policy issues. Ideas in this field included - in addition to the model of the Convention - the organisation of European weeks each year, as a common window for European debate in each Member State, the organisation of interparliamentary conferences on specific issues, and the creation of a Congress.

A considerable number of speakers were reluctant to envisage the creation of new institutions or bodies, because this could further complicate the institutional architecture, and in this context questioned the role of a Congress that would periodically bring together national and European parliamentarians. Several speakers thought that the Convention should defer consideration of the issue to the broader institutional debate that would take place at a later stage. Some thought it important to have a clear and precise idea of the objectives and the functions of any new mechanism or body: some thought that the possibility of convening a Convention, together with other existing means of networking between national and European parliamentarians, would be sufficient.

A number of speakers nevertheless supported the idea of a Congress, provided that it would not have any legislative powers. Some suggestions for its possible functions were advanced. It was argued that such a forum might provide increased democratic control of the European Council and it should be seen as complementary to the European Parliament. Those expressing an interest in the idea of a Congress were divided on whether it should have a role in appointments.

The President, closing the debate, drew the following conclusions:

- A large consensus could be noted regarding the importance of a stronger involvement of national parliaments in the activities of the Union, and the recognition of their role in the context of the future Constitutional Treaty.
- Their involvement should primarily lie in efficient control of the action of national governments: the Working Group's proposals for the direct transmission of texts and other practical measures were therefore welcome, and supported by the Plenary.
- Support for the recommendations of the Working Group on Subsidiarity, and the creation of an early-warning mechanism, was reconfirmed.
- The need to strengthen the possibilities for consultation and exchange of best practice between national parliaments was recognised.
- Several ideas had been advanced on how better to involve national parliaments in debates on the large orientations of the European Union, including the formalisation of the method of the Convention in the Constitutional Treaty, the organisation of European weeks, interparliamentary conferences on specific issues, and the creation of a Congress in which national and European parliamentarians would periodically meet. The Convention would need to explore the potential role and functions of a Congress further: in the view of the Chairman, such a Congress could play an important role in involving senior national parliamentarians, together with the European Parliament, in bringing debates on major issues (e.g. Enlargements) to the attention of wider public opinion. The Convention would revert to these issues.

3. **Progress report by Mr Hänsch on the proceedings of Group VI on economic governance**
4. **Progress report by Mr Christopherson on the proceedings of Group V on complementary competence**

The Convention heard oral presentations on the proceedings of each of these two Groups, which will present their reports at the next meeting (7-8 November).

5. **The Charter of Fundamental Rights**

- debate on the report by Group II chaired by Mr Vitorino (CONV 354/02)

The Working Group chaired by Commissioner Antonio Vitorino had been asked to examine:

- Modalities and consequences of possible incorporation of the Charter into the Treaties
- Modalities and consequences of possible accession of the EC/EU to the European Convention on Human Rights ("ECHR")
- In addition, the Group has also examined the question of effective judicial remedies and access of individuals to the European Court of Justice.

In introducing the debate, the President congratulated all members of the Group and its Chairman on having succeeded in producing a highly consensual report. The main features of the report as presented by Mr Antonio Vitorino were as follows:

The Group underlined that the political decision concerning the incorporation of the Charter into the Treaties was for the Convention. All members of the Group however either strongly supported incorporation in a form which would make the Charter legally binding and give it constitutional status or did not rule out giving favourable consideration to such incorporation.

As to the modalities of possible incorporation the basic options were: **either** insertion of the text of the Charter articles at the beginning of the Constitutional Treaty, in a Title or Chapter of that Treaty; **or** insertion of an appropriate reference to the Charter in one article of the Constitutional Treaty; such a reference could be combined with annexing or attaching the Charter to the Constitutional Treaty, either as a specific part of the Constitutional Treaty containing only the Charter or as a separate legal text (e.g., in form of a Protocol). According to one member of the Group, an "indirect reference" to the Charter could be used in order to make the Charter legally binding without giving it constitutional status.

In the Group's view the content of the Charter in its substance was a consensus crafted by the previous Convention: the Group did not recommend any substantive modifications. In order to render it absolutely clear and watertight, they had however drafted and submitted proposed adjustments of certain horizontal clauses included in the Charter. They had also discussed other questions such as: the preamble of the Charter, the role of the Praesidium Explanations, and the question of Article 6(2).

Concerning the modalities and consequences of possible accession of the EC/EU to the ECHR, all members of the Group either strongly supported or were ready to give favourable consideration to the creation of a constitutional authorisation enabling the Union to accede to the ECHR. Within this question the Group insisted on two points: preservation of the autonomy of Union law and the Luxembourg Court, and the introduction of technical safeguards in order to make clear that accession would not modify the division of competences between the Union and the Member States.

The Group also discussed the Union's current system of remedies available to individuals, notably in the light of the fundamental right to effective judicial protection. In this context, the Group drew the Convention's attention notably to the question whether or not the conditions of direct access by individuals to the Court (Article 230, fourth paragraph, TEC) need to be reformed in the interest of ensuring effective judicial protection. The Group refrained from making concrete recommendations: instead they commended the question of possible reform of Article 230, fourth paragraph, TEC for further examination by the Convention in an appropriate context.

In the general debate, speakers across the board welcomed the conclusions of the Working Group and congratulated it and its Chairman for having succeeded in producing such a highly consensual report on a complex matter which had in the past given rise to concerns and disagreement.

A very large majority of speakers supported incorporation of the Charter into the Constitutional Treaty thereby making the Charter a legally binding text with constitutional status, or stated that - on the basis of the common understanding reached and of the conditions defined by the Group - they were now ready to consider such an incorporation favourably, leaving behind the disagreements of the past. It was stated that fundamental rights are a key building block which would, through incorporation of the Charter, find their rightful place in the Union's future Constitution, and that such incorporation would follow the logic of the evolution from an economic Community to a political Union of common values.

One member welcomed the useful and solid technical work done by the Working Group which teased out many of the difficult issues raised by the Charter, and stated that the political decision on incorporation should be taken by the Plenary in due course. Another member referred to continuing concern about the Charter and particularly about its provisions touching on employment and social matters.

As to the concrete form of incorporation of the Charter, a series of speakers favoured the option of insertion of the text of the Charter articles in the Constitutional Treaty (option "a" in the Group's report). According to these speakers, this would enhance the visibility of fundamental rights in the Constitutional Treaty and express their high symbolic value clearly to the citizens.

Several other Convention members expressed a preference for the second basic option set out in the Group's report, i.e. incorporating the Charter through an appropriate reference made to it in an article of the Constitutional Treaty and, as some added, annexing or attaching it to the Treaty as a separate legal document. These speakers argued that this technique would best serve the interest of a short and legible Treaty, better preserve the integrity of the Charter, and avoid certain technical complications arising in the case of direct insertion of the Charter text into the Treaty.

A much smaller number of speakers preferred to make an "indirect" reference in an article of the Treaty to the Charter as a source for interpreting fundamental rights as general principles of Union law, arguing that not all articles of the Charter could in the same way entail justiciable rights for the citizens, or that some Charter rights would need more precise formulation.

Most speakers stated their support for the drafting adjustments in the horizontal provisions of the Charter as proposed by the Group, and were satisfied that these adjustments did not constitute changes of substance to the Charter. A number of speakers welcomed the adjustments as enhancing legal certainty and clarity and allowing different legal traditions to find themselves in the Charter, thereby paving the way for the Charter to become a legally binding text. Other speakers expressed the view that the amended horizontal clauses as proposed by the Group were not necessary and simply stated the obvious, but would not do any harm and could therefore be accepted if they helped to bring about consensus on incorporation of the Charter as a legally binding text.

Certain members, however, expressed reservations about the amendments to the horizontal articles proposed by the Group, seeing them as unnecessary or potentially diluting the standard of protection foreseen by the Charter and contrary to the basic line of respecting the content of the Charter. In particular, it was argued that proposed Article 52 (5) on the effect of "principles" of the Charter could be understood as contradicting the obligation, enshrined in Article 51 (1), to observe these principles and to promote their application, and that it unduly restricted the legal force of these principles which, according to these members, should be justiciable generally and not merely as regards acts specifically taken in implementation of the principles. One member saw ambiguities in the formula "with due regard to the principle of subsidiarity" in Article 51 (1) of the Charter, expressed doubts about the enforceability of certain Charter provisions, and stressed the need to know which Charter articles were, respectively, rights or principles.

A number of speakers stressed the need to preserve the preamble of the Charter which contained important statements on the fundamental nature of the Union and represented a delicate political consensus reached by the previous Convention. These members therefore called for that preamble to be incorporated into, or used as, the preamble of the Constitutional Treaty.

Several speakers underlined the importance of the Explanations which had been prepared at the instigation of the Praesidium of the previous Convention. Although, as stressed by some speakers, these Explanations have no legal value, they were seen as an extremely useful aid to interpretation - *inter alia* for the courts and authorities of the candidate countries which had not participated in the drafting of the Charter - or as a vital part of the overall political package on the Charter. In this perspective, speakers welcomed the Group's recommendation to incorporate the explanations given

by the Working Group on the technical amendments on the Charter with the original Explanations. It was, however, recalled by one member that the Explanations were drawn up under the sole responsibility of the Praesidium and did not engage the previous Convention which had decided not to discuss them.

A vast majority of speakers supported the insertion in the Constitutional Treaty of a constitutional authorisation enabling the Union to accede to the ECHR. Several speakers welcomed in this context the common understanding reached by the Group on key issues raised by accession to the ECHR; it was notably stressed that the autonomy of Union law and the position of the Court of Justice will not be undermined by accession; that, through the use of certain safeguards, it will be clear that the legal "scope" of accession will be limited to the Union's competencies without leading to any extension of these competencies; and that the national positions expressed with respect to the ECHR and its protocols will remain unaffected. A further point frequently made was that incorporation of the Charter and accession by the Union to the ECHR should be considered not as alternatives but as complementary initiatives, leading together to a situation analogous of that in national legal systems.

In this context, a number of speakers stressed the primary importance which they attribute to accession by the Union to the ECHR and recalled the main arguments for accession as developed in the Group's report. Some qualified accession by the Union to the ECHR as a necessity if the Charter became legally binding, in order to ensure that the relationship between the two European Courts was properly resolved; a call was also made for a political declaration in favour of accession to accompany the Constitutional Treaty.

Other members took the view that the Convention should limit itself to creating a legal base authorising the Union to accede to the ECHR and leave the decision on opening accession negotiations, and the modalities, to the Union institutions (on the basis of unanimity in the Council); one of these members specified that, prior to such a decision, it should be examined whether such an accession would be possible without encroaching on the autonomy of Union law, affecting the individual positions of Member States with respect to the ECHR or extending the Union's competence.

A small number of members expressed reservations about the idea of accession by the Union to the ECHR, calling for further reflection on whether such a step would not lead to an undue prolongation of judicial procedures or risk extending the Union's competencies or undermining the Court of Justice.

Several speakers underlined the importance of effective judicial remedies and called for an extension of the rights of action of individuals before the European Court of Justice, or requested further consideration on this issue. It was argued that lacunae of protection exist currently, given the strict conditions set out in Article 230, fourth paragraph, TEC, the fact that this Article mentions actions against institutions only, but not against bodies of the Union, and the current limitations on jurisdiction in Justice and Home Affairs. One member called for a stronger European Ombudsman with a view to reinforcing the protection of citizens' complaints.

In a final statement replying to points made during the discussion, the Chairman of the Working Group stressed that the Working Group's consensual report represented a compromise. He explained that the proposed text of Article 52 (4) would enshrine in the Charter the approach already followed by the Court of Justice, according to which the common constitutional traditions did not oblige the Court to stick to a common minimum denominator but instead to designate the common values of the Member States, which may not necessarily be stated with the same scope and meaning in all constitutions. He furthermore stressed that the Charter already makes a clear and undeniable distinction between subjective rights and principles that do not grant self-executing rights to concrete benefits but call for acts of implementation, a distinction which would only be spelt out in clearer terms in the new clause. As to the "Explanations" on the Charter, he confirmed that the Group's explanations would need to be added to the original Explanations in the further course of the Convention's work; he would be ready to take on this work of editing a consolidated version in close consultation with the members of the Working Group, and to submit it to the Praesidium. Finally, the Chairman of the Working Group argued that accession to the ECHR would not lead to significant extra delays in judicial proceedings, given that citizens can already today, in national proceedings relating to Union law, invoke the ECHR and go to the Strasbourg Court; accession would, however, permit, in such cases, the Union, as the author of the alleged human rights violation, itself to defend its acts rather than force Member States to assume the defence. He also argued that it would be strange if the Union, which required adherence to the ECHR from candidate countries as a condition of membership, were not ready to take the same step itself.

The President again congratulated Mr Vitorino, and expressed full endorsement of his summary of, and reactions to, the debate.

6. Preliminary debate on the preliminary draft Constitutional Treaty

Members of the Convention gave their preliminary views on the preliminary draft Treaty submitted by the Chairman on behalf of the Praesidium.

The architecture of the future Treaty was favourably received; the structure of the Treaty was deemed good while its essential features, namely its constitutional nature, the fact that it was a single Treaty, the explicit conferral of a single legal personality and the clarity and readability of the "backbone" of the draft were commended by the members as a bold approach which met the expectations of both the Convention and Union citizens.

More specific comments were also made:

- several members stressed the importance of the substantive elements, particularly concerning institutional matters, which would enhance the structure; some already saw in the draft architecture a balanced compromise; others made their backing for the structure subject to agreement on the solution finally adopted for institutional matters;
- some members stressed with satisfaction that the preliminary draft would be able finally to give citizens a sense of being part of a political union and not just of a single market;
- some members suggested that Article 1 should refer to peoples and not just to States; it was also suggested that an addition be made to the effect that the Union's citizens were united by the same values;
- a number of members expressed doubts about the second indent of Article 14, (as they feared that joint activity by Member States was a step backwards in the case of certain common policies);
- a number of members pointed out that the new policies reflected the Union's real priorities but differed in nature from "Community" policies and should therefore be covered by specific procedures;
- the importance of the Treaty emphasising the multicultural nature of the Union was stressed by several members, while some mentioned the need to refer to gender equality;
- the debate on finding a new name for the new Europe was regarded as pointless by a number of members, as the term European Union had already become part and parcel of the language of citizens;

- some members wanted a reference to national parliaments in the basic part of the Treaty;
- questions were raised about citizenship, competences, the existence in the draft of a "defence" title and of other articles concerning the Congress and the Presidency of the Council, the final clauses and the procedures for revising the Treaty.

Replying to the comments and questions, the Chairman:

- stressed the considerable progress represented by the single Treaty with the disappearance of the pillars, although this did not automatically mean that procedures and modalities would be made uniform, since specific procedures could be necessary depending on the nature of certain policies;
- confirmed that decision-making procedures and in particular the legislative procedure would be included in the basic part of the Treaty;
- stressed that national parliaments could not be cited as European institutions, but would, however, be referred to in the context of those procedures in which they were involved (subsidiarity);
- pointed out that competences were already defined in the existing Treaties but would be covered more systematically in the new Treaty;
- noted that common defence was already envisaged in the existing provisions of the TEU (Article 17);
- reiterated that the existence of certain articles and their content would depend on the Convention's debates; they were, however, referred to in order to show where they might fit into into the structure.

The Chairman concluded that from the beginning of 2003 the Praesidium could, on the basis of the substantive points which emerged from the debate on the Working Groups' conclusions, start drawing up more detailed proposals. The institutional questions, which needed to be seen from an overall viewpoint, would not be entrusted to Working Groups but would be debated in plenary.

II. NEXT SESSION OF THE CONVENTION

The Chairman announced that the Convention's next meeting would take place starting at 15.00 on Thursday 7 and 9.30 on Friday 8 November. It would be devoted to examination of the reports by the Working Groups on economic governance and complementary competence and a debate on Social Europe.

ANNEX

THE EUROPEAN CONVENTION
Plenary session 28 and 29 October 2002

LIST OF SPEAKERS
following order of intervention

Monday 28 October

2. **The role of national Parliaments (CONV 353/02)**

– **debate on the report by Group IV on the role of national parliaments chaired by Ms Stuart**

1. Mr Erwin TEUFEL – Germany (Parliament)
 2. Mr Dick ROCHE – Ireland (Government)
 3. Mr Joschka FISCHER – Germany (Government)
 4. Mr Sören LEKBERG – Sweden (Parliament)
 5. Mr Michel BARNIER – Commission
 6. Mr Elmar BROK – European Parliament
 7. Mr Pierre LEQUILLER France (Parliament)
 8. Mr Henrik HOLOLEI – Estonia (Government)
 9. Mr Kimmo KILJUNEN – Finland (Parliament)
- (Blue card: Caspar EINEM)*
10. Mr Jürgen MEYER – Germany (Parliament)
 11. Mr Andrew DUFF – European Parliament
 12. Mr Alfonso DASTIS – Spain (Government)
 13. Mr Tunne KELAM – Estonia (Parliament)
 14. Mr Aloiz PETERLE – Slovenia (Parliament)
 15. Mr Henrk Dam KRISTENSEN – Denmark (Parliament)
 16. Mr Mesut YILMAZ – Turkey – (Government)
- (Blue card: G. AMATO)*
17. Ms Eduarda AZEVEDO – Portugal (Parliament)
 18. Mr Hubert HAENEL – France (Parliament)
 19. Ms Pervenche BERES – European Parliament
- (Blue cards:*
HAIN, Mac CORMICK, PIETERS, MCLENNAN, FAYOT, DI RUPO, VOGGENHÛBER)
20. M. Proinsias DE ROSSA – Ireland (Parliament)

21. Mr Josep BORRELL FONTELLES – Spain (Parliament)
 22. Mr Matti VANHANEN – Finland (Parliament)
 23. Mr Inigo MENDEZ de VIGO – European Parliament
 24. Ms Hanja MAIJ-WEGGEN – European Parliament
 25. Ms Dalia KUTRAITE-GIEDRAITIENE – Lithuania (Parliament)
 26. Mr Gianfranco FINI – Italy (Government)
 27. Mr Pierre MOSCOVICI – France (Government)
 28. Ali TEKIN – Turkey (Parliament)
 29. Mr William ABITBOL – European Parliament
 30. Mr David HEATHCOAT-AMORY – United Kingdom (Parliament)
- (Blue cards: BRUTON, TOMLINSON, MENDEZ DE VIGO)*
31. Mr Pierre CHEVALIER – Belgium (Government)
 32. Mr Alberto COSTA – Portugal (Parliament)
 33. Mr Lamberto DINI – Italy (Parliament)
 34. Mr Hannes FARNLEITNER – Austria (Government)
 35. Mr Frans TIMMERMANS – Holland (Parliament)
 36. Mr Edvins INKENS – Latvia (Parliament)
 37. Mr Panayotis DEMETRIOU – Cyprus (Parliament)

Plenary session 29 October 2002**LIST OF SPEAKERS**
following order of intervention**5. The Charter of Fundamental Rights (CONV 354/02)**
– debate on the report by Group II chaired by Mr Vitorino

1. Mr Ernâni LOPES – Portugal (Government)
2. Mr Inigo MENDEZ de VIGO – European Parliament
3. Mr Alexander ARABADJIEV – Bulgaria (Parliament)
4. Mr Andrew DUFF – European Parliament
5. Mr René van der LINDEN – Netherlands (Parliament)
6. Mr Peter HAIN – United Kingdom (Government)
7. Mr Ben FAYOT – Luxembourg (Parliament)
8. Mr Olivier DUHAMEL – European Parliament
9. Mr Jürgen MEYER – Germany (Parliament)
10. Mr Alfonso DASTIS (Spain) Government
11. Mr Dick ROCHE – Ireland (Government)
- (Blue cards: Caspar EINEM, S. KAUFFMANN)*
12. Mr Diego LOPEZ GARRIDO – Spain (Parliament)
13. Ms Neli KUTSKOVA – Bulgaria (Government)
14. Mr Neil Mac CORMICK – European Parliament
15. [Mr A. Emre KOCAOĞLU](#) – Turkey (Parliament)
16. Mr Hubert HAENEL – France (Parliament)
17. Mr Reinhard RACK – European Parliament
18. Mr Jozef OLEKSY – Poland (Parliament)
19. Mr Timothy KIRKHOPE – European Parliament
20. Mr Peter SERRACINO-INGLOTT – Malta (Government)
21. Mr Mihael BREJC – Slovenia (Parliament)
22. Mr Gianfranco FINI – Italy (Government)
23. Ms Anne VAN LANCKER – European Parliament
24. Mr Gabriel CISNEROS LABORDA – Spain (Parliament)
25. Ms Elena PACIOTTI – European Parliament

26. Mr Ingvar SVENSSON – Sweden (Parliament)
 27. Ms Cristiana MUSCARDINI – European Parliament
 28. Mr Pierre MOSCOVICI – France (Government)
 29. Ms Lena HJELM–WALLEN – Sweden (Government)
 30. Mr Niels PETERSEN – Denmark (Parliament)
- (Blue cards: Peter HAIN, HELLE)*
31. Mr Alberto COSTA – Portugal (Parliament)
 32. Mr Gijs de VRIES – Netherlands (Government)
 33. Mr Henning CHRISTOPHERSEN – Denmark (Government)
 34. Ms Hanja MAIJ-WEGGEN – European Parliament
 35. Mr John BRUTON – Ireland (Parliament)
 36. Ms Eleni MAVROU – Cyprus (Parliament)

Preliminary debate on the preliminary draft Constitutional Treaty

Chairman Valéry Giscard d'Estaing

1. Mr Klaus HÄNSCH – European Parliament
2. Ms Ana PALACIO – Spain (Government)
3. Mr Andrew DUFF – European Parliament
4. Mr Michel BARNIER Commission
5. Mr Rytis MARTIKONIS – Lithuania (Government)
6. Mr Hubert HAENEL – France (Parliament)
7. Mr Josep BORRELL FONTELLES – Spain (Parliament)
8. Mr Ernâni LOPES – Portugal (Government)
9. Mr Gijs de VRIES – Netherlands (Government)
10. Mr Alan LAMASSOURE – European Parliament
11. Mr Peter HAIN – United Kingdom (Government)
12. Mr Rihards PIKS – Latvia (Parliament)
13. Ms Danuta HÛBNER – Poland (Government)
14. Mr Marco FOLLINI – Italy (Parliament)
15. Mr Dick ROCHE – Ireland (Government)
16. Ms Teija TIILIKAINEN – Finland (Government)
17. Ms Marietta GIANNAKOU – Greece (Parliament)
18. Ms Hanja MAIJ-WEGGEN – European Parliament
19. Mr Elmar BROK – European Parliament
20. Mr Ben FAYOT – Luxembourg (Parliament)
21. Ms Michael FRENDÓ – Malta (Parliament)
22. Ms Linda McAVAN – European Parliament
23. Ms Lena HJELM-WALLEN – Sweden (Government)
24. Mr Elio DI RUPO – Belgium (Parliament)
25. Mr Jens-Peter BONDE – European Parliament
26. Mr Pierre MOSCOVICI – France (Government)

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1-001

DA

**DET EUROPÆISKE KONVENT
MANDAG DEN 28. OKTOBER 2002**

DE

**EUROPÄISCHER KONVENT
MONTAG, 28. OKTOBER 2002**

EL

**ΕΥΡΩΠΑΪΚΗ ΣΥΝΕΛΕΥΣΗ
ΔΕΥΤΕΡΑ 28 ΟΚΤΩΒΡΙΟΥ 2002**

EN

**EUROPEAN CONVENTION
MONDAY, 28 OCTOBER 2002**

ES

**CONVENCIÓN EUROPEA
LUNES, 28 DE OCTUBRE DE 2002**

FR

**CONVENTION EUROPÉENNE
LUNDI 28 OCTOBRE 2002**

IT

**CONVENZIONE EUROPEA
LUNEDÌ 28 OTTOBRE 2002**

NL

**EUROPESE CONVENTIE
VERGADERING VAN MAANDAG 28 OKTOBER 2002**

PT

**CONVENÇÃO EUROPEIA
SEGUNDA-FEIRA, 28 DE OUTUBRO DE 2002**

FI

**EUROOPPA-VALMISTELUKUNTA
MAANANTAINA 28. LOKAKUUTA 2002**

SV

**EUROPEISKA KONVENTET
MÅNDAGEN DEN 28 OKTOBER 2002**

1-002

FR

PRÉSIDENCE DE M. GISCARD D'ESTAING*(La séance est ouverte à 15h06)*

Le Président.- Mes chers Collègues, vous avez dû tous recevoir une correspondance. Ce texte étant destiné à chacune et à chacun d'entre vous, il est distribuée ici aux Conventionnels, leurs suppléants et les observateurs. Si quelqu'un n'avait pas cette correspondance, qu'il le signale ici devant. Je vais vous présenter ce texte en quelques mots. <BRK>

1-003

DA

Redegørelse fra formanden om det foreløbige udkast til en forfatningstraktat

DE

Vorstellung eines Vorentwurfs eines Verfassungsvertrags durch den Vorsitzenden

EL

Παρουσίαση από τον Πρόεδρο του προσχεδίου Συνταγματικής Συνθήκης

EN

Presentation by the President of the preliminary draft constitutional treaty

ES

Presentación por parte del Presidente del Anteproyecto de Tratado Constitucional

FR

Présentation par le Président de l'avant-projet d'un traité constitutionnel

IT

Presentazione da parte del Presidente del progetto preliminare di Trattato costituzionale

NL

Presentatie door de voorzitter van het voorontwerp**van constitutioneel verdrag**

PT

Apresentação do anteprojecto de tratado constitucional pelo Presidente

FI

Puheenjohtaja esittelee alustavan ehdotuksen perustuslain luonteiseksi sopimukseksi

SV

Ordföranden lägger fram ett preliminärt utkast till konstitutionellt fördrag

1-004

FR

Le Président. – Voilà, mes chers Collègues, la Convention européenne avance. Aujourd'hui, elle va franchir une étape significative.

28 février - 28 octobre. 8 mois exactement après l'ouverture de la Convention, je vous présente, aujourd'hui, l'architecture de la future Constitution européenne. Dès le départ, nous savions que nous devrions aboutir à un texte unique, un projet de Traité Constitutionnel. D'ailleurs, vous avez bien voulu m'applaudir quand je l'ai proposé dans mon discours d'ouverture de la Convention.

Les discussions que nous avons eues jusqu'ici ont paru à certains parfois trop générales, parfois trop techniques. Elles étaient pourtant indispensables avant de pouvoir définir les contours d'un premier projet. Un document a été remis personnellement à chacune et à chacun d'entre vous. Je souhaitais, en effet, que ce soit une remise personnelle et non pas la simple distribution d'un document.

Sur la base des discussions que nous avons tenues jusqu'ici, nous avons élaboré, avec le Praesidium, le projet d'architecture du futur Traité constitutionnel. Ainsi, j'honore devant vous l'engagement pris avant l'été. Au mois de juin et de juillet, certains d'entre vous étaient impatients de voir apparaître ce projet d'architecture pour pouvoir mettre davantage d'ordre dans nos débats et dans nos réflexions. Vous constaterez que ce projet est celui d'un Traité constitutionnel car il nous est apparu que cela reflète la volonté de la quasi-totalité de la Convention.

Un Traité Constitutionnel s'impose pour marquer l'étape de la fondation d'une Europe rénovée, acceptant nos frères des pays candidats, une Europe dans laquelle tous les citoyens doivent se reconnaître comme Européens et à laquelle toutes les institutions nationales, régionales et locales doivent pouvoir participer, chacune à son niveau de responsabilité.

Le point de départ de ce texte est le large consensus dégagé lors de notre débat de la dernière session en faveur du principe d'une personnalité juridique unique. En effet, ceci ouvre la voie, jusqu'ici fermée, à la fusion des Traités de la Communauté et de l'Union européenne. Cette fusion constitue un pas fondamental en direction de la simplification et répond ainsi à l'attente, et même à l'impatience, de l'opinion publique.

Ce texte unique comporterait trois parties. La première partie contiendrait les dispositions définissant l'architecture constitutionnelle et institutionnelle. La deuxième partie porterait sur les politiques et les actions de l'Union. La troisième partie contiendrait les clauses finales et les clauses de continuité juridique habituelles dans ce type d'acte constitutionnel. L'ensemble, enfin, serait complété par un petit nombre de protocoles.

La première partie, celle qui reprend les dispositions fondamentales, doit être particulièrement claire et percutante. Il faut savoir qu'un texte constitutionnel est un texte qui doit avoir une certaine force, par lui-même et à la limite, un certain lyrisme, afin de définir de manière accessible à tous, jeunes étudiants, jeunes lycéens, travailleurs de tous âges et de tous milieux, les bases et les fonctionnements de l'Union. La première qualité de notre Traité constitutionnel doit être celle d'être lisible par tous.

Cette partie comporterait un préambule et définirait ensuite un certain nombre de points. J'y reviendrai tout à l'heure. Je vous donne la liste des chapitres essentiels : ce qu'est l'Union, sa définition et sa nature juridique, pourquoi les Etats Membres ont décidé de se réunir, autrement dit les objectifs de l'Union, quelles sont les valeurs et les objectifs qui les rassemblent, ce que signifie être un citoyen de l'Union, et quels sont les droits fondamentaux des citoyens de l'Union. On y traiterait également des compétences de l'Union en spécifiant que l'Union n'a que les compétences qui lui sont attribuées, les principes de subsidiarité et de proportionnalité étant affirmés de manière précise. Figureraient aussi dans cette partie la question des institutions de l'Union, la façon dont est mise en oeuvre l'action de l'Union, comment elle est organisée dans un souci de simplicité, de transparence et d'efficacité, la nature des principes de la vie démocratique de l'Union, le problème des finances de l'Union (monnaie et budget), l'action extérieure de l'Union, les relations entre l'Union et son environnement proche et enfin, un article de principe indiquant que l'Union est ouverte à tous les Etats européens, qui respectent ses valeurs et ses droits fondamentaux et qui acceptent ses règles.

La deuxième partie du Traité sur les politiques et les actions de l'Union reprendrait, de façon naturelle, un nombre important de clauses des Traités actuels. Nous ne voulons pas, en effet, modifier les articles pour la satisfaction de donner une écriture nouvelle à ces articles. Donc, nous ne proposerons de changements qu'aux articles relatifs aux politiques de l'Union, qui découleront de notre travail sur la première partie, c'est-à-dire sur la simplification des procédures et sur la mise en oeuvre des actions de l'Union.

Enfin, la troisième partie comporterait des dispositions finales et de continuité juridique puisque nous partons de deux Traités de nature et d'objectifs différents, le Traité de Rome et le Traité de Maastricht, et que nous voulons aboutir à un texte unique.

Je vais vous donner une indication quant au contenu du travail à effectuer. Les articles actuels, sur lesquels nous travaillons, sont au nombre de 414. Une lecture rapide, ce n'est pas une précision définitive, montrerait que, la moite environ, à savoir 205 articles resteraient inchangés. 136 articles seraient légèrement modifiés, c'est-à-dire adaptés aux dispositifs nouveaux et 73 devraient être substantiellement réécrits ou regroupés. A la lumière de l'ensemble du projet, qui répond à une demande d'une simplification de l'architecture des Traités, qui figure d'ailleurs dans les textes d'origine de Nice et de Laeken, cette voie semble logique et pratiquement inévitable. Nous avons étudié les différentes hypothèses possibles, sauf à entrer dans de véritables contorsions rédactionnelles, qui nous permettent de penser que le nouveau Traité constitutionnel se substituera au Traité existant. Dans cette hypothèse, les dispositions finales devront comprendre des clauses assurant la continuité juridique par rapport aux Communautés et par rapport à l'Union européenne.

Le document qui vous a été remis comporte une seconde partie destinée à vous apporter certaines indications contenant les dispositions de la partie fondamentale du Traité. Nous avons pensé que si l'on vous donnait simplement la table des matières sans donner quelques indications, vous risqueriez de trouver cette approche un peu limitée. Et donc, ces indications de la deuxième partie que je vais vous commenter rapidement se proposent d'illustrer l'articulation de ce projet de Traité constitutionnel et

d'indiquer la place que chacun des différents éléments viendra prendre dans le texte. Ainsi, certaines de ces indications correspondent à des orientations qui émergent déjà de nos travaux, notamment des conclusions du premier groupe de travail tandis que d'autres reflètent des propositions qui ont été avancées par les uns et par les autres, notamment dans vos très nombreuses contributions, mais qui doivent encore faire l'objet d'un débat ou d'un approfondissement.

Je voudrais que nous soyons très clairs vis-à-vis de vous-même bien entendu, mais aussi de la presse et des media. Il s'agit, aujourd'hui, d'une architecture, en d'autres termes, de la place des articles et des sujets traités dans l'ensemble du texte. La question de savoir si certains articles seront finalement retenus et quel sera précisément leur contenu, trouvera sa réponse dans les travaux futurs de la Convention.

Je vais maintenant vous commenter brièvement ce texte. Je commence à la page 8 du document que vous avez devant vous.

Première partie: architecture constitutionnelle

Il faudra sans doute un préambule. En effet, tous les textes constitutionnels de l'histoire politique comportent un préambule plus ou moins long, bien que nous ayons d'autres éléments tels que la Charte, qui contiendront des dispositions de nature voisine.

L'article 1 correspondrait à la décision de mettre en place une entité nommée à laquelle il faudra donner un nom puisque, à l'heure actuelle, deux noms qui sont en vigueur: d'une part Communauté européenne pour la partie venant du Traité de Rome, et d'autre part, Union européenne pour la partie venant du Traité de Maastricht. Il faudra de toute façon choisir. On peut également songer à d'autres appellations: soit l'appellation lancée au début de la construction européenne, à la fois par Jean Monnet et par Winston Churchill, qui était celle des Etats-Unis d'Europe soit une appellation qui décrirait l'état d'avancement de la construction européenne, et qui serait Europe Unie, appellation se traduisant simplement et fortement dans les différents langues de l'Union.

On donnerait ensuite la définition de cette Union. J'utiliserai le mot Union pour simplifier et ne pas reprendre chaque fois les différentes appellations possibles. Nous avons une définition. Cette définition donnera lieu à un débat. Toutefois, j'invite les Conventionnels à eux-mêmes rechercher un texte décrivant bien ce qu'est cette Union. Le texte que nous proposons est une Union d'Etats européens conservant leur identité nationale, coordonnant étroitement leur politique au niveau européen et gérant, sur le mode fédéral, certaines compétences communes Il s'agit donc d'une définition compréhensible et courte de la nature de cette Union.

Ensuite, il y aurait la reconnaissance du caractère pluriel de l'Union, c'est-à-dire les éléments de diversité qui font partie de l'Union et enfin, la mention d'une Union ouverte à tous les Etats européens qui partagent les mêmes valeurs et qui s'engagent à les promouvoir en commun.

L'article 2 énumérerait les valeurs de l'Union. Vous objecterez qu'il y a déjà la Charte des droits fondamentaux dont nous parlerons tout à l'heure et vous vous demanderez s'il n'y a pas là une redite. Pas exactement parce que la Charte est une Charte de droits. Les valeurs ne se limitent pas à l'exercice de certains droits. Il y a la dignité humaine, la démocratie, l'Etat de droit, la tolérance et enfin, le respect des obligations et du droit international. Par conséquent, il faudra préciser ce qui va dans la Charte, qui est déjà écrite et ce qui doit figurer parmi les valeurs de l'Union.

L'article 3 énoncerait les objectifs de l'Union. C'est d'ailleurs un sujet qui a été un sujet de réflexion. Vous savez que la caractéristique de notre texte par rapport à une Constitution nationale est son existence en fonction des objectifs de l'Union. Une Constitution nationale existe en fonction de l'existence de l'Etat et décrit comment l'Etat doit fonctionner. Dans la construction européenne, ce sont les objectifs qui déterminent la construction. Nous indiquons ces objectifs : sauvegarde des valeurs communes, intérêts et indépendance de l'Union, promotion de la cohésion économique et sociale, renforcement du Marché intérieur ainsi que de l'Union économique et monétaire, promotion d'un haut niveau d'emploi et d'un niveau élevé de protection sociale, niveau élevé de protection de l'environnement, encouragement au progrès technologique et scientifique, création d'un espace de liberté, de sécurité et de justice et, enfin, développement d'une politique étrangère et de sécurité commune et d'une politique de défense visant à défendre et promouvoir les valeurs de l'Union dans le monde extérieur.

Il serait précisé ensuite que ces objectifs sont poursuivis selon des modalités adaptées au fait que les compétences sont attribuées en toute ou en partie à l'Union, ou ils sont au contraire exercés conjointement par les Etats membres. Ce dernier passage se terminerait par l'article 4 qui est la reconnaissance explicite de la personnalité juridique à de nouvelles entités internationales.

Pour le titre 2, on a repris des éléments qui figurent dans les Traités. On y a ajouté des éléments qui viennent de vos propres travaux (citoyenneté de l'Union et les droits fondamentaux).

Dans l'article 5, on instituerait et définirait la citoyenneté de l'Union. Tout national d'un Etat-membre et citoyen de l'Union disposerait d'une double citoyenneté de niveau égal: la citoyenneté nationale et la citoyenneté européenne. Nous n'avons pas mis nationalité mais bien citoyenneté. C'est d'ailleurs là une proposition que l'Espagne avait faite voici quelques années. Et il utilise librement l'une ou l'autre à sa convenance, avec les droits et les devoirs attachés à chacune d'elle. Précisément, l'article énumère les droits attachés à la citoyenneté européenne – la libre circulation, le séjour, le vote et l'éligibilité aux élections municipales et au Parlement européen, la protection diplomatique de l'ensemble de l'Union dans les pays tiers, le droit de pétition, le droit d'écrire et d'obtenir une réponse des institutions européennes dans sa propre langue. Enfin, cet article établit le principe de non-discrimination entre les citoyens de l'Union en fonction de la nationalité.

Viendrait ensuite l'article concernant la Charte des droits fondamentaux. M. Vitorino exposera diverses possibilités pour la rédaction de cet article. Il pourra s'inspirer de l'article 6 du Traité sur l'Union européenne, où il y a déjà une référence à ce sujet, et M. Vitorino vous donnera les trois solutions possibles.

Le titre 3 prévoirait les compétences et les actions de l'Union. Cet article énoncerait d'abord les principes de l'action de l'Union. Ceci a été demandé par de nombreux conventionnels. Celle-ci s'exerce conformément aux dispositions du traité, dans la limite des compétences conférées par le traité et dans le respect des principes de subsidiarité et de proportionnalité solennellement annoncés dans le texte.

L'article 8 est en fait un complément. Il établirait le respect du principe selon lequel toute compétence non attribuée par la constitution à l'Union demeure de la compétence des Etats membres. C'est la conclusion d'un débat qui a eu lieu ici sur la nécessité d'avoir deux listes ou une seule. C'est donc une seule liste, avec cet article prévoyant la non-compétence lorsque les compétences ne sont pas attribuées à l'Union. Il établirait la primauté du droit de l'Union dans l'exercice des compétences qui lui ont été attribuées. Il fixerait les règles du contrôle effectif de la subsidiarité et de la proportionnalité et le rôle des parlements nationaux à cet effet serait mentionné. Enfin, il déterminerait les règles qui établissent l'adaptabilité du système. Nous en avons parlé, sans entrer dans une réflexion approfondie, c'est-à-dire le sort de l'ancien article 308 et des articles antérieurs du Traité de Rome. Enfin, il établit l'obligation de coopération loyale des Etats membres vis-à-vis de l'Union ainsi que le principe de mise en oeuvre par ceux-ci des actes des institutions.

Les articles suivants – on ne donne que le titre des articles; ils sont évidemment beaucoup plus détaillés –: l'article 9 concernerait les catégories de compétences de l'Union, qui seraient simplifiées après les travaux du groupe de travail; l'article 10 indiquerait les domaines de compétences exclusives de l'Union et reprendrait d'ailleurs dans ce domaine les textes des traités sur les Communautés, qui, semble-t-il, n'ont pas besoin d'être modifiés; l'article 11 indiquerait les domaines de compétences partagées entre l'Union et les Etats membres, et il établirait le principe selon lequel, au fur et à mesure que l'Union agit dans ces domaines, les Etats membres ne peuvent agir que dans les limites définies par la législation de l'Union. Enfin, l'article 12 indiquerait les domaines où l'Union appuie ou coordonne l'action des Etats membres mais n'a pas la compétence pour légiférer. Et enfin l'article 13 répondrait à la question suivante: dans quels domaines les Etats membres définissent-ils et mettent-ils en oeuvre, dans le cadre de l'Union, une politique commune selon des modalités spécifiques? Cet article indiquerait de quels domaines il s'agirait.

Le titre 4 fera l'objet de beaucoup d'attention et de débats à venir dans notre Convention: ce sont les institutions de l'Union.

L'article 14 indiquerait que l'Union dispose d'un cadre institutionnel unique; nous sortirions donc de l'ancien concept des piliers. Il disposerait que ce cadre assure la cohérence et la continuité des politiques et des actions menées en vue d'atteindre les objectifs de l'Union, tant s'agissant des actions dans les domaines de compétences attribuées à l'Union que s'agissant des domaines où les compétences appartiennent aux Etats membres et sont exercées par eux de façon conjointe. Cet article énumérerait les institutions de l'Union et il établirait le principe selon lequel chaque institution agit dans les limites des attributions qui lui sont conférées par les traités, conformément aux procédures prévues par ceux-ci. Il énoncerait une obligation pour les institutions européennes d'assurer et de promouvoir une administration ouverte, efficace et sobre. Il établirait le principe de coopération loyale dans les relations entre les institutions.

Ensuite, vous auriez les articles consacrés à chacune des institutions. Nous avons repris l'ordre du Traité de Rome, c'est-à-dire avec simplement l'article 15 qui, lui, est issu du Traité de Maastricht, qui définit le Conseil européen, sa composition et ses missions. Il y aurait ensuite un article 15 bis, après que la Convention en aura débattu, article qui pourrait établir la durée du mandat et le mode de désignation de la présidence du Conseil européen, son rôle et ses responsabilités.

L'article 16 établit la composition du Parlement européen dont les membres sont élus au suffrage universel direct. Il prévoira d'une manière ou d'une autre la création de moyens d'aboutir à un mode d'élection homogène sur l'ensemble du territoire de l'Union et il énumérera les attributions du Parlement européen; il prévoira la possibilité pour celui-ci d'introduire une motion de censure sur la gestion de la Commission et sa procédure et les conséquences d'une telle motion.

L'article suivant énumère la composition et les attributions du Conseil. Il ferait référence aux différentes formations du Conseil: le Conseil dans sa formation d'Affaires générales, le Conseil dans sa formation législative, et le Conseil dans sa formation de Conseil des ministres des affaires étrangères.

L'article 17 bis, par symétrie avec ce qui est dit pour le Conseil européen, établirait la règle pour la désignation de la présidence du Conseil, son rôle et ses responsabilités, ainsi que la durée de son mandat.

Ensuite, nous en viendrions à la Commission, dans l'article 18. Cet article contiendrait les dispositions relatives à la composition et aux attributions de la Commission, y compris le monopole d'initiative. Le texte, vraisemblablement, serait repris des articles du Traité de Rome. Selon les travaux à venir de la Convention, il reviendrait à la culture initiale, c'est-à-dire un collège restreint, soit une Commission plus nombreuse, et dans ce cas-là, il préciserait alors les règles de délibération.

L'article 18 bis, sur lequel beaucoup d'entre vous se sont déjà exprimés, établirait le rôle et le mode de désignation du président de la Commission.

L'article 19 évoquerait la possibilité d'instituer le Congrès des peuples d'Europe. Il déterminerait sa composition et la procédure pour la désignation de ses membres et définirait ses attributions. Il serait évidemment rédigé en fonction des travaux de la

Convention.

L'article 20 porterait sur la composition et les attributions de la Cour de justice et du Tribunal de Première instance; l'article 21, sur la composition et les attributions de la Cour des comptes; l'article 22, sur la composition et les missions de la Banque centrale européenne. Pour ce qui est de l'article 23, on prévoirait que le Parlement européen, le Conseil et la Commission seraient assistés d'un Conseil économique et social et d'un Comité des régions.

On passerait ensuite, après avoir défini les compétences et les institutions, à la mise en oeuvre des actions de l'Union. L'article 24 énumérerait les différents instruments dont disposeraient les institutions de l'Union pour exercer leurs compétences. La demande concernant la réduction et la lisibilité de cette liste par rapport à la liste actuelle est actuellement examinée par le groupe de travail de M. Giuliano Amato. L'article 25 décrirait la procédure législative de l'Union, en termes classiques, c'est-à-dire procédure d'adoption des lois et des lois-cadres. L'article 26 décrirait clairement les procédures d'adoption des décisions et l'article 27 décrirait les procédures de mise en oeuvre par l'Union des actes qui relèvent de sa compétence ainsi que les moyens de surveillance de leur exécution, puisqu'il a souvent été souligné qu'il y avait une lacune institutionnelle à cet égard. Enfin, l'article 28 décrirait les procédures de mise en oeuvre par l'Union des actions d'appui, y compris des programmes, ainsi que les moyens de surveillance de leur exécution.

Les trois articles suivants, 29, 30 et 31, décriraient les procédures d'application dans le domaine de la politique étrangère et de sécurité commune, dans le domaine de la politique de défense commune, ainsi que les procédures d'application en matière de police et de justice dans le domaine pénal.

Je passe sur l'article 32, parce qu'il correspond à des dispositions déjà débattues dans des traités antérieurs. Il concernerait les conditions pour l'instauration d'une coopération renforcée dans le cadre du traité, et donc les domaines exclus de cette coopération, comme le principe de l'application des obligations des Etats participants.

Un titre nouveau, qui ne figure pas dans les traités, serait le titre 6: la vie démocratique de l'Union. Beaucoup d'entre vous ont exprimé le souci d'une mise en lumière de la vie démocratique de l'Union.

L'article 33 établirait le principe selon lequel les citoyens de l'Union sont égaux vis-à-vis de toutes ses institutions.

L'article 34 énonce le principe d'une démocratie participative. Nous n'intervenons pas dans l'architecture institutionnelle des Etats membres, mais nous indiquons que les institutions assurent un degré élevé de transparence permettant aux différentes formes d'associations des citoyens de participer à la vie de l'Union.

L'article 35 reprendrait l'idée que l'élément central de l'expression démocratique est le Parlement européen. Un protocole assurerait l'élection du Parlement européen selon une procédure uniforme, ou plutôt homogène, dans tous les Etats membres.

L'article 36 établit la règle de la publicité des délibérations législatives du Parlement européen et du Conseil lorsque celui-ci siège dans sa forme législative.

L'article 37 établirait les règles de vote applicables aux délibérations des institutions de l'Union, y compris la définition des majorités qualifiées, ou éventuellement super qualifiées, et la mise en oeuvre de la possibilité de l'abstention constructive et de ses conséquences.

Il y aurait un titre 7 – beaucoup d'entre vous l'ont souhaité – sur les finances de l'Union. Cet article prévoirait que le budget de l'Union soit intégralement financé par des ressources propres, et prévoirait une procédure à suivre pour l'établissement du système de ressources propres.

L'article 39 poserait le principe de l'équilibre budgétaire ainsi que les dispositions concernant la discipline budgétaire.

Enfin, l'article 40 serait un article technique sur le budget, décrivant la procédure d'adoption du budget.

Ensuite, vous avez différents titres. L'action de l'Union dans le monde: titre 9. L'article 41 devrait établir qui représente l'Union dans les relations internationales, en tenant compte des compétences déjà exercées au titre de la Communauté. En fonction des travaux de la Convention, cet article devrait définir le rôle et le rang futur du haut représentant pour la politique étrangère et de sécurité commune. Le titre 9 serait original, puisqu'il n'existe pas dans les traités. Ce serait un article-cadre pouvant contenir les dispositions définissant une relation privilégiée entre l'Union et les Etats de son voisinage s'il était décidé de créer une telle relation.

Le titre 10, qui a donné lieu à des commentaires ou à des traductions un peu déformantes, porte sur l'appartenance à l'Union. On y rappelle d'abord que l'Union est ouverte à tous les Etats d'Europe qui partagent ses valeurs, etc. L'article 44 établirait la procédure pour l'adhésion de nouveaux Etats à l'union européenne. M. Duff a d'ailleurs fait des propositions originales dans ce domaine. L'article 45 reprendrait un article qui a été introduit dans le Traité sur l'Union européenne pour la suspension des droits d'appartenance à l'Union en cas de constatation d'une violation des principes et des valeurs de l'Union de la part d'un Etat membre. L'article 46 mentionnerait ce que l'on appelle *the right to secession* dans le droit constitutionnel anglo-saxon, et notamment américain, c'est-à-dire la possibilité d'établir une procédure de retrait volontaire de l'Union sur décision d'un Etat membre, ainsi que les conséquences institutionnelles d'un tel retrait. Comme le traité lui-même sera vraisemblablement établi pour une durée illimitée, que ce n'est pas un traité avec une échéance, il est normal, sur la longue durée, de réserver la possibilité pour un Etat, s'il le souhaite, de se retirer de l'Union.

La deuxième partie, que je ne commenterai pas, comprendra tous les chapitres des politiques et indiquera le type de compétence et les actes et procédures qui seront applicables. Il sera nécessaire d'introduire des amendements techniques aux textes antérieurs, c'est-à-dire principalement aux textes du Traité de Rome, pour mettre en conformité cette deuxième partie.

Il y aurait enfin les dispositions générales et finales, qui seraient l'abrogation des traités antérieurs, inévitable en raison de la procédure suivie, la continuité juridique par rapport aux Communautés européennes et à l'Union européenne, et ensuite des questions techniques et juridiques, le champ d'application du traité, l'indication que les protocoles annexés au traité en font partie intégrante; un point important, la procédure de révision du traité constitutionnel; l'adoption, la ratification et l'entrée en vigueur de ce traité, et la durée: il serait conclu pour une durée illimitée; enfin, on énumérerait les langues dans lesquelles le traité serait rédigé et qui feraient foi.

Voilà donc cette architecture. Comme je n'ai pas voulu qu'elle vous parvienne par morceaux, on vous a remis tout à l'heure ce texte. Mais, naturellement, vous avez besoin d'un certain délai pour l'examiner et pour y réfléchir. Aussi, nous vous proposons de travailler de la manière suivante: le débat sur l'architecture n'est pas un débat sur le contenu des différents articles, nous essayons en fait de savoir si cette architecture est convenable, adaptée ou devrait être améliorée ou amendée. Nous pourrions, demain matin, aménager notre emploi du temps afin de consacrer environ une heure et demie à vos premières réactions. Le débat sera plus approfondi par la suite. Nous aurons en effet d'autres occasions d'en débattre en profondeur au fur et à mesure du retour des rapports des groupes de travail qui vont porter sur telle ou telle partie de cette architecture. L'idée serait que le praesidium puisse présenter, au cours des premiers mois de l'année 2003, et en fonction des résultats de nos débats, des sections du projet de traité qui auront été nourries grâce aux éléments dégagés sur la base des rapports des groupes de travail et de vos débats en séance. Il faudra aussi, à un moment ou à un autre, insérer dans cette procédure de réflexion une réflexion plus précise sur l'aspect institutionnel, mais l'aspect institutionnel viendra à partir de cette démarche, précisément, sur les compétences et leur exercice. C'est ainsi que les éléments de construction viendront prendre leur place dans la structure constitutionnelle et que nous allons, lentement mais sûrement, atteindre notre but. Ainsi, la tortue sera présente au rendez-vous de l'été 2003.

Voilà, mes chers conventionnels, ce que je voulais vous dire aujourd'hui en ouvrant cette séance et en vous remettant ce document à propos duquel vous pourrez, si vous le souhaitez, faire part demain matin d'un premier ensemble de réactions.

Nous allons maintenant poursuivre nos travaux tels qu'ils ont été organisés et donc écouter les rapports de deux de nos groupes de travail. D'abord, concernant les horaires, nous travaillerons jusque 20 h, avec une pause de 17 h 30 à 18 h. Nous aurons maintenant les conclusions du groupe de travail sur les parlements nationaux, le groupe présidé par Mme Gisela Stuart, et demain matin les conclusions du groupe de travail sur la Charte des droits fondamentaux, présentées par M. Vitorino. Ce seront les débats finaux sur ces deux questions: rôle des parlements nationaux et Charte. Par contre, nous entendrons en fin d'après-midi M. Hänsch qui nous présentera en avant-première les résultats de son groupe de travail, et M. Christophersen, sur l'état d'avancement des travaux de son groupe. Demain matin, la réunion commencera à 9 h 30 par le débat sur le rapport Vitorino, et à partir de 11 h 30 aura lieu le débat préliminaire sur l'architecture du projet de traité constitutionnel. Voilà donc deux journées très chargées qui vous imposent un grand effort d'attention et de réflexion. <BRK>

1-005

DA

De nationale parlmenters rolle

DE

Die Rolle der nationalen Parlamente

EL

Ρόλος των εθνικών κοινοβουλίων

EN

The role of national parliaments

ES

El papel de los Parlamentos nacionales

FR

Le rôle des parlements nationaux

IT

Il ruolo dei parlamenti nazionali

NL

De rol van de nationale parlementen

PT

O papel dos parlamentos nacionais

FI

Kansalliset parlamentit

SV

De nationella parlamentens roll

2-001

DA

**DET EUROPÆISKE KONVENT
TIRSDAG DEN 29. OKTOBER 2002**

DE

**EUROPÄISCHER KONVENT
DIENSTAG, 29. OKTOBER 2002**

EL

**ΕΥΡΩΠΑΪΚΗ ΣΥΝΕΛΕΥΣΗ
ΤΡΙΤΗ 29 ΟΚΤΩΒΡΙΟΥ 2002**

EN

**EUROPEAN CONVENTION
TUESDAY, 29 OCTOBER 2002**

ES

**CONVENCIÓN EUROPEA
MARTES, 29 DE OCTUBRE DE 2002**

FR

**CONVENTION EUROPÉENNE
MARDI 29 OCTOBRE 2002**

IT

**CONVENZIONE EUROPEA
MARTEDI' 29 OTTOBRE 2002**

NL

**EUROPESE CONVENTIE
VERGADERING VAN DINSDAG 29 OKTOBER 2002**

PT

**CONVENÇÃO EUROPEIA
TERÇA-FEIRA, 29 DE OUTUBRO DE 2002**

FI

**EUROOPPA-VALMISTELUKUNTA
TIISTAINA 29. LOKAKUUTA 2002**

SV

**EUROPEISKA KONVENTET
TISDAGEN DEN 29 OKTOBER 2002**

2-002

FR

PRÉSIDENCE DE M. GISCARD D'ESTAING*(La séance est ouverte à 9h35) <BRK>*

2-003

DA

Chartret om Grundlæggende Rettigheder

DE

Charta der Grundrechte

EL

Χάρτης των Θεμελιωδών Δικαιωμάτων

EN

Charter of Fundamental Rights

ES

La Carta de los Derechos Fundamentales

FR

La Charte des droits fondamentaux

IT

Carta dei diritti fondamentali

NL

Handvest van de grondrechten

PT

Carta dos Direitos Fundamentais

FI

Perusoikeuskirja

SV

Stadgan om de grundläggande rättigheterna

2-004

FR

Le Président. – Mes chers Collègues, nous allons commencer nos travaux. Vous savez que nous allons écouter le rapport du groupe de travail numéro 2, présidé par Monsieur António Vitorino, sur la Charte des droits fondamentaux.

Vous avez tous reçu le rapport de ce groupe de travail concernant l'intégration de la Charte des droits fondamentaux ainsi que sur l'adhésion de l'Union à la Convention européenne des droits de l'homme.

Avant de donner la parole à Monsieur Vitorino, je voudrais le féliciter, ainsi que tous les membres de son groupe de travail, pour avoir réussi à produire un rapport très consensuel. En effet, c'était là un sujet qui méritait, peut-être plus encore que d'autres, de bénéficier d'un large consensus parmi les Européens, mais qui a soulevé au départ, un certain nombre de questions difficiles et controversées, notamment de nature juridique.

Comme le dit le rapport, ce n'était pas au groupe de travail d'anticiper sur les décisions à caractère politique, qui reviendront à la Convention elle-même et aux Institutions européennes. Vous avez, grâce à un travail très vigoureux et très minutieux, dégagé une position commune sur toutes les questions essentielles soulevées par la Charte. On peut espérer que, grâce à cet excellent travail préparatoire, un groupe de texte ou "building block" concernant les Droits fondamentaux est désormais modelé d'une façon qui rendra possible son intégration, vous le direz, sous une forme ou une autre, dans le futur Traité. Je crois que cela constituerait un progrès énorme sur notre chemin vers une Constitution jouissant de la confiance des citoyens européens. <BRK>

2-005

EN

Vitorino (CE). – Mr President, as you have emphasised yourself, the political decision on both integrating the Charter into the Treaties and having the Union acceding to the Convention on Human Rights is for the plenary of the Convention. But for the group we can say that there is an overall consensus in orientation, thanks to a common understanding in the group on several key legal and technical issues relating both to the Charter and to accession to the European Convention on Human Rights.

I would like to emphasise, as you have done Mr President, that these results were achieved thanks to the expertise commitment of all members of the group, and of the very skillful and well-prepared work by the secretariat of the Convention, whom I would like to thank personally.

As far as the Charter is concerned, all members of the group either support it strongly and see it being incorporated in a form which would make the Charter legally binding and give it constitutional status, or they would not rule out giving favourable consideration to such incorporation.

As for the concrete form of incorporation, the group is well aware that it depends on the overall Treaty architecture. But the group would submit two basic options to this plenary, either of which would serve to make the Charter binding, and give it constitutional status:

1. The insertion of the text of the Charter articles at the beginning of the Constitutional treaty,

or

2. The insertion of an appropriate reference to the Charter in one article of the Treaty combined with annexing the Charter as a specific part of the Treaty or as a separate instrument, such as a protocol.

As the report emphasises, a large majority of the group is in favour of the first option. Some members prefer the second option, and one member of the group has submitted a third option, which, in his view, could be used to make the Charter legally binding, but without giving it constitutional status.

I would say that the basic starting point of the group's work is that the Charter, and the contents of the Charter, represent a consensus that has been reached by the previous Convention, and that consensus should be respected by the current Convention. Therefore, the group did not wish to reopen the discussion on the content of the Charter. The rights and principles of the Charter have thus remained untouched. Nevertheless, the group, with reservations from two of its members, proposes certain drafting adjustments in the so-called "horizontal provisions" of the Charter. These do not change the substance of the horizontal provisions which were enshrined in the Charter by the previous Convention, but on the contrary, these new horizontal provisions serve to confirm, or even to render clear and legally watertight, certain key elements on which, in substance, the previous Convention has already agreed.

These drafting adjustments meet some members' concerns about legal certainty, and they are inserted in our report to ensure a smooth incorporation of the Charter as a legally binding document.

I would just like to call your attention to the three main aspects of these horizontal clauses:

First of all, we wish to put forward for your consideration a strengthened clause in the Charter, rendering it absolutely clear that integrating the Charter in the Treaty will not lead to an extension of the Union's competencies. This is a principle that was adopted by the previous Convention; we are just re-emphasising it.

A second element is a clause clarifying that Charter rights that are based on the common constitutional tradition of Member States will be interpreted in harmony with those traditions.

The third clause clarifies the distinction between rights and principles in the Charter: a distinction which was already an important element of the overall consensus found in the previous Convention, but which is now spelled out in more detail. These are the three key elements of the new horizontal clauses.

Of course, there are other elements of the Charter that the group wants to submit for discussion. Firstly, regarding the Charter preamble. We believe this to be a crucial element of the Charter, and therefore it should be preserved in the future Constitutional Treaty framework.

Secondly, the explanations of the Charter, which were drawn up by the Presidium of the old Convention, are not part of the Charter as such, but could be considered as an *exposé de motifs* of the Charter. We however believe that those explanations are very important for

the interpretation of the Charter, and therefore they should be taken into consideration, and be publicised more widely.

Finally, the report also signals the question to the Convention whether upon incorporation of the Charter the Treaty should still retain a reference to external sources of fundamental rights as currently found in Article 6.2 of the Treaty of the European Union - I mean the reference to the common constitutional tradition of Member States, and reference to the European Convention on Human Rights.

Now turning to the second part of our work, the accession of the Union to the European Convention on Human Rights. All members of the group either strongly support, or are ready to give favourable consideration to, the creation of a constitutional authorisation in the Treaty, to enable the Union to accede to the European Convention on Human Rights. I would like, once again, to emphasise that the Convention now only has to decide upon a possible insertion of such a constitution habitation in the Treaty. It will then be up to the Union's institutions, later on, notably for the Council taking the decision by unanimity, to decide when and how to open negotiations on such an accession, according to which technical modalities, and also to deal with the question of which additional protocols to the European Convention on Human Rights the Union should accede to. Those elements are simply subsequent elements of the major decision that we are supposed to discuss and take which is the constitutional habilitation to allow the Union to accede to the European Convention on Human Rights.

What are the main arguments that the group emphasises in favour of accession of the Union to the European Convention on Human Rights? First of all, it is a strong political signal for coherence between the Union and the greater Europe based on the Council of Europe, and the Strasbourg system of protection of fundamental rights.

Secondly, the fact that the Union accedes to the European Convention on Human Rights gives the citizens an analogous protection *vis-à-vis* Acts of the Union, as they already enjoy *vis-à-vis* legal Acts of Member States.

Thirdly, such an accession would ensure harmony in the case law of the two European Courts in human rights matters: the Luxembourg Court, and the Strasbourg Court.

We have also tried to dispel some of the fears that this option might raise. First of all, we believe in the group that such an accession does not threaten the principle of autonomy of Union law, or even the authority of the European Court of Justice. This is the opinion of the judges of both those Courts, and we believe that, at the end of the day, the autonomy of the Community legal system and the autonomy of the judicial /legal system of the European Union should be kept on the same basis as the autonomy of national law and the autonomy of national constitutional law courts and the autonomy of national supreme courts in regard to the European Convention on Human Rights. In our opinion, there is no difference between the two cases.

The group also stresses that the incorporation of the Charter and the accession to the European Convention are not alternatives but should be considered as complementary steps. The two steps together are, we believe, worthy of a constitution of the European Union.

The group's consensus was in favour of the clarification of certain key elements in this accession. First of all, we want to emphasise that accession to the Convention like the incorporation of the Charter in the Treaties, will not modify the division of competencies between the Union and the Member States. Therefore, we recommend the use of certain technical safeguards in order to make this point totally clear. There is no enlargement of the scope of competencies of the Union from the fact that the Union accedes to the European Convention on Human Rights.

Lastly, there is one final issue that has been discussed in the group, and to some extent this issue is independent from the integration of the Charter of Fundamental Rights into the Treaties, but nevertheless, we want to emphasise that if the Charter becomes legally binding, and gains constitutional status, this question of access to courts at European level may become a more relevant issue. Several members of the group have raised the issue of the possible reform of the conditions under which individuals may refer matters to the European Court of Justice on the basis of the current Article 230(4). A certain number of group members and some experts have pointed out during our discussions certain *lacunae* of judicial protection that might well exist in the current system of remedies. I would call your attention to some proposals that the European Ombudsman has put forward in this respect. On the other hand some members of the group felt that any possible reform of such a system of access to courts should be examined with great care, and that the current system of remedies should not be profoundly altered.

The group recommends this topic for further examination by the Convention in an appropriate context, together with other issues touching the statutes of the Courts, such as for instance, the present limits to the Court's jurisdiction in matters of justice and home affairs.

Finally, Mr President, I think we have achieved a conclusion that allows us to be optimistic about the final outcome of these two operations; enshrining the Charter in the Treaties and at the same time for the Union acceding to European Convention on Human Rights But it is ultimately up to you, Members of the Convention, to decide on that.

(Applause) <BRK>

2-006

FR

Le Président. – Nous remercions Monsieur Vitorino de cette présentation des conclusions du rapport émis par le groupe. Nous allons maintenant en débattre en commençant par Monsieur Lopes. <BRK>

2-007

PT

Lopes (Ch.E/G.-PT). - Senhor Presidente, caros colegas, gostaria em primeiro lugar de felicitar o senhor comissário António Vitorino pela forma como dirigiu as reuniões do grupo de trabalho sobre a Carta dos Direitos Fundamentais. Recebi testemunho directo de que as conclusões que agora nos apresentou são naturalmente, e em primeiro lugar, o resultado de um esforço do compromisso entre os seus membros, mas que esse compromisso dificilmente teria sido possível sem a sua reconhecida competência técnica na matéria, o seu profissionalismo na condução das reuniões e a sua habilidade na procura dos consensos. Apoio as recomendações submetidas pelo grupo de trabalho tais como constam do respectivo relatório. A incorporação da Carta dos Direitos Fundamentais nos Tratados de forma a conferir-lhe um carácter vinculativo e a possibilidade de lhe ser, além disso, concedido estatuto constitucional marcarão, do meu ponto de vista, um progresso assinalável para a nossa União. O ser humano passa a ser indiscutivelmente o cerne da acção da União, tal como proclama o preâmbulo da Carta, que reafirma sem margem para dúvidas os valores indivisíveis e universais da dignidade do ser humano, da liberdade, da igualdade e da solidariedade.

As propostas de adaptação técnica dos chamados artigos horizontais necessárias à incorporação da Carta nos Tratados parecem-me soluções felizes. Não lhe introduzem alterações de substância e permitem responder às diferentes culturas, tradições constitucionais e jurídicas dos vários Estados-Membros. O grupo de trabalho recomenda também que seja incluída no novo Tratado uma autorização constitucional que possibilitará a adesão da União à Convenção Europeia dos Direitos Humanos. Dado o significado constitucional dessa possível adesão, caberá, porém, às instituições, nomeadamente ao Conselho, decidindo por unanimidade, iniciar as negociações para o efeito. É também uma recomendação que me parece política e juridicamente bem fundamentada. Essa adesão não modificará a divisão de competências entre os Estados-Membros e a União. A posição individual destes perante a Convenção de Estrasburgo também não será alterada. Mas, ao mesmo tempo, será dado um importante sinal político aos países europeus da chamada "grande Europa" do verdadeiro comprometimento da União com a promoção e a defesa dos Direitos humanos. Em resumo, congratulo-me com a qualidade do relatório apresentado a este plenário pelo grupo de trabalho da Carta e com o equilíbrio e o alcance das recomendações apresentadas. <BRK>

2-008

ES

Méndez de Vigo (PE). - Señor Presidente, hace casi dos años, un día como hoy, en el salón plenario de aquí enfrente, la primera Convención aprobó la Carta de los Derechos Fundamentales de la Unión Europea, y veo a muchos amigos convencionales que estaban entonces allí.

Aquella Carta fue redactada como si fuera a integrarse en los Tratados, según la expresión del Presidente Hähnsh, pero esa decisión política pertenecía a una Conferencia Intergubernamental que decidió hacer de esa Carta una declaración política.

La delegación del Parlamento Europeo, que tuve el honor de presidir entonces, quería la integración de la Carta en los Tratados. Quería darle un valor jurídico constitucional, y ello porque la Carta es una garantía para la gente; es una garantía de que la Unión -y los Estados miembros-, cuando apliquen el Derecho comunitario, respetarán los derechos y libertades contenidos en la misma.

El Parlamento Europeo, en un informe que ha hecho Andrew Duff y que les hemos remitido a ustedes, aprobó la semana pasada en el Pleno de Estrasburgo una Resolución pidiendo nuevamente la integración de la Carta en la Constitución europea.

Por lo tanto, no podemos sino saludar y aprobar la propuesta que hoy nos hace el Comisario Vitorino, que ha dirigido, con el talento que todos conocemos, este Grupo de trabajo, al que quiero felicitar de corazón por el espléndido resultado de sus magníficas conclusiones. Estoy absolutamente de acuerdo con todo lo que dice en ellas y con los acuerdos que ha encontrado para las cláusulas horizontales.

Me gustaría obtener del Comisario, si es tan amable, alguna tranquilidad de espíritu en el sentido de que la referencia en el artículo 52.4 a las tradiciones constitucionales de los Estados miembros no supone, en la práctica, que se tengan que tener en cuenta todas las tradiciones constitucionales de los Estados miembros, como una referencia, como un mínimo común denominador indispensable.

Finalmente, en lo que respecta al armazón constitucional que ayer presentamos, en el artículo 6 de la Carta se contempla su integración en la Constitución con varias posibilidades. A título personal, creo que la Carta debe integrarse en su totalidad en una parte segunda de la Constitución europea.

Nada más, señor Presidente. He hablado menos de tres minutos porque el trabajo del Grupo Vitorino ha sido tan bueno que sólo merece nuestro agradecimiento. <BRK>

2-009

EN

Arabadjiev (Parl.-BG). - Mr President, let me start by thanking chairman Vitorino and the other members of the working group for the opportunity of participating in the working group's discussions which resulted in this excellent report.

It is not at all my idea to confuse the debate on the Charter, with the preliminary debate on the preliminary direct constitutional treaty that is to take place later this morning. For this reason, though it may appear as a first reaction to Article 6 of the preliminary constitutional treaty, it is rather as a member of the working group on the Charter that I would like to note that I do not agree that the overall picture of the future Treaty should, in itself, prejudice the decision on the concrete form of incorporation.

I therefore firmly state at the outset that I confidently, and not as a mere conformist, belong to the large majority of the group, that would prefer the first option indicated in the report; that is insertion of the text of the Charter Articles at the beginning of the Constitutional Treaty in a title or chapter of that treaty. It is by virtue of this option, that the Charter would acquire to the greatest extent, the power of a fully binding text, and would make a decisive step towards a constitution for European citizens in line with the Laeken Declaration.

It is my understanding, that the present debate has the purpose of influencing the political decision about possible incorporation, and not go into the details about incorporation techniques. It is not simply a matter of technical adjustments however to have the drafting adjustments in the horizontal articles of the Charter, as proposed by the working group, especially with a view to the distinction between rights and principles.

In my view, the Charter articles do not explicitly distinguish between provisions which contain rights, and those which contain principles. It would therefore be a responsible approach to seek clarity by means of the proposed amendments, were the Charter to be incorporated in the future Constitutional Treaty.

Without necessarily sharing the concerns of those who would prefer to have the Charter out of the Treaty, and not merely for the sake of commanding a broad consensus, it is for the sake of legal clarity that the impact of provisions of a problematic character need to be clearly determined if the Charter is to have the status of positive law.

Finally, coming from a country which has so positively experienced the effect of the Strasbourg jurisprudence, and having some personal experience in the application of the ECHR, I would prefer not to put forward here any new arguments in favour of accession to that Convention.

I think, however, that it is legally important to introduce instruments that would ensure legal certainty and coherence, and avoid situations where EU Member States are held responsible before the European Court of Human Rights for acts performed pursuant to obligations imposed on those states by EU law.

I believe that it is possible to address and find solutions to these issues in the context of the accession of the EU to the European Convention. The scope of the accession would, by virtue of the very nature of the Union, be limited to areas in which the Union already has competence under the EU Treaties. <BRK>

2-010

EN

Duff (PE). - Mr President, as Mr Mendez de Vigo has said, the European Parliament at Strasbourg last week passed with a great majority, a report that has contributed as CONV 368 to the Convention.

The purpose of this was to refresh the political story behind the drafting of the Charter, and to affirm with greater clarity than before, the Parliament's belief that the Charter carries great authority and legitimacy, and that it should now become mandatory with full constitutional status.

I think that the Parliament's resolution fully complements the excellent work of Mr Vitorino's working group, and I congratulate Commissioner Vitorino for having brokered what was clearly a complex agreement. He seems to have tolerated protracted semantic arguments with little legal effect. It seems that some of the proposed revised clauses are simply statements of the obvious, but if the revision of those clauses is the price we have to pay for the installation of the Charter at the centre of the integration process, then I and my colleagues from the Parliament will be prepared to accept them.

I would however have to say that we would greatly appreciate at the present stage of the debate, a clear commitment from the British government that they are also now prepared to accept the confirmation of a mandatory status for the Charter. <BRK>

2-011

NL

Van der Linden (Parl.-NL). - Voorzitter, ik zou graag willen beginnen met een groot compliment aan commissaris Vitorino die deze werkgroep zo zorgvuldig, deskundig en standvastig heeft voorgezeten en die een resultaat op tafel heeft gelegd dat een afspiegeling vormt van de discussies. En met collega Duff zou ik aan de Britse regering willen zeggen: hier ligt een resultaat dat rekening houdt met de wensen van de Britse regering en dat ons dus machtigt ook haar te vragen om een inspanning te doen om dit resultaat mee te onderschrijven.

Het gaat om de plaats van de grondrechten in de toekomstige Unie. Voor de legitimiteit van de Europese Unie en voor het vertrouwen van de Europese burger in de handelingen van die Unie is het respect voor de mensenrechten door de instellingen van de Europese Unie van groot belang. De Europese Unie is van een economische gemeenschap, een kolen- en staalgemeenschap, na de Top van

Rome in 1989 gegroeid naar een politieke unie, en gaat nu in de richting van een waardengemeenschap. De kern van die waardengemeenschap is juist het Handvest, dat zijn de mensenrechten. Dat is de ziel en het hart van het nieuwe Verdrag. Daarom hoort het mijns inziens ook thuis in een constituerend verdrag: hoe kunnen wij de burgers uitleggen dat een kernstuk - een "building block", zoals Vitorino het noemt - als bijlage aan een verdrag zou worden gehecht? Juist omdat het een kernstuk is, hoort het thuis in het Verdrag, ook omdat wij de burgers duidelijk willen maken welke de belangrijkste gegevens zijn van die Europese Unie. Ik ben dus een voorstander van integrale opname in het Verdrag zelf.

Met betrekking tot de toetreding tot het EVRM-Verdrag committeert de Europese Unie zich nu aan de mensenrechtenstandaards waaraan ook de lidstaten gebonden zijn. Het voorkomt dubbele standaards en selectief winkelen. Het Handvest moet niet gezien worden als een alternatief voor het EVRM-Verdrag maar als een aanvullend instrument. Het bevordert - en dat vind ik eigenlijk het belangrijkste - een rechtsruimte voor Europa in de ruimere zin des woords, met een consistent mensenrechtenbeschermingssysteem in Europa als geheel. Het is dus een natuurlijke en logische stap.

Toetreding maakt een einde aan de rechtsonduidelijkheid dat de lidstaten wel lid zijn van het EVRM-Verdrag, maar de Europese Unie niet. De burgers krijgen dezelfde mate van rechtsbescherming jegens de Unie als die welke ze nu reeds hebben jegens haar lidstaten. Toetreding zal ook de harmonieuze ontwikkeling van de rechtspraak van de beide hoven bevorderen en, wat ik heel belangrijk vind, geeft een politiek belangrijk signaal dat mensenrechten binnen en buiten de Europese Unie hetzelfde betekenen. Bovendien voldoen wij hiermee aan de resoluties van het Europees Parlement - collega Duff heeft daarover gesproken - en van de Raad van Europa. Bij dat laatste zou ik nog willen zeggen dat de Raad van Europa, met volksvertegenwoordigers uit 44 landen van Europa als geheel, zich bij meerdere gelegenheden uitgesproken heeft voor toetreding van de Europese Unie tot het EVRM-Verdrag, juist om te zorgen dat er sprake is van één rechtsruimte op het punt van de mensenrechten in Europa als geheel.

Voorzitter, het is evident dat ik er voorstander van ben dat de Europese Unie tot het EVRM-Verdrag toetreedt en dat het Handvest op die manier juridisch bindend wordt en een constitutionele status krijgt. <BRK>

2-012

EN

Hain (Ch.E/G.-GB). - Mr President, can I thank you first of all for your warm congratulations on my promotion to the British Cabinet, and if I could give you the bad news, I intend to stay on as the Government representative in the Convention, to the end.

I want to congratulate Antonio Vitorino and the group on the work they have done. There is a consensus that the Charter has never been easy to achieve, and I believe we should welcome the Working Group's achievement. I want to thank Antonio, particularly, for his own hard work, his ingenuity, and his flexibility in achieving this consensus. Their excellent report will be a key building block as we begin to look at the shape of a new constitution for Europe.

That constitution must refer to the rights of our citizens and it must be firmly rooted in the Member States' democracies, so no extension of legal competencies, as the Commissioner said himself. I am clear that without this, we cannot have a constitution that meets the need of Europe and its people.

My government has always made clear that we support the Charter as an excellent way of enshrining important values across Europe. Equally, we have made clear that there are issues of what Antonio Vitorino called "legal certainty" that would need to be resolved before we could consider its incorporation into the Treaty. We are ready now to give favourable consideration to the recommendations on this in the report.

In particular, we support the very important technical amendments to the so-called "horizontal provisions" recommended by the group, and we are grateful for them. Crucially, they help clarify its legal intentions. A legal Charter, which is unclear in meaning, would be bad for the citizens and bad for the Member States. It would be counterproductive for the European Union too. The Working Group report also speaks of further work to enrich and publicise the detailed technical explanations that are associated with the Charter. The explanations are a vital part of the overall Charter package. The Commissioner referred to this, and I hope that he may be able to say a little more today about how he proposes to take that vital work forward.

The Working Group has wisely left to the plenary the major political question about an appropriate form of incorporation. Although I agree that the final decision requires us to be clearer about the future architecture of the Treaties, I believe that we can now see the great merit in preserving the integrity of the Charter as a complete and self-contained statement of rights, freedoms and principles. This can be achieved by constructing a simple bridge between the new constitutional Treaty and the Charter, perhaps by the inclusion of an Article in the new Constitution, specifically referring to the Charter, which would then remain a separate document. This would give appropriate weight and status to the Charter, without compromising the simplicity and clarity of the Constitutional Treaty. So in that sense, we do not support the first option; we support the second one.

The rights and freedoms of our citizens, and the principles that inspire the Union, should have prominence in the new constitution we are devising. This report allows us to see how that might be achieved. To put the disagreements we have had behind us, it is to be warmly welcomed, and in specific answer to the question asked by Andrew Duff and others, provided we stick firmly to the approach here, and provided we pursue the second option, yes, we are ready to work towards incorporation. <BRK>

2-013

FR

Fayot (Parl.-LU). – Oui, Monsieur le Président, la Charte des droits fondamentaux est un signal important en vue d'une Constitution européenne. Celle-ci doit mettre le citoyen européen au centre de la construction européenne. Elle doit se préoccuper d'énoncer clairement ses droits et devoirs et les moyens pour y arriver pour autant que cela soit de la compétence de l'Europe. En incorporant, comme je le souhaite, la totalité de la Charte dans une Constitution européenne, nous en faisons un texte contraignant qui donne des droits effectifs aux citoyens communautaires. Je voudrais, pour ma part, insister tout particulièrement sur le chapitre social. Certes, nous savons qu'il y a de multiples restrictions et limitations dans le texte de la Charte lui-même.

Il n'en reste pas moins que ce chapitre est une indication importante pour le respect du modèle social européen et des principes essentiels de l'Etat social. Que nous ayons atteint cela, je voudrais le souligner également, est le grand mérite du Commissaire Vitorino, qui a déployé d'importants efforts afin d'atteindre le consensus, tâche moins facile qu'il n'y paraissait de prime abord.

Monsieur le Président, le groupe de travail a renvoyé une décision importante à la Convention elle-même. C'est, comme le prévoit la Charte elle-même dans son article 47, le droit à la protection juridictionnelle effective des citoyens. Je pense que le groupe de travail a eu raison de le faire parce que la question ne se limite pas à la protection juridique relative aux droits fondamentaux. Elle concerne également les actes communautaires en général.

On sait qu'à l'heure actuelle, il incombe aux Etats membres de prévoir des voies de recours et des procédures permettant d'assurer le respect du droit des individus à une protection juridictionnelle effective en matière européenne. L'article 230, paragraphe 4, ne permet le recours direct d'un citoyen devant la Cour de justice européenne que de façon très restrictive. Or, nous voulons rapprocher l'Union du citoyen. Dans un tel système, la protection juridique des citoyens face à la machine institutionnelle est une pièce maîtresse. A cet égard, trois réformes sont essentielles selon moi. En premier lieu, il n'est pas acceptable que la loi communautaire n'offre pas de protection juridictionnelle à des individus qui voudraient contester des mesures communautaires directement applicables. En deuxième lieu, la juridiction de la Cour de justice européenne doit être étendue à toutes les Institutions et à tous les organes de l'Union, comme le dit la Charte, d'ailleurs, expressément à l'article 51.1. Or l'article 230 ne parle que de la légalité des actes des Institutions, qui n'est qu'une partie de ce qui se passe dans l'Union européenne. Et, en troisième lieu, la juridiction doit être étendue à toutes les mesures de l'Union alors, qu'à l'heure actuelle, l'activité de la Cour est limitée. Je pense que la question se pose même si dans l'état actuel de la législation européenne, dans le domaine juridictionnel, cette législation est en accord avec les exigences de la Charte et de la Convention européenne des droits de l'homme. Je pense donc Monsieur le Président, que dans la Constitution que nous allons rédiger, devra figurer le droit du citoyen à une protection juridictionnelle effective et sans lacunes. <BRK>

2-014

FR

Duhamel (PE). – Monsieur le Président, je ne voudrais pas briser le consensus, je voudrais aider à bien l'identifier, ce qui implique une franchise nécessaire.

Un très large consensus existe pour incorporer la Charte des droits fondamentaux dans notre Union. Ce consensus existe au sein de la Convention et nos débats l'ont amplement démontré. Mais il existe peut-être encore plus dans la société civile. Impossible de ne pas l'avoir entendu. Certes, un petit nombre de gouvernements sont plus ou moins réticents. On peut comprendre que le groupe de travail ait voulu les apaiser. On ne comprendrait pas tous en tout cas que la Convention en vienne à leur céder. Ne décevons pas les citoyens européens, ne touchons pas inutilement à la Charte. Les adjonctions proposées me paraissent parfois inutiles, parfois rétrogrades, et toujours très fâcheuses.

Par exemple, sont inutiles les adjonctions des articles 52.4 et 52.5 sur les traditions constitutionnelles nationales, les législations nationales, les pratiques nationales. Rien n'y figure qui ne soit déjà dans la Charte. Inutiles sont les incantations qu'on veut ajouter aux articles 51.1 et 51.2 sur le champ d'application limité aux compétences de l'Union. L'article 51.2 dans le texte de la Charte est déjà redondant par rapport à l'article 51.1. Cette répétition avait été faite pour rassurer. A ce rythme-là, on finira par écrire 10 fois de suite que la Charte ne crée aucune compétence nouvelle, que la Charte ne crée aucune compétence nouvelle, que la Charte ne crée aucune compétence nouvelle ou, pourquoi pas dix, quinze, vingt fois.

Lorsque les propositions ne sont pas inutiles, elles peuvent devenir rétrogrades. C'est le cas de l'article 52.5 nouveau qui est proposé. Il s'agit ici de la distinction entre les droits et les principes consacrés par la Charte. Cette question est déjà traitée par l'article 51.1. Il dispose que l'Union et les Etats membres, lorsqu'ils mettent en oeuvre le droit de l'Union, respectent les droits fondamentaux tandis qu'ils en observent les principes et en promeuvent l'application. Avec le nouveau texte proposé, il serait désormais affirmé que les principes peuvent être mis en oeuvre. A première vue, on exprime une évidence. En effet, on imagine mal que les principes ne puissent pas être mis en oeuvre. Après examen, on mesure le recul et d'ailleurs la contradiction. L'article 51 inchangé affirme que l'Union et les Etats promeuvent l'application. Dans le texte anglais "they shall promote", le nouvel article 52.5 suggère de faire marche arrière, les principes peuvent être mis en oeuvre. En anglais "may be implemented". Il est évident qu'ils ne seront mis en oeuvre que lorsqu'on voudra les mettre en oeuvre. Mais voyez la portée symbolique d'un tel recul. On passe de l'affirmation de valeurs et de principes que la politique s'efforcera de mettre en oeuvre à l'énoncé étriqué d'éventualités limitées. Est-ce là le message que nous voulons envoyer sur l'avenir de l'Europe?

A sans arrêt rassurer quelque gouvernement, d'ailleurs très minoritaire, vous risquez de désespérer la société civile. Par conséquent, je propose qu'on ne le fasse pas. Ne touchons pas à la Charte. <BRK>

2-015

DE

Meyer (Parl.-DE). - Herr Präsident, liebe Kolleginnen und Kollegen! Ich habe zweimal als Gast an der Arbeitsgruppe, die Kommissar Vitorino geleitet hat, teilgenommen und dabei ist meine Bewunderung für seinen Sachverstand und sein diplomatisches Geschick - soweit das noch überhaupt möglich war - noch gestiegen! Durch die Rechtsverbindlichkeit der Charta wird ein großer Schritt gemacht, der deutlich werden lässt: Die Europäische Union ist nicht nur eine Wirtschaftsgemeinschaft und Währungsunion, sie ist auch eine Wertegemeinschaft. Mit den Worten von Romano Prodi kann man sagen: Sie ist die künftige Seele der Europäischen Union.

Was nun die Klarstellungen angeht, zu denen der Kollege Duhamel sich geäußert hat, ist meine Auffassung, dass diese Klarstellungen unnötig sind, aber ich betone auch, sie sind unschädlich, und sie waren eine Bedingung dafür, dass in der Arbeitsgruppe Konsens erreicht werden konnte; aus diesem Grunde wurde diese Klarstellung an drei Stellen, die keine inhaltliche Veränderung ist - das betone ich noch einmal -, vereinbart. Ich will aber auch eindeutig betonen, hinsichtlich der Aufnahme der Charta in die Verfassung bin ich für die erste Option. Eine Verfassung, die in ihrem Text keine Grundrechte enthält, sondern nur auf diese verweist, verdient nicht den Namen Verfassung!

Was die Präambel angeht, unterstütze ich mit Nachdruck den Vorschlag der Arbeitsgruppe, diese auch zur Präambel der künftigen Verfassung zu machen. Im Strukturvorschlag, den Präsident Giscard d'Estaing gestern vorgestellt hat, ist unter der Überschrift Präambel kein Text. Ich möchte das so verstehen, dass es bisher jedenfalls inhaltlich nichts Besseres gibt als diese Präambel. Ich erinnere daran, dass wir im ersten Konvent lange über den Inhalt der Präambel debattiert haben, die auch Gegenstand von Kompromissen war, und dieses sollten wir in diesem Konvent nicht wiederholen.

Was den Beitritt zur europäischen Menschenrechtskonvention angeht, sollten wir uns keine unnötigen Probleme bereiten. Über den Beitritt selbst entscheiden die neue Verfassung und dieser Konvent nicht, sondern es geht nur um die Möglichkeit des Beitritts. Diese Möglichkeit kann in der Verfassung sichergestellt werden, und wie Kommissar Vitorino eben gesagt hat, bedarf es dann zur Aufnahme von Verhandlungen nach geltendem Recht eines einstimmigen Ratsbeschlusses.

Diese Grundrechtecharta als rechtsverbindliches Dokument ist ein wichtiges Signal an die neuen Mitgliedsländer. Dort gibt es viele Menschen, die fürchten, was aus Brüssel an Machtausübung auf sie zukommt, und denen können wir gemeinsam sagen: Ihr kommt in eine Gemeinschaft, die unter der Herrschaft der Menschenrechte steht, und wenn aus Brüssel eure Rechte verletzt werden, dann werdet ihr dagegen geschützt durch die Grundrechtecharta! Ihr könnt Vertrauen haben, wenn ihr in die Europäische Union kommt!
<BRK>

2-016

ES

Dastis (Ch.E./G.-ES). - Señor Presidente, quisiera, en primer lugar, felicitar al Comisario Vitorino por la excelente labor que ha desarrollado presidiendo el Grupo de trabajo y apoyar resueltamente la conclusión de incorporar la Carta a nuestro futuro Tratado constitucional.

En cuanto a la modalidad concreta de esa incorporación, creo, a la vista de la arquitectura de Tratado Constitucional que nos fue presentada ayer, que la que mejor se adapta es la modalidad segunda: la de un artículo en dicho Tratado y la inclusión de la Carta como documento anejo.

Quisiera también apoyar el esfuerzo de compromiso realizado en la modificación de la redacción de las cláusulas horizontales. Creo que es un esfuerzo que vale la pena para lograr el consenso que todos deseamos. En este contexto, quisiera resaltar la importancia de las explicaciones para suministrar una interpretación auténtica de la Carta y la necesidad de reforzar la seguridad jurídica, evitando que su contenido quede afectado de manera indirecta por políticas comunitarias en el futuro.

En cuanto a la adhesión de la Unión al Convenio Europeo de Derechos Humanos, creemos apropiado que se incluya una cláusula permitiendo, habilitando para que se tome esa decisión en el futuro, pero esa decisión deberá ser tomada por la Unión en el futuro, una vez que se estudie si es posible hacerla sin menoscabar la autonomía del Derecho comunitario, sin modificar el reparto de competencias entre la Unión y los Estados miembros y sin afectar a la posición de los Estados miembros en dicho Convenio. <BRK>

2-017

EN

Roche (Ch.E./G.-IE). - Thanks first of all to Commissioner Vitorino and to his colleagues for a very constructive, careful and thoughtful piece of work.

The protection and promotion of human rights must be at the very heart of the European project. As a past human rights fellow of the United Nations, this is particularly significant to me. The Charter remains a clear and comprehensive statement of where we stand collectively. It is an important and an accessible listing of the values, principles which underpin the Union's identity and its purpose. This is particularly important at a period of change.

The Charter's future status is a central part of the work of the Convention. It is a question that gives rise to complex issues. We need to ensure that not only are human rights fully protected and respected, but that this is done in a way that is clear and effective. Many of

these difficult issues are identified and teased out in the excellent work of the working group. I welcome, in particular, the progress that has been made in relation to the Charter's horizontal provisions which define its scope and application. In my view, the Working Group took the right approach, by not reopening questions of substance in the Charter, while producing or proposing amendments to further confirm key elements of the overall consensus on which the Convention has agreed.

This is very useful and solid work, and will give enormous benefit to the wider Convention when it comes to drawing up the final recommendations.

The working group's mandate made it clear that it was not to get involved in the question of whether the Charter should be incorporated. Rather it was to assume a political decision to move towards incorporation, and to examine the specific matters that would then arise. The political decision on the Charter's place, in any new Treaty remains to be taken and clearly, depends crucially on the nature and the scope of the Treaty itself. There is no need to rush to judgement at this stage. The report has set out proposals that merit careful and thoughtful consideration.

There is also some further technical work to be done, including the status of the explanatory notes, on the articles sources, produced by the Charter Convention Presidium. My immediate preference, as regard to the techniques of incorporation, would be for further explanation of the approach set out at Option B. This would involve insertion of an appropriate reference to the Charter in an Article of the Treaty. This, I believe would be the most fruitful approach.

The group, of course, also studied the question of accession to the European Convention on Human Rights. Again, I welcome the very careful, and thoughtful work that has been done on this issue. Broadly, I can support, in principle, and subject to further detailed work, the concept of the European Union accession to the Convention, as set out in the report.

Finally, I would like to reiterate my strong support for the Charter, as an expression of the rights and values which underpin this Union, and to which we are all committed. The question this Convention must address, is not whether we are for or against Human Rights, there can be absolute no ambiguity in that regard, but rather how it can best be rendered effectively and meaningfully for our citizens. <BRK>

2-018

FR

Le Président. – Merci beaucoup Monsieur Roche. Vous avez réussi un tour de force et vous avez arrêté la pendule. Je signale au service de la séance qu'il peut la remettre en marche puisque vous avez parlé 2 minutes 34 mais qu'ensuite ça s'est arrêté. Evidemment, il ne faudrait pas que cela serve de précédent aux orateurs suivants. <BRK>

2-019

DE

Einem (Parl.-AT). - Herr Präsident! Vier kurze Anmerkungen. Erstens, ich war Mitglied der ersten Charta-Konvention, also des ersten Konvents zur Arbeit an der Charta, und nach dem Verständnis, das wir dort hatten, ist die Charta der Ausdruck der gemeinsamen Verfassungstraditionen der Mitgliedstaaten in einer aktualisierten und im Text zusammengefassten Weise. Daher verstehe ich den Artikel 52 Absatz 4 der neu formulierten Übergangsbestimmungen nicht wirklich, denn er könnte eine Einschränkung auf nationale Besonderheiten nach sich ziehen.

Zweitens, Artikel 52 Absatz 5 wie von der Arbeitsgruppe vorgeschlagen, ist für mich entweder eine dramatische Einschränkung der Charta und ihrer Anwendbarkeit oder überflüssig. Ich glaube, darüber muss man noch einmal reden. Drittens, nach unserer Auffassung muss die Charta ein Bestandteil der europäischen Verfassung sein, das heißt, der Text muss in der Verfassung sein. Viertens, ich möchte durchaus anerkennen, dass die Regierung des Vereinigten Königreichs ihre Haltung weiter entwickelt hat. <BRK>

2-020

DE

Kaufmann (PE). - Herr Präsident! Ich möchte zu den Erläuterungen und zu den horizontalen Artikeln etwas sagen. Ich selbst war damals Mitglied im Grundrechtekonvent, und ich habe in Bezug auf die Erläuterungen die Verwirrung miterlebt, die damals die Präsentation dieses Dokuments ausgelöst hat. Der Grundrechtekonvent selbst hat damals ausdrücklich abgelehnt, sich diese Erläuterung als Dokument zu eigen zu machen. Deshalb steht auch in dem Dokument mit der Nummer Konvent 49 ausdrücklich: "Die vorliegenden Erläuterungen sind vom Präsidium in eigener Verantwortung formuliert worden." Das heißt, die Erläuterungen sind kein Arbeitsdokument des Grundrechtekonvents, und sie gehen auch nicht auf einen Beschluss des Grundrechtekonvents selbst zurück. Insofern muss ich sagen, dass für mich nicht akzeptabel ist, wenn jetzt diese Erläuterungen in einer besonderen Weise hervorgehoben werden und aus meiner Sicht damit nachträglich durch die Hintertür die Erläuterungen eine Legitimation erhalten sollen, die der damalige Konvent ihnen nicht gegeben hat.

Zur horizontalen Bestimmung, vor allen Dingen zum Artikel 52: Wir haben im damaligen Grundrechtekonvent heftig darüber gestritten, ob die Charta zwischen subjektiven Rechten und objektiven Grundsätzen unterscheiden solle. Damals war allen Beteiligten klar, dass Grundrechte als objektive Grundsätze zwar gleichfalls verbindlich sind, dass aber Einzelne ihre Einhaltung nicht selbst

einklagen können würden. Im Grundrechtekonvent wurde damals ein sehr wichtiger Kompromiss erzielt. Die große Mehrheit des Konvents, die keinesfalls bloß objektive Grundsätze in der Charta sehen wollte, stimmte damals zu. Im Gegenzug erklärten sich aber andere Konventsmitglieder damit einverstanden, dass man in den horizontalen Bestimmungen darauf verzichtet, zwischen Rechten und Grundsätzen zu unterscheiden. Deshalb muss ich sagen, habe ich mich sehr gewundert über den Vorschlag, der jetzt von der Arbeitsgruppe ausgearbeitet wurde. Ich teile die Meinung von Herrn Duhamel, dass es hier um einen Rückschritt handelt und nicht, wie Herr Meyer sagt, nur um eine Klarstellung der horizontalen Bestimmung. <BRK>

2-021

ES

López Garrido (Parl.-ES). - Señor Presidente, quiero destacar que en el Grupo de trabajo al que he tenido el honor de pertenecer ha habido un amplísimo consenso sobre tres elementos esenciales de la Carta de los Derechos Fundamentales.

Primero, que su contenido es el que se acordó hace dos años y que tiene el apoyo unánime de esta Convención. Segundo, que se trata de una Carta que va a tener un carácter legalmente vinculante, jurídicamente vinculante, e invocable ante los Tribunales. Tercero, que tiene un estatus constitucional.

Sobre esto ha habido un amplísimo consenso, una amplísima mayoría en el Grupo de trabajo y -es importante destacarlo- porque, sin duda, la Carta de los Derechos Fundamentales constituye el mayor elemento de vinculación, de contacto con los ciudadanos que va a haber a lo largo de los trabajos de esta Convención. El mayor elemento seguramente de legitimación y de acercamiento de Europa, de la construcción europea, a los ciudadanos. Por cierto, una construcción europea que en estos momentos coincide con una ampliación a países, que en algunos casos no han tenido una larga tradición democrática. Va a ser importantísimo para ellos entrar en una construcción que tiene esa base de consolidación democrática y de defensa de derechos fundamentales.

Y además, la Carta de los Derechos Fundamentales es un pilar básico de la futura Constitución Europea. Desde la Revolución francesa sabemos que una Constitución, básicamente, proclama dos cosas: derechos fundamentales y división de poderes. Los derechos fundamentales están en esta Carta, que recibirá sin duda un espaldarazo de este Pleno, y falta un elemento básico, sin duda importante, que es la división de poderes. Pero forma parte de los valores de Europa una Carta de los Derechos Fundamentales, en la cual, por cierto, se incluye un capítulo esencial que es la solidaridad, que no he visto reflejado en el esqueleto de Tratado Constitucional que ayer se presentó a esta Convención. La solidaridad debe formar parte de los valores de la Unión Europea y no he visto reflejado esto en los primeros artículos del proyecto de Tratado Constitucional.

Creemos que el preámbulo de la Carta debe insertarse como parte del preámbulo de la Constitución Europea y que, además, la Constitución Europea debe tener una parte visible, una primera parte muy visible, que es la Carta de los Derechos Fundamentales. Creo que debe ser la parte primera de la Constitución y no ser relegada a un Protocolo, como si quisiéramos ocultarla, hacerla difícil de ver para los ciudadanos. Los ciudadanos tienen que ver, al leer la Constitución, que lo primero que hay es una Carta de los Derechos Fundamentales; por eso, claramente apoyo la primera opción: que forme parte de la Constitución Europea y que no sea relegada, como si fuera algo inconfesable, algo que queremos ocultar, a una parte secundaria.

Por último, en cuanto al debate sobre las cláusulas horizontales, yo creo que son innecesarias las modificaciones que se han hecho, pero me parece que no alteran esencialmente el texto. Debemos firmar el Convenio Europeo de los Derechos Humanos -es una forma de homogeneizar la protección de los derechos humanos en Europa- y el control judicial de los derechos humanos de la Carta de los Derechos Fundamentales tiene que ser explicado, detallado y precisado, y en ese sentido apoyo la propuesta que ha hecho Ben Fayot anteriormente.

Por último, quiero decir que todo esto me lleva a apoyar el informe final, elaborado en ese Grupo de trabajo, que ha requerido un alto grado de consenso, en el que ha habido concesiones de todas las partes, y en donde hay, sin duda, un trabajo importante de fondo del Comisario Vitorino, al que quiero agradecer su trabajo eficiente y lúcido. Estoy convencido de que este Pleno va a dar el espaldarazo a la Carta de los Derechos Fundamentales, que convertirá definitivamente a esta Convención en una asamblea constituyente. <BRK>

2-022

FR

Le Président. – Je voudrais simplement signaler à Monsieur López Garrido qu'on parle de solidarité dans le titre de l'article 4 et que dans les articles article 2 ou 3, la référence à la solidarité sera explicite. Donc, il n'y a pas de lacune à cet égard. Nous n'avons pas tout mis dans le détail. Mais naturellement, cette notion fondamentale ne sera pas oubliée. <BRK>

2-023

EN

Kutskova (Gouv.-BG). - Mr President, dear colleagues, I am glad to express my support for the final report, as member of the working group on the Charter of Fundamental Rights. I am glad that we succeeded in producing a document of normal majority and minority opinions. This now makes the consensual decision of the incorporation of the Charter possible. Finding such a balance was not an easy task. Therefore, let me congratulate all the members of the working group for their constructive attitudes, and especially Mr Vitorino, for his excellent and diplomatic chairmanship.

As already stated by the Bulgarian Government, we favour the incorporation of the Charter of Fundamental Rights into the future Constitutional Treaty, thus giving it a legally binding character. The European citizens will support a constitution where the protection of fundamental rights is given a central place.

As for the technique for the incorporation of the Charter, both suggested options have comparative advantages. We would, however, prefer the B option, which would provide a more balanced and concise institutional text. Let me emphasise the role of the drafting adjustments to the Charter's general provisions, should it be incorporated. Without touching on the substance of the Charter's provisions, these adjustments could be very important for the legal certainty in the area of human rights. Strengthening the horizontal clauses might prove to be an essential consensus-building element. These provisions guarantee the application of subsidiarity.

Another point concerns the explanations of the Presidium of the previous Convention, as well as those of the working group itself. On the one hand, these are very helpful to candidate countries, who did not participate in the previous Convention. On the other hand, although having no legal value, they do have particular importance for the interpretation of the Charter provisions and, in particular, for the distinction between rights and principles.

The Group left the question open, as to whether the Constitutional Treaty should refer to the external sources of inspiration for fundamental rights - in particular, the constitutional traditions, and the European Convention on Human Rights. In my view, we should bear in mind that the Union exists in a dynamic environment, in which human rights will continue to develop. Therefore, referring to external sources would help enrich Union law, and give additional protection to its citizens.

Finally, endowing the Union with a single legal personality will almost mean that it will have the constitutional right to accede to the European Convention on Human Rights. The modalities of accession should be discussed only as a complementary step to the Charter's incorporation. <BRK>

2-024

EN

MacCormick (PE). - Mr President, since I am somebody who does not spend all his time praising the works of the Government of his own country, I would particularly like to express my gratitude to Peter Hain, for saying so clearly today, that he, on behalf of the United Kingdom government, would be willing to accept this text, with the adjustments that have been suggested.

That really is an important step forward, and if I may say so, in her presence, it is also important to pay respect to Baroness Scotland, who in the working group was very good-natured and persuaded us, including sceptics like myself, that some adjustments of this kind were necessary. That really was a very important step forward.

After all, we have spent quite a lot of time discussing how important it is for the institutions of the Union to be limited in respect of the principles of subsidiarity and the principle of proportionality. It is, of course, important to have these limits on the institutions of the Union. But how absurd it would be, if we had them, but did not at the same time require the institutions of the Union, under binding force of law, to respect the fundamental rights of the citizens of the Union. That is absolutely critical to constituting a new European Union in a proper manner. Now that we have taken the steps that the working group under Commissioner Vitorino has recommended, we are in a position to do just that.

Secondly, the greatest fear, and I think, the best founded one, of those who were doubtful about the idea of a Charter of Rights as a binding part of the constitution, was that it could undermine the Court at Strasbourg, and the valuable tradition of the European Convention on Human Rights, and as Commissioner Vitorino said, the greater Europe that has subscribed, all along, to the Convention on Human Rights. I think that this document guarantees that the incorporation of our own Charter, internal to Union law will not externally undermine the European Convention on Human Rights, or the Court at Strasbourg. This is also something that many of us hold absolutely vital and fundamental.

In that respect, the proposal that having recognised the personality of the Union, we should encourage the Council to accede to the Convention is all-important, and in all these respects I would like to give my full-hearted support to the proposals of the working group, and thank Mr Vitorino for the work he did in chairing it. <BRK>

2-025

EN

Kocaoglu (Parl.-TR). - Mr President, effective protection of fundamental rights is not only the main moral obligation at the EU, but also one of the most important sources of its legitimacy.

However, unlike the situation in its Member States, the protection of fundamental human rights within the EU, has so far been an issue which has lagged behind developments in other fields, for example the completion of the internal market. As the EU is increasingly becoming part of the day-to-day lives of the millions of people living in Europe, the protection of fundamental rights of individuals against its acts is highly relevant in the debate on EU legitimacy.

There are two components for a better protection of fundamental rights within the EU. Firstly, a clear-cut catalogue of fundamental rights of a constitutional nature and secondly, an external control of its implementation. The former involves the incorporation of the

Charter of Fundamental Rights into the Constitutional Treaty, whereas the latter entails the accession of the EU to the European Convention on Human Rights.

For this reason, I welcome the report of the working group, and the recommendations made therein. The members of this Convention must now discharge their historic responsibilities, by expressing a strong political will to make it happen.

Once a political consensus to this end is reached among the members of the Convention, the remaining legal and technical issues, as successfully addressed by this report, are I believe, surmountable. In order to reduce potential legal complexities, I would suggest the incorporation of the Charter by way of a reference in an Article of the Constitutional Treaty, to which the Charter itself, is attached.

I generally support the idea behind the proposed drafting adjustments in the horizontal articles of the Charter. However, given their highly technical nature, I think they should be revisited, particularly after the final decision of the Convention regarding the exact form of incorporation. I am in favour of the continuation of the reference to external sources of inspiration for fundamental rights, currently made in Article 6, paragraph 2 of the EU Treaty.

I understand the approach of the report, but I think the contents of the Charter should be left intact, as it was endorsed by the Nice European Council. However, when we talk about fundamental rights, we cannot ignore the reality of the 10 million long-term residents of third country nationals within the EU. This issue should also be addressed by the Commission.

As for the accession of the EU to the European Convention on Human Rights, I believe that the first bold step must be taken by this Convention. The Union must open itself to the control of the pan-European human rights system of the Council of Europe, as has long been done by the Member States themselves. I support all the arguments in favour listed within the report. <BRK>

2-026

FR

Haenel (Parl.-FR). – Merci, Monsieur le Président. Concernant la Charte tout d'abord, je ne peux qu'applaudir aux conclusions du groupe pour avoir moi-même participé aux travaux de la première Convention. Je ne pourrais pas imaginer que notre Convention ne se prononce pas en faveur d'une intégration de ces dispositions sous une forme qui les rendent juridiquement obligatoires. Nous le disions à l'époque. La Charte rappelle les fondations de l'Europe, les fondamentaux du pourquoi on est ensemble. Elle était considérée comme le préalable à la démarche constitutionnelle. Pour ma part, je tiens à le souligner auprès de mon ami Monsieur Vitorino, je tiens beaucoup à ce que tout le préambule soit incorporé dans un article premier pimpant de la Constitution avec la même valeur que l'ensemble des articles. En ce qui concerne le statut des explications, je me souviens que dans cette première Convention, j'étais le voisin de Lord Goldsmith et que ce dernier avait considéré qu'il ne donnerait son accord que s'il y avait des explications qui, par la suite, devaient éclairer la lecture des articles de la Charte et, notamment, en faciliter l'interprétation. Par conséquent, il est très important qu'on rementionne aujourd'hui ces explications qui font, en quelque sorte, partie intégrante de l'ensemble du dispositif.

Pour ce qui est de l'adhésion à la Convention européenne des droits de l'homme, en revanche, le rapport du groupe de travail me laisse dans l'incertitude. En effet, je suis réservé. En matière de protection des droits, nous avons tous tendance à penser que deux garanties valent mieux qu'une. La Charte constitue une première garantie, l'adhésion à la Convention européenne en ajouterait une seconde. De ce fait, quel est celui d'entre nous qui ne serait pas tenté dans un premier mouvement, un mouvement d'ensemble bannière au vent, de répondre qu'il faut ajouter cette deuxième protection à la première. Etant juriste de formation, je sais par expérience que dans les matières juridiques, le mieux est parfois l'ennemi du bien. Ce qu'il faut avant tout, c'est que le citoyen comprenne les voies de recours qui lui sont offertes et qu'il puisse obtenir assez rapidement la réponse du juge. Je m'interroge à ce sujet sur les effets que pourrait avoir l'adhésion à la Convention européenne des droits de l'homme. Je me pose deux questions. Premièrement, a-t-on bien mesuré les conséquences de cette adhésion sur l'allongement des délais de procédure? J'ai fait mes calculs. En moyenne, on arrive à une dizaine d'années. Le problème est de savoir si on y adhère pour les juristes et les avocats ou pour les citoyens. Deuxièmement, dès lors que les dispositions de la Charte deviennent contraignantes, l'adhésion à la Convention apporte-t-elle une protection nouvelle réelle et cela compense-t-il le surcroît de complexité du système puisque toute la Convention est dans la Charte. Les explications orales que nous a données tout à l'heure sur cette deuxième partie le Commissaire Vitorino ont bien montré la complexité du sujet et les interrogations qui persistent. A mon avis, le travail n'est donc pas fini et ce n'est qu'après un examen approfondi de ces questions que nous pourrions nous prononcer sur l'adhésion à la Convention qui n'est pas faite, je le répète, pour les juristes mais pour les citoyens. <BRK>

2-027

DE

Rack (PE). - Herr Präsident! Fast alles, was zum wichtigen Thema europäische Grundrechte zu sagen ist, hat Kommissar Vitorino bereits gesagt, nachzulesen auch im ausgezeichneten Schlussdokument. Er hat sich in Form und Inhalt als ein würdiger Nachfolger von Roman Herzog erwiesen. Der verdiente Applaus im Haus hat gezeigt, dass auch in unserem Konvent schon jetzt insgesamt Konsens besteht, die Charta *telle quelle* als verbindlichen Teil unserer künftigen Verfassung zu verlangen. Ich möchte in diesem Zusammenhang anmerken, dass die Variante A jedenfalls für die Mitglieder der Arbeitsgruppe die eindeutig optimale war und alles andere nur *second best*-Lösungen sein können.

Ein zweiter, aus unserer Sicht wichtiger Punkt ist das harmonische Miteinander der beiden Gerichtshöfe in Straßburg und Luxemburg und das, was Kollege Haenel gerade jetzt angesprochen hat, werden wir dabei berücksichtigen müssen. Ein paar wenige zusätzliche

Bemerkungen erscheinen mir angebracht. Zunächst eine positive: Erstmals hat der Grundrechtechartatext eine starke Unterstützung auch durch die Vertreter der Beitrittsländer gefunden. Seinerzeit hat es nur eine Anhörung in unserer Arbeitsgruppe gegeben, und auch jetzt, in allen Wortmeldungen hier im Konvent, hat es einen ausdrücklichen Konsens gegeben, und ich glaube, das ist wichtig und gut so.

Eine kritische Anmerkung zur Arbeit der Arbeitsgruppe: In vielem hat sich bei einigen von unseren Kollegen gezeigt, dass sie die Funktion als Regierungsvertreter vielleicht ein wenig missverstehen. Selbst wenn und wo jemand Regierungsvertreter ist, kann er in diesem Konvent keine Vetomöglichkeit haben, und er soll sie auch nicht nutzen, um taktische Vorteile zu verlangen. Ich bin sehr froh, dass Minister Hain jetzt wenigstens der vollen Verbindlicherklärung zugestimmt hat. Ich sage nochmals Variante I oder Variante A ist die bessere, und die Artikel 52, Absatz 4 und 5 wären eigentlich auch entbehrlich.

Eine Schlussbemerkung: Wir werden die Zugänglichkeit zu den Gerichten in Luxemburg verbessern müssen. Artikel 203 Absatz 4 ist zu wenig. Hier brauchen wir mehr. <BRK>

2-028

EN

Oleksy (Parl.-PL). - Mr President, we agree that the question of the incorporation of the Charter of Fundamental Rights, and the accession by the European Union to the European Convention on Human Rights is not a technical one. It should be perceived as a key element of the constitutional process of the Union. It concerns the philosophy of the Union seen as a Community of values.

I strongly welcome the remarkable work carried out by the working group, chaired by Commissioner Vitorino. This report is undoubtedly a well-balanced document. I am in favour of the incorporation of the Charter into the future single Constitutional Treaty in a form that would make the Charter legally binding.

The incorporation of the Charter will bring the Union closer to its citizens and allow them to better identify with the goals of the Union. I also support the working group recommendation to enable the Union to accede to the European Convention on Human Rights. It will make the European Human Rights protection system more credible and coherent. The level on which Union's citizens' fundamental rights are protected cannot be lower than the system of protection guaranteed by the European Convention on Human Rights.

Similarly, the proposal to amend Article 52 of the Charter is a step in the right direction, as it takes into account the constitutional traditions of the Member States. It is especially worth mentioning that the incorporation of the Charter, and the possible accession by the EU to the European Convention on Human Rights, does not modify the current division of competencies between the Union and the Member States, and will not lead to the extension of the Union's competencies.

I also agree with the need to refrain from any further discussion regarding the contents of the Charter as agreed by the previous Convention. Certain technical adjustments will however have to be made.

Finally, let me stress how important it is for Poland, as Mr Meyer also stressed, that the fundamental rights of the Union, of which it will soon be a member, be guaranteed and protected in a coherent and effective manner. <BRK>

2-029

EN

Kirkhope (PE). - Mr President, there is no doubt, that this Charter is a significant document. But as a member of the previous Convention, I had concerns then, as I still have now, both in terms of its content, and the use to which it may be put, that is the legal status it might find itself in.

I was particularly concerned about some of the contents regarding the continuing powers of national governments and national parliaments in employment and social areas, for instance. I worry that some people here are talking as if it were the easiest thing in the world to incorporate this document. I think the British government owes us an explanation. I know we have already had one this morning from their minister. But, it is far from clear whether they are now saying that they agree that legal status should be given to this within a Treaty. This is completely unclear, and I would like to know their position.

Personally, I feel that this is a significant and important document. Parts of it, in particular those relating to specific human rights already covered by the European Convention, should be confirmed. All Member States, and Accession States have signed the Convention, and therefore we are entering into negotiation areas of considerable complexity. In order to get the support of the people of Europe, the ultimate Treaty we are looking for needs to be as straightforward as possible.

My final point, is as follows: it is important that the individual citizens of Europe have the ability to deal with their complaints, in a more hands-on way, whether it be through the Court of Justice, or the Court of Human Rights. The Court of Human Rights cannot deal with this, as they are Council of Europe based. But the Court of Justice, if it is to have further capacities, must allow for the establishment of a proper Ombudsman in Europe, who would have the powers, and ability to deal with the direct complaints of the citizens of Europe. <BRK>

2-030

EN

Serracino-Inglott (Gouv.-MT). - Mr. President, I would simply like to suggest the addition of some vision for the future formulation of the Constitution Treaty, which I must say, is a brilliant intellectual *tour de force* achieved by Mr Vitorino's working group.

I suggest that in the article in the Treaty referring to the Nice codification, that Europe explicitly commits itself to an on-going process, aimed at going well beyond what is now being agreed. I support this option as being the most acceptable form for the same reasons as previously stated by Mr Meyer. In fact, at this point, due to a paradox in the Nice text, we really cannot improve on what the group is proposing.

On the one hand, the Nice text provides the most extensive coverage of human rights, especially in the field of socio-economics. On the other hand, it often expresses this in terms that are not practically enforceable by any court. It would be an obvious folly to try to sort out this paradox at this time.

I would like to ask, at this point of the constitution-making process, whether Europe should only commit itself to going beyond Mr Vitorino proposals at some later date? Surely, European citizens are entitled to all of the rights recognised by the European constitutions, including socio-economic rights, which are not protected in Strasbourg. These rights should not only be guaranteed vis-à-vis the European institutions, or national states implementing European law, but in general. This would of course, depend on the overly generic phraseology currently used in the Nice text being revised in due course. <BRK>

2-031

EN

Brejc (Parl.-SI). - Mr President, Mr Vitorino and his group have prepared an excellent report. In part B, the members of the working group either strongly support, or are ready to give favourable consideration to a constitutional authorisation, enabling the European Union to accede to the European Charter on Human Rights. I am not a member of this group, yet I strongly support this suggestion. I would like to mention some political and legal arguments in favour of accession.

Accession would strengthen the protection of European citizens who are presently denied the right to bring complaints against the EU institutions before the Strasbourg Court. It would avoid the situation where there are alternative, competing and conflicting human rights protection systems, within the European Union and in Europe in general. Dual protection systems would weaken the overall protection offered and undermine legal certainty in the field of human rights in Europe.

For the new Member States, it should be very important, at least at a symbolic level, to see the Charter as part of the Constitutional Treaty. Mr President, I hope the Convention will support the idea of accession to the European Charter on Human Rights<BRK>

2-032

IT

Fini (Ch.E/G.-IT). - Signor Presidente, innanzitutto ringrazio anch'io il Commissario Vitorino per le conclusioni del suo gruppo di lavoro. Sappiamo che non era facile raggiungere un consenso su una soluzione che rafforzasse la Carta come *building block* centrale nel sistema delle regole europee, senza però alterare il riparto di competenze tra l'Unione e gli Stati membri.

Mi sembra che sia stata molto opportuna la precisazione degli articoli 51 e 52 rafforzati, secondo cui il campo di applicazione della Carta è quello relativo al diritto e alle competenze dell'Unione. Credo che in questo modo possano, per il futuro, evitarsi delle contraddizioni tra le disposizioni della Carta e le legislazioni nazionali degli Stati membri.

Per quello che riguarda le modalità dell'incorporazione, il gruppo di lavoro ci indica due strade: o l'incorporazione della Carta nel preambolo o in un titolo del nuovo Trattato, oppure l'inserimento di un riferimento alla Carta in un articolo. Mi sembra che questa scelta non vada drammatizzata e che si possa ragionare in termini di opportunità.

La prima opzione presenterebbe, a mio giudizio, delle questioni e dei problemi tecnici. Basti pensare al fatto che inserire nel Trattato costituzionale 54 articoli - tanti ne contiene la Carta - determinerebbe certamente un notevole appesantimento del nostro lavoro. In secondo luogo, mi sembra difficile contestare che inserire 54 articoli significherebbe, per forza di cose, modificare o abrogare quegli articoli della Carta o del Trattato che in qualche modo sanciscono gli stessi principi.

E' questa la ragione per la quale la mia preferenza va alla seconda opzione, cioè all'integrazione, attraverso un riferimento in un articolo del Trattato, proprio perché questo comporterebbe, tra l'altro, la possibilità di non modificare il testo della Carta, così come ha auspicato il gruppo di lavoro.

Questa è la ragione, in sintesi, per cui il governo italiano ritiene preferibile all'incorporazione testuale quella opzione che il gruppo di lavoro definisce come riferimento appropriato. <BRK>

2-033

NL

Van Lancker (PE). - Voorzitter, graag vijf puntjes. Eerste punt, ik zou graag de werkgroep en de heer Vitorino feliciteren voor de consensus die ze gevonden hebben om het Handvest op te nemen in de grondwet en de toetreding tot het Europees Verdrag voor de rechten van de mens mogelijk te maken. Eerlijk gezegd zou ik het ongelooflijk vinden als we erin zouden slagen een grondwet te maken zonder te verwijzen naar de grondrechten. Persoonlijk vind ik, zoals de meerderheid van de werkgroep en de meerderheid van de collega's die zich hier hebben uitgesproken, dat het Handvest het best integraal in de grondwet opgenomen kan worden en niet in een bijlage of in een protocol. Ik begrijp eigenlijk niet goed de bezwaren van Peter Hain, die als voorwaarde stelt dat de Britse regering akkoord moet gaan. Het zou qua juridische afdwingbaarheid geen verschil maken, maar qua zichtbaarheid des te meer.

Ten tweede, een grondwet heeft een preambule nodig die de waarden expliciteert. De preambule van het Handvest doet dat en ik zou echt willen aanbevelen om die preambule dan ook op te nemen in de ontwerpgrondwet die wij gaan maken. Ik wou trouwens ook de voorzitter danken voor het feit dat hij nu al gezien heeft dat we dan consequent moeten zijn en ook artikel 2 van het ontwerp dat we gisteren gekregen hebben, moeten aanvullen met de notie solidariteit.

Ten derde, ik vind het juist dat het Handvest de bevoegdheden van de Unie niet impliciet moet uitbreiden. Maar het moet wel een dynamisch document blijven, dus moeten we vermijden dat horizontale artikelen het Handvest gaan betonnen. Ik heb één groot probleem met de technische aanpassing van namelijk artikel 52, paragraaf 5 maar op een ander punt dat collega Duhamel. Rechten en principes van het Handvest moeten de toetssteen zijn voor alle optreden, niet alleen daar waar de Unie de principes implementeert, maar in alle handelingen van de Unie en de lidstaten in het kader van het recht van de Unie. Ik denk dat de tekst die nu in zin 2 staat daar haaks op staat en de beperking van het Handvest op zich inhoudt.

Tot slot, voorzitter, het Handvest heeft de grote verdienste dat het rechten formuleert die niet alleen gelden voor de burgers die de nationaliteit hebben van de lidstaten, maar voor alle mensen die duurzaam verblijf hebben in de Unie. Ik denk dat wij daar ook onze conclusies moeten uit trekken en de moed hebben om in artikel 5 van het ontwerp dat u ons gisteren overhandigd hebt, het burgerschap te definiëren op basis van residentie, van verblijf, van bijdrage tot de samenleving en niet uitsluitend op het bekrompen concept van nationaliteit of lidmaatschap van een van de lidstaten. <BRK>

2-034

ES

Cisneros Laborda (Parl.-ES). - Señor Presidente, estoy seguro de atenerme a los términos de "jibarización" de la palabra que nos ha indicado.

Yo querría unirme al coro de felicitaciones de que ha sido objeto nuestro Presidente, el Comisario Sr. Vitorino, por su excelente labor en el seno del Grupo de trabajo y por el excelente fruto representado por el documento que nos aporta. Él ha sido un auténtico constructor de consensos. Éste es un texto que básicamente goza de un amplísimo consenso, pero no es un consenso de mínimos -no se ha obtenido a base de limitar o reducir las posiciones extremas-, ni tampoco es un consenso apócrifo -no se ha obtenido a base de alcanzar un acuerdo sobre las palabras a costa de atribuirles significados ambiguos a sus contenidos-, sino que se ha obtenido profundizando en la materia objeto de examen; el Comisario Vitorino ha hecho un auténtico ejercicio de persuasión, de suerte que hemos alcanzado un documento del más alto nivel técnico, susceptible de incorporarse al Tratado Constitucional o de suministrar los criterios para hacerlo, que atribuye a los derechos y a las libertades fundamentales el papel nuclear que deben tener.

Se ha invocado por parte de algunos compañeros predecesores en el uso de la palabra su condición de intervinientes en la anterior Convención, en la Convención redactora de la Carta, para denunciar un supuesto carácter regresivo que podría tener la nueva redacción de las cláusulas horizontales o también el valor interpretativo que se atribuye a las explicaciones. Debo decir que no coincido en absoluto con ese diagnóstico. Creo, por el contrario, que hay que invocar la suerte corrida por la Carta de los Derechos Fundamentales, relegada a una mera declaración institucional solemne. Es decir, creo que una consideración de eficacia debería ser muy tenida en cuenta para respaldar el contenido de esas cláusulas horizontales.

Francamente, yo optaría -digo optaría en términos condicionales porque, después de algunas posiciones por parte del Sr. Representante del Gobierno británico que hemos oído aquí, debo quedarme en esos términos condicionales-, yo optaría por la solución A, es decir, por la inclusión de los cuarenta y tantos artículos de la Carta, tal cual están, en lo que sería la parte dogmática de la Constitución. Veo que la arquitectura del Tratado, con su referencia en el artículo 6, ya claramente insinúa o sugiere otra solución, bien sea la remisión, bien sea el protocolo. Es claro que, desde el punto de vista de su carácter vinculante, estas otras fórmulas no afectan ni disminuyen en nada dicho carácter, pero, desde un punto de vista pedagógico, desde un punto de vista de visibilidad, de comprensión, de divulgación de los valores fundamentales de la Carta y de la Constitución entre los ciudadanos, yo creo que estas otras fórmulas son menos deseables. Al final, no vamos a hacer un Tratado que quepa en el bolsillo o que se pueda estudiar en los institutos de enseñanza media y, si lo hacemos, desde luego, no van a tener en él los derechos ni las libertades fundamentales el papel que hubiéramos querido.

Respecto a la adhesión al Convenio -y termino-, no tenemos que decidirlo, ni en el Grupo de trabajo ni en el Pleno. Basta con la habilitación que supone la atribución de la personalidad jurídica, pero yo comparto las reservas manifestadas por el Sr. Haenel. <BRK>

2-035

IT

Paciotti (PE). - Signor Presidente, mi limito ad esprimere il mio dissenso su un solo punto delle proposte dell'eccellente relazione del Commissario Vitorino, che per il resto condivido. Si tratta della proposta di aggiungere tre nuove clausole alla Carta dei diritti. Nonostante la benevola interpretazione che ne dà il Commissario Vitorino, l'aggiunta di tre nuove clausole mette in discussione, a mio giudizio, il compromesso raggiunto nella prima Convenzione e crea incertezza giuridica.

L'articolo 51 della Carta dice che le Istituzioni e gli organi dell'Unione rispettano i diritti, osservano i principi, ne promuovono l'applicazione, *shall observe the principles, promote the application*. Si vuole aggiungere una clausola che dice che le disposizioni che contengono i principi possono essere attuate da atti legislativi o esecutivi, *may be implemented*. Questa clausola crea ambiguità e incertezza: o è inutile ovvero è dannosa, e, data l'insistenza per ottenerla, dubito che si voglia una cosa inutile.

Altre norme della Carta prevedono che i diritti spettino secondo le norme del diritto comunitario, le legislazioni e le prassi degli Stati membri. Ora si chiede di tener conto soltanto delle legislazioni e delle pratiche nazionali. Insomma, le tre clausole danno un messaggio politico di minimizzazione della Carta dei diritti, l'esatto contrario di quello che ci chiede la società civile, che vorrebbe vedere la Carta potenziata. <BRK>

2-036

SV

Svensson (Parl.-SE). - Herr ordförande! Jag vill inleda med att tacka herr Vitorino för hans utmärkta insats som ordförande i vår arbetsgrupp. Resultatet har blivit mycket bra. Förslagen om EU:s anslutning till Europakonventionen om skydd för de mänskliga rättigheterna samt införlivande av EU-stadgan i fördraget måste ses som kompletterande lösningar på EU:s skydd av mänskliga rättigheter. För mig är det viktigt att konstatera följande: att göra stadgan juridiskt bindande förutsätter för min del en anslutning till Europakonventionen.

Sverige har i sin grundlag ett fri- och rättighetskapitel och har dessutom införlivat Europakonventionen. Det är således naturligt att ha ett rättighetskydd i ett konstitutionellt fördrag, samtidigt som EU ansluter sig till Europakonventionen. Mot denna bakgrund finner jag det mycket glädjande att en helt enig arbetsgrupp ställer sig positiv till en anslutning av EU till Europakonventionen. En av de främsta vinsterna med en sådan anslutning är att vi åstadkommer ett närmande mellan EU-stater och stater utanför EU och därmed förstärker skyddet för de grundläggande rättigheterna i hela Europa.

Att EU har underkastat sig den externa granskningen ökar vår trovärdighet, inte minst på den internationella arenan. I slutrapporten noteras att det i fördragen skall ges ett konstitutionellt bemyndigande som ger unionen möjlighet att ansluta sig till Europakonventionen. Jag noterade att detta inte fanns omnämnt i utkastet till konstitutionellt fördrag, men det bör göras. Jag föreslår dessutom att det i samband med antagandet av ett nytt konstitutionellt fördrag borde göras en politisk deklaration om anslutningen till Europakonventionen. Anslutningen har många fördelar. Jag kan inte nämna alla, men jag måste nämna den klara och positiva signal som vi sänder ut till medborgarna om att unionen tar mänskliga rättigheter på allvar. Samma signal sänder vi ut genom att införliva EU-stadgan i fördraget och göra den rättsligt bindande.

Arbetsgruppen har haft en gemensam strävan och har också lyckats finna lösningar på de tekniska problemen som är förknippade med att göra stadgan rättsligt bindande. Enligt min uppfattning är det bästa sättet att tydliggöra rättigheterna för EU-medborgarna att föra in stadgan i dess helhet i fördraget. Den kan då utgöra en naturlig del i ett nytt grundfördrag för EU. <BRK>

2-037

IT

Muscardini (PE). - Signor Presidente, mi dolgo che il tempo sia più tiranno con alcuni rispetto ad altri: farò pervenire il mio intervento per iscritto. Rimarco comunque la necessità che la politica torni a riconquistare quegli spazi che in questi anni ha lasciato scoperti. Non ci sembra utopia ritenere che la politica non debba essere solo ragion di Stato ma anche strumento etico per avvicinare i cittadini e costruire una società europea, nella quale la libertà, principio ispiratore degli Stati moderni, intesa come libertà sia individuale che associativa, sia anche la libertà e la capacità di affrontare le sfide future tenendo conto delle diversità che esistono tra gli individui come tra gli Stati, e sia perciò una libertà garantita da regole che, difendendo la democrazia, impediscano la nascita di oligarchie e sappiano coniugare i diritti e i doveri sia dei singoli che degli Stati. E' per questo che riteniamo che la Carta ampliata - non è infatti sufficiente così com'è - e resa contenuto vivo per le esigenze della società, dovrebbe rimanere un testo autonomo, mentre il nuovo Trattato, in uno specifico articolo, dovrebbe enunciare valori e principi comuni per gli Stati membri facendo alla Carta specifico riferimento. <BRK>

2-038

FR

Moscovici (Ch.E/G.-FR). – Monsieur le Président, je formulerai cinq remarques en style télégraphique après avoir félicité Monsieur Vitorino et le groupe de travail.

Premièrement, je me réjouis que le groupe se soit prononcé unanimement en faveur de l'intégration de la Charte dans le Traité et ensuite, pour dire que l'option consistant à l'incorporer dans les tout premiers chapitres de notre future Constitution semble cohérente avec la nature même de la Charte et cela lui donnerait une visibilité maximale.

Deuxièmement, je souscris aussi tout à fait au sage principe retenu par le groupe selon lequel il ne faut pas chercher à renégocier le contenu de la Charte, y compris son préambule. Ce n'est pas contradictoire bien sûr avec la vocation de la Charte à être enrichie à l'avenir du nouveau droit.

Troisièmement, ce principe même me conduit cependant à m'interroger sur l'opportunité des modifications proposées aux articles horizontaux de la Charte et, en toute hypothèse, le nouveau paragraphe 5 de l'article 52 ne me semble pas acceptable car il tend à limiter fortement la portée juridique de ce que la Charte appelle les principes.

Quatrièmement, s'agissant de l'adhésion éventuelle de l'Union à la Convention européenne des droits de l'homme, chacun sait que la France y est jusqu'à présent toujours opposée. Toutefois, nous partageons tout à fait l'objectif d'améliorer encore davantage la protection juridictionnelle des citoyens. Mais il convient de bien réfléchir afin de savoir si une adhésion à la Convention est le meilleur moyen d'y parvenir.

Dernière observation, il me semble que l'extension des possibilité de recours des particuliers devant les juridictions communautaires constituerait une réelle amélioration de la protection des droits des citoyens. Il faudra y réfléchir tout comme il faudra peut-être réfléchir aux moyens qu'il faudrait donner pour y parvenir, à la Cour de justice et au Tribunal de première instance. <BRK>

2-039

SV

Hjelm-Wallén (Ch.E/G.-SE). - Herr ordförande, kära kolleger! Jag vill börja med att berömma arbetsgruppen för förslaget att EU skall ansluta sig Europakonventionen om skydd för de mänskliga rättigheterna. Arbetsgruppen har på ett utmärkt sätt behandlat denna fråga, och det gläder mig att gruppen står så enig bakom rekommendationen.

Det är en trovärdighetsfråga för unionen att vi tar de mänskliga rättigheterna på allvar, inte bara i högtidstal utan även när vi fattar politiska beslut. Europakonventionen är ett väl etablerat juridiskt dokument med en utvecklad praxis som garanterar en hög grad av rättssäkerhet. Genom att ansluta sig till konventionen stärker EU väsentligt det breda alleuropeiska samarbetet kring mänskliga rättigheter. Som arbetsgruppen själv konstaterar, är det också av stor vikt att medborgarna tillförsäkras samma grad av skydd för mänskliga rättigheter gentemot Europeiska unionen som de har gentemot sina respektive länder.

Vad gäller stadgan om grundläggande rättigheter har den svenska regeringen, liksom i stort sett hela den svenska riksdagen, uttalat att införlivandet av stadgan förutsätter att förhållandet till Europakonventionen regleras på ett tillfredsställande sätt. Skälet till detta har för oss varit att det inte får finnas oklarheter och olika praxis mellan Europadomstolen och EG-domstolen; det är naturligtvis *inte* för att vi ifrågasätter innehållet i stadgan. Vi är nu glada för att stadgan kommer att kunna införlivas i fördraget. Min sista kommentar är dock att ju mer framträdande plats stadgan får i fördraget, desto viktigare är det att de horisontella artiklarna är så heltäckande som möjligt.

Arbetsgruppen har i sin rapport visat på flera möjligheter att införliva stadgan i fördraget och lämnar förslag om hur de horisontella artiklarna kan förtydligas ytterligare. Jag menar att det är viktigt att det arbetet fortsätter, och jag utgår från att presidiet nu arbetar vidare med frågan i syfte att finna en bred lösning som hela konventet kan ställa sig bakom. <BRK>

2-040

EN

Petersen (Parl.-DA). - Mr President, I would firstly like to align myself with the words of praise for the work of Commissioner Vitorino.

The European Union makes legislation and decisions on matters of vital importance for its citizens and businesses. It is therefore crucial that the EU respects fundamental rights when it acts.

The Charter on Fundamental Rights, which has been drafted in a political context, is an important statement. I fully believe that now is the time to make the Charter legally binding. To make a political text legally binding is a major step, and we must not pull the wool over the eyes of our citizens, by making them believe that all the provisions in the Charter can be invoked in the European or national courts.

I therefore favour that we make the Charter legally binding by introducing a reference in the Treaty, stating that the EU respects the Charter on Fundamental Rights as general principles in EU law. We all know that model already. It is the same model that was used when we made the European Convention on Human Rights legally binding in the EU.

The European Court of Justice has taken the responsibility of ensuring that the EU complies with human rights, including the European Convention on Human Rights. And it has done this very well.

For the reasons I have just mentioned, I welcome the Working Group's proposal to add to the Charter some "horizontal provisions". Making the Charter legally binding will indeed, Mr President, be a big step forward for the protection of the citizens' legal position within the EU. <BRK>

2-041

EN

Hain (Ch.E/G.-GB). - Mr President, could I say to my comrades Olivier Duhamel and Anne Van Lancker that it is very important to recognise that we have here at least four governments: the U.K., Italy, Spain and Ireland, who have spoken in the same terms. They all want to see the legal accession of the Charter.

But, we have to have the second option, and we need legal certainty. I would also point out, that inserting it straight into the Treaty would mean that the Charter would in fact be longer than the Draft Constitution. The Charter has 54 articles, while the Draft Constitution only has 46. You need to ask yourselves some serious questions here.

For the first time, we can see way forward. Let us move together on this agenda, and let us find a result we can all be united on. I know the Convention does not want to be bored by internal political squabbling from Britain, but the Conservatives, in my view, have consistently been an anti-European party, and I am standing with the Convention in building a consensus. <BRK>

2-042

FR

Le Président. – Nous prenons note de cette distinction.

(Rires) <BRK>

2-043

FI

Helle (Parl.-FI). - Arvoisa puheenjohtaja, kuulun siihen työryhmän suureen enemmistöön, jonka mielestä perusoikeuskirja johdantoineen ja selityksineen tulee liittää uuden perussopimuksen alkuun. Mielestäni se lisäisi EU:n uskottavuutta kansalaisten silmissä. Lisäykset horisontaalisiin artikloihin ovat mielestäni osin turhia, mutta jos ne auttavat eräitä hallituksia myönteiseen ratkaisuun, olkoot olemassa. Sen sijaan olin pettynyt siihen, että eilen jaetussa luonnoksessa ei ollut sellaista artiklaa, joka sallisi EU:n liittymisen Euroopan ihmisoikeussopimukseen. Sellainen sinne tulisi mielestäni ehdottomasti lisätä.

Suomalaiset eivät yleensä kiitä, mutta nyt minun on pakko liittyä siihen kuoroon, joka kiittää puheenjohtaja Vitorinoa työryhmän erittäin hyvästä ja taitavasta johtamisesta. <BRK>

2-044

FR

Le Président. – Merci Monsieur Helle. Nous donnons la parole pour une minute aux orateurs suivants, de façon à ce que Monsieur Vitorino puisse apporter quelques éléments de réponse. <BRK>

2-045

PT

Costa (Parl.-PT). - Senhor Presidente, no minuto que me concede apenas queria, de forma sentida mas reflectida, protestar contra a desigualdade na atribuição dos tempos aos vários oradores e também à ordenação das inscrições para intervir. Ficaria mal comigo próprio se não aproveitasse este minuto para transmitir de forma muito sincera este estado de espírito. <BRK>

2-046

NL

De Vries (Regering - NL). - Voorzitter, Nederland deelt de wens van deze Conventie en de werkgroep om de waarborgen van grondrechten van de Europese burger een plaats te geven in het Verdrag. Het was immers de Unie die in Maastricht en Amsterdam heeft uitgesproken dat respect voor de mensenrechten de grondslag vormt voor de identiteit van de Unie en een belangrijk onderdeel van ons extern beleid. Daar moeten wij voorzien in de lacune dat er geen rechtsbescherming is van de burger tegen handelingen van de instellingen van de Unie zelf.

De materiële bepalingen van het Handvest staan hier niet ter discussie. Maar toch zijn er wel enkele bepalingen die nauwkeuriger geformuleerd zouden moeten worden omdat ze, als ze juridisch bindend zouden zijn, wellicht te ruime rechten zouden toekennen. Ik denk daarbij aan het recht op kosteloos onderwijs.

De Nederlandse regering heeft daarom een voorkeur voor verwijzing naar het Handvest in artikel 6, lid 2 van het Verdrag, zodat het Handvest een bron van interpretatie kan zijn voor het Hof van Justitie. Ik merk op dat ook Peter Hain en Gianfranco Fini zich zojuist in vergelijkbare zin hebben uitgelaten.

De voorgestelde aanpassingen van de horizontale bepalingen zijn een belangrijke vooruitgang. Ik pleit ervoor dat we duidelijkheid scheppen tussen de beginselen van het Handvest en de bepalingen die stammen uit de constitutionele tradities die een lidstaat gemeen

hebben. Door een dergelijk onderscheid is glashelder aan te geven welke beginselen nieuw zijn en welke voortkomen uit de reeds bestaande tradities van de lidstaten. Dat zou het Handvest kunnen vereenvoudigen.

Tenslotte, voorzitter, kan ik u melden dat het Nederlandse parlement een motie heeft aangenomen die uitspreekt dat wij vóór toetreding van de Unie tot het EVRM zijn, maar er zal nog wel een oplossing gevonden moeten worden voor de mogelijke conflicterende rechtsgangen in Luxemburg en Straatsburg. <BRK>

2-047

EN

Christophersen (Ch.E/G.-DK). -Mr. President, I would like firstly to thank the working group and Mr Vitorino, for a very well-drafted and comprehensive report, concerning the incorporation of the Charter, and the accession to the European Convention on Human Rights. The report is an excellent basis for the discussion in the Convention, on whether and how the Charter can be made legally binding, as foreseen in the Laeken declaration. The Chairman of the working group and the members have shown a remarkable willingness to create the necessary basis for reaching consensus.

From my point of view, we are in favour of making the Charter legally binding in order to emphasise that the European Union is a community of nations which attaches great importance to the protection of its citizens. We would prefer the incorporation of the Charter into the Constitution Treaty following the so-called indirect reference model. For example, it is stated in the Treaty that the Union respects the Charter on Fundamental Rights as outlined in EU law. This model corresponds with the approach in the existing Union Treaty, (Article 6, paragraph 2), by which the European Convention on Human Rights has become legally binding as a general principle in EU law.

Let me add, Mr President, that I fully agree with the working group when it stresses the importance of explaining the Charter. The explanations of the new horizontal positions should be incorporated into the existing ones. This would create clarity, and safeguard the rule of law. We believe it important that the Convention decides whether these explanations should have judicial value at a later stage.

Finally, I welcome the proposal of introducing a Constitutional authorisation enabling the Union to accede to the European Charter of Human Rights into the new Treaty. The accession of the Union will imply that the EU institutions will be under the same external jurisdiction of the Court of European Human Rights as the Member States and candidate countries. <BRK>

2-048

NL

Maij-Weggen (PE). - Voorzitter, veel dank aan de heer Vitorino voor het uitstekende werk dat is geleverd. Drie punten, kort, omwille van de tijd.

In de eerste plaats een compliment voor de wijze waarop de aanvankelijke controverse tussen het EVRM en het Handvest is opgelost. Dank ook aan de rechters en deskundigen van de Europese hoven die daar hele constructieve artikelen over hebben geschreven en handreikingen hebben gedaan. Ook dank voor het feit dat uit de kring van de Raad van Europa - ik denk aan de heer Van der Linden - handreikingen zijn gedaan om EVRM en Handvest met elkaar in overeenstemming te brengen.

Tweede punt, ik heb twijfel over het idee om nog wijzigingen aan te brengen in het Handvest. Als het gaat om technische wijzigingen, vind ik dat geen probleem, maar ik denk dat we inhoudelijk niets meer moeten veranderen. Ik ben het op dat punt eens met de heer Duhamel en mevrouw Paciotti.

Ten slotte, ik ben blij dat het stuk opgenomen kan worden in het constitutioneel gedeelte van het Verdrag. Er is dan de discussie over de vraag of dat direct of via een verwijzing moet gebeuren. Voor mij is doorslaggevend wat de juridische achtergrond daarvan is: als het zwakker is om het met een verwijzing te doen, ben ik daar tegen, als het geen verschil uitmaakt, dan wil ik daar niet dogmatisch over zijn. <BRK>

2-049

EN

Bruton (Parl.-IE). - Mr President, I congratulate Antonio.

Once the Union had moved into the area of Justice and Home Affairs, the incorporation of fundamental rights into the Treaty became essential. But there is no room for ambiguity in a Charter for which people will have to vote in a referendum, where the "yes" advocates would not only face persuasive but destructive questions. Some questions now require answers.

Against whom are the rights in the Charter to be enforced? If the Charter does not extend the scope of application of Union law beyond the powers of the Union, against whom, and how, are the rights outside the scope of Union law in the Charter to be enforced?

Obviously the articles on marriage, academic freedom, education, free placement services, and social security cannot be enforced against a Union which is confined to spend 1.2% of GDP, and which is bound by subsidiarity. Article 51 of the Charter is actually

ambiguous. It says that "due regard to the principle of subsidiarity". What does "due regard" mean? It all depends on who is doing the "regarding".

Paragraph 6 of the report stresses the distinction between rights and principles. These rights, I presume, are the only rights enforceable in court. But there is no list in existence of which articles are "rights" and which articles are "principles".

To sum up, if this is to pass in a referendum, we must be able to answer questions about what we are actually promising. I remind colleagues of the words of La Rochefoucauld: "We promise according to our hopes, we perform according to our fears." <BRK>

2-050

EL

Μαύρου (Parl.-CY). – Κύριε Πρόεδρε, μετά από 35 ομιλητές δεν μένουν πολλά να πεις μέσα σε ένα λεπτό. Θα αναφερθώ σε τρία σημεία μόνο.

Το ένα είναι ότι αναγνωρίζουμε πως το περιεχόμενο του Χάρτη δεν είναι σήμερα αντικείμενο συζήτησης. Γι' αυτό δεν στεκόμαστε σε επιφυλάξεις ή ακόμα σε διαφορετικές προσεγγίσεις που έχουν αρκετοί από εμάς σε ότι αφορά συγκεκριμένα άρθρα του Χάρτη. Είμαστε έτοιμοι να δούμε θετικά την ενσωμάτωσή του στο συνταγματικό πλαίσιο της Ένωσης και δεν θα σταθώ στην τεχνική της ενσωμάτωσης, από την στιγμή που διασφαλίζεται η δεσμευτικότητα του Χάρτη.

Το δεύτερο σημείο αφορά τα οριζόντια άρθρα, ιδιαίτερα το άρθρο 52. Συμμερίζομαι τις ανησυχίες που έχουν εκφρασθεί από τον κ. Duhamel, την κ. Kaufmann, αλλά και άλλους ομιλητές για την συμπερίληψη αυτών των νέων προνοιών. Έχω την εντύπωση ότι δημιουργούν αβεβαιότητα και σύγχυση που είναι δυνατόν να αναιρέσουν αρχές του Χάρτη.

Το τρίτο σημείο αφορά την προσχώρηση στην Ευρωπαϊκή Σύμβαση Ανθρωπίνων Δικαιωμάτων. Πιστεύω ότι είναι ανάγκη να δούμε πραγματικά με εποικοδομητική διάθεση τη θέσπιση μιας συνταγματικής εξουσιοδότησης που θα επιτρέπει στην Ένωση να προχωρήσει στην Ευρωπαϊκή Σύμβαση για πολλούς λόγους, που αναλύονται στην έκθεση, γιατί διασφαλίζει την προστασία των πολιτών έναντι της Ένωσης. <BRK>

2-051

FR

Le Président. – Il est important que Monsieur Vitorino puisse répondre à ce qui a été dit, donc je lui donne la parole. <BRK>

2-052

FR

Vitorino (CE). – Merci, Monsieur le Président. Je vais être très bref. Tout d'abord, je souhaiterais remercier les références personnelles que je tiens à partager avec tous les membres du groupe de travail. Ce groupe de travail n'est pas une exception. Sans volonté de compromis, la Convention n'aboutira pas à un résultat positif. C'est le principe que nous avons suivi dans notre travail. Il s'agit donc d'une solution de compromis. Et habituellement, les solutions de compromis sont orphelines à la fin si elles échouent tandis que si elles ont du succès, il y a une multiplication de parents. J'espère que ce sera un cas de multiplication des parrains du compromis.

En ce qui concerne les trois questions essentielles qui ont été soulevées par Monsieur Méndez de Vigo, je dois dire que ce qui est écrit là-bas, c'est que les droits de la Charte qui ne découlent ni d'autres articles des Traités ni de la Convention européenne des droits de l'homme et qui donc, n'ont comme source que la tradition constitutionnelle commune des Etats membres, doivent être interprétés en harmonie avec cette tradition constitutionnelle commune. Ce qui peut être d'une certaine façon considéré comme tautologique, c'est la répétition du savoir acquis sans doute, mais également la consécration dans la Charte de la jurisprudence de la Cour de justice. Celle-ci est claire, dans le sens où tradition constitutionnelle commune ne veut pas dire moindre dénominateur commun. Cela signifie interprétation des valeurs qui sont communes à tous les Etats membres mais qui n'ont pas la même portée dans chacune des Constitutions de ces Etats membres. Je crois que c'est dans cette ligne qu'il convient d'interpréter l'article 52.4.

La question de l'adhésion à la Convention européenne des droits de l'homme est un problème à la fois politique et juridique. Du point de vue politique, je vous rappelle que le Conseil européen de Copenhague a dit à tous les Etats candidats qu'ils devraient adhérer à la Convention européenne des droits de l'homme comme préalable à la garantie du plein respect des droits fondamentaux dans leur ordre juridique national afin de pouvoir adhérer à l'Union européenne. Il est un peu étrange que nous puissions nous permettre de demander aux pays candidats d'adhérer à la Convention européenne des droits de l'homme et que nous-mêmes ne soyons pas prêts d'en faire autant, pour nous soumettre à un contrôle extérieur de la conformité des statuts des droits fondamentaux dans le droit de l'Union vis-à-vis de la Convention européenne des droits de l'homme.

Je comprends l'observation de Monsieur Haenel car en effet, on ne peut pas conclure que l'adhésion conduirait de façon incontournable à un allègement des procédures judiciaires dans les Etats membres. En effet, aujourd'hui, il est déjà possible qu'un citoyen d'un Etat-membre, qui est l'objet d'une norme juridique d'un Etat-membre en application du droit communautaire puisse soulever auprès des tribunaux nationaux la question de la violation de la Convention européenne des droits de l'homme, y compris

l'accès à Strasbourg. La seule différence est qu'aujourd'hui, l'auteur moral de la règle, à savoir l'organe ou l'Institution de l'Union, n'est pas là pour répondre de son activité. Celui qui est là est le pauvre Etat-membre qui ne peut qu'opposer cette réponse "que puis-je y faire ? Je ne fais qu'accomplir mes obligations dans le cadre de l'Union européenne". Je ne pense pas que ce soit une révolution mais plutôt, une petite réforme qui a quand même une valeur symbolique du point de vue politique.

Avant de parler des droits et les principes, je voudrais simplement dire à Peter Hain que je pense que l'on devrait ajouter les explications de nos débats de cette Convention aux explications du Praesidium de la précédente Convention. Dans ce cadre-là, je me propose de mener cette opération d'addition en consultation étroite avec les membres du groupe de travail et les soumettre à la fin, au Praesidium de cette Convention. Les explications n'ont pas une valeur juridique, on le sait, mais sont un élément important d'interprétation des textes de la Convention.

En ce qui concerne les remarques sur la question la plus controversée sans doute, à savoir l'article 52.5 et en d'autres termes, la distinction entre droits et principes, il convient d'être clairs. Je crois que la distinction entre droits et principes existe déjà dans la Charte. La question est de savoir si on bouleverse ou non cette distinction. Très franchement, je ne crois pas. Je pense que ce qu'on dit avec cet article 52.5, c'est qu'il est évident que les droits objectifs et les droits subjectifs sont des droits à des prestations. C'est une évidence. Les principes n'ont pas la même portée que les droits subjectifs. Les principes ne sont pas "self executing", ce qui signifie que les principes requièrent des actions explicites d'exécution pour devenir contraignants. Mais en plus, ce que nous faisons dans cet ajout, c'est clarifier que quand l'Union adopte des règles juridiques ou prend des actions pour appliquer les principes, elles doivent bien sûr respecter ces principes-là. Ces principes sont justiciables mais ils ne le sont pas directement. Ils le sont d'un point de vue normatif. C'est ce que le professeur Braibant appelait à la Convention précédente "justiciabilité normative". C'est l'explication de l'article 52.5 qui n'est pas en contradiction avec l'article 51.1. Pour certains, ça peut être une répétition. Je suis d'accord. Mais à l'école, j'ai appris une expression latine qui disait "quod abundat non nocet", que l'on peut traduire par ce qui est abondant n'est pas nuisible. Et selon moi, cet ajout n'est pas nuisible. Si vous voulez, on peut la discuter juridiquement. Je prends d'ailleurs beaucoup de plaisir à discuter juridiquement des choses. Toutefois, si on voit cette question politiquement, un peu plus au-delà de cette discussion qui fait le bonheur des juristes, on se rendra compte, selon moi, que du point de vue historique, cette discussion sur l'article 52.5 ne méritera même pas une note de fin de page dans l'histoire de la Charte des droits fondamentaux. Par contre, une vision trop pessimiste de l'interprétation d'un article de la Charte peut jeter la Charte dans une querelle dès son début, ce qui serait très nuisible à la fin, dans le cadre de son application. Je crois qu'aujourd'hui, on fait un grand pas en avant pour consacrer la Charte des droits fondamentaux dans le statut d'un texte constitutionnel et juridiquement contraignant au-delà des notes de fin de page. Personnellement, j'ai une grande confiance en la Charte afin de surmonter toute difficulté d'interprétation juridique.

(Applaudissements) <BRK>

2-053

FR

Le Président. – Je vous remercie. Je ferai deux propositions. Tout d'abord, vous savez que le budget de la Convention est assez réduit. Mais je vous demanderais néanmoins de prélever sur les crédits un montant nécessaire pour offrir une couronne de lauriers à Antonio Vitorino qui l'a bien mérité. Ensuite, je renonce moi-même à la parole. En effet, je devais faire la synthèse de ce qui a été dit ici de façon à préparer la poursuite de nos travaux de la Convention et du Traité constitutionnel mais le temps est passé et je ne voudrais priver les orateurs du débat suivant de leur temps de parole. Ainsi, personnellement, je m'en tiendrai au résumé ou aux arguments présentés par Antonio Vitorino. <BRK>

2-054

DA

Indledende debat om det foreløbige udkast til en forfatningstraktat

DE

Erste Aussprache über den Vorentwurf eines Verfassungsvertrags

EL

Προκαταρκτική συζήτηση για το προσχέδιο Συνταγματικής Συνθήκης

EN

Preliminary debate on the preliminary draft constitutional treaty

ES

Debate preliminar sobre el Anteproyecto de arquitectura de un Tratado Constitucional

FR

Débat préliminaire sur l'avant-projet d'architecture d'un Traité constitutionnel

IT

Discussione iniziale sul progetto preliminare di struttura per un Trattato costituzionale

NL

Vorbereidend debat over het voorontwerp van architectuur voor een constitutioneel verdrag

PT

Debate preliminar sobre o anteprojecto de arquitectura de um Tratado Constitucional

FI

Alustava keskustelu ehdotuksesta perustuslain luonteiseksi sopimukseksi

SV

Inledande debatt om det preliminära utkastet till konstitutionellt fördrag

2-055

FR

Le Président. – Nous abordons le débat sur l'avant-projet d'architecture du Traité constitutionnel. Je voudrais naturellement ne pas le détourner de son objet qui n'est pas un débat sur la substance qui est de savoir si l'architecture telle qu'elle est proposée, telle qu'elle est présentée permet d'avancer sur la voie de la préparation de ce futur Traité.

En raison des demandes de temps de parole qui ont été présentées, nous sommes contraints de limiter à deux minutes le temps de parole des orateurs jusqu'à 12h30 et ensuite de le ramener à une minute. Le premier orateur est Monsieur Hänsch. <BRK>

2-056

DE

Hänsch (PE). - Herr Präsident, Kolleginnen und Kollegen! Der Konvent hat das Präsidium aufgefordert, bis spätestens im Herbst dieses Jahres die Architektur für einen neuen Vertrag der Europäischen Union vorzulegen. Sie, Herr Präsident, haben das mit Unterstützung des Präsidiums getan. Die Architektur liegt vor. Das ist auch ein Erfolg des gesamten Konvents. Ich sage: Der Entwurf ist das Dokument eines mutigen Realismus. Natürlich wissen wir, da gibt es noch eine ganze Reihe blinder Stellen. Wir wissen auch, es ist noch Unausgegrenztes und Unakzeptables in diesem Entwurf, vor allem im Teil Institutionen. Darüber wird es noch intensive und sicherlich auch kontroverse Debatten hier in diesem Plenum geben.

Wir wissen, dass wir einen noch schwierigen Weg vor uns haben. Wir werden noch vielen Schlaglöchern und Stolpersteinen ausweichen müssen. Wir werden aufpassen müssen, dass wir nicht in eine Regouvernementalisierung der Europäischen Union hineingleiten, aber mit dem gestern vorgelegten Verfassungsentwurf wissen wir, dass da ein Weg ist, den wir gemeinsam gehen können. Die Architektur lässt die tragenden Strukturen der künftigen Europäischen Union deutlich erkennen, jedenfalls die wichtigen unter ihnen.

Erstens, wir werden den Entwurf einer Verfassung für die Europäische Union ausarbeiten. Vor acht Monaten war das durchaus noch eine sehr umstrittene Frage. Dass wir uns darauf geeinigt haben, ist ein Erfolg der Arbeit, die wir in den vergangenen acht Monaten gemacht haben. Zweitens, wir werden einen einheitlichen Vertrag haben, und ich unterstreiche nur einen einheitlichen Vertrag mit einem Verfassungsteil und einem operativen Teil. Das ist ein klares Bekenntnis zur Rechtssicherheit und zur Kontinuität. Vor acht Monaten lag das alles noch in weiter Ferne.

Wir werden die Grundrechtscharta in die Verfassung aufnehmen und verbindlich machen. Jeder weiß - und wir haben das ja gerade noch einmal in der Diskussion bemerkt -, welche rechtlichen und politisch-kulturellen Probleme damit aufgeworfen sind, aber wir zeigen auch, dass wir über Nizza ein großes Stück hinausgehen werden.

Viertens, wir werden der Union die Rechtspersönlichkeit zuerkennen. Das wird ihr erlauben, nach außen einheitlich vertreten zu sein und geschlossen aufzutreten. Vor acht Monaten war das noch außerhalb jeden Konsenses. Dass wir das geschafft haben, ist auch ein Erfolg der bisherigen Arbeit.

Fünftens, wir lösen die unsinnige und hinderliche Pfeilerstruktur der heutigen Verträge auf. Damit wird eine Forderung des Europäischen Parlaments, die wir seit Maastricht und Amsterdam immer wieder erhoben haben, erfüllt. Sechstens, wir nähern uns mit dem Entwurf dem Ziel einen großen Schritt, nämlich der Union eine neue, straffere, einfachere und transparentere Grundlage zu geben. Das ist der Auftrag von Laeken, den wir zu erfüllen haben. Gewiss, noch ist nichts gewonnen. Nichts ist festgezurr, nichts zementiert, aber die Architektur für das neue Haus ist konzipiert. Jetzt muss sich der Konvent auf die Baustelle begeben. Aus der Form, die dieser Entwurf für die neue Union vorsieht, kann sie weltpolitisches Format gewinnen und die Kraft für eine Politik zum gemeinsamen Wohl der Völker Europas. Das Notwendige möglich zu machen, diesem Auftrag haben wir uns mit dem Entwurf für die Architektur einer neuen Verfassung ein großes Stück genähert. <BRK>

2-057

FR

Le Président. – Je remercie Monsieur Hänsch de sa présentation à la fois brillante et chaleureuse. <BRK>

2-058

ES

Palacio Valleresundi (Ch.E/G.-ES). - Señor Presidente, en aras de la brevedad, puedo decir que suscribo lo que acaba de decir Klaus Hänsch, que creo que, con brío, ha descrito perfectamente cuáles son los principales puntos de esta importante etapa que estamos a punto de iniciar.

En efecto, la Convención vuelve a demostrar que cumple. Hemos terminado la fase de escucha y hemos puesto sobre la mesa un esqueleto de Tratado Constitucional. Y la Convención, además, ya tiene resultados: el primero, señor Presidente, se le debe en gran medida a usted, y es que la palabra Convención, la idea de que Europa tenga una Convención, ya ha pasado a ser razonable y confortablemente asumida por las opiniones públicas.

Pero hoy damos un paso más. Con este esqueleto de Constitución sobre la mesa de la Convención, los ciudadanos europeos ya no van a asociar Europa a un mercado, van a asociar Europa a esa Constitución, que ven cómo llega.

Tres observaciones sobre el contenido, suscribiendo lo que ha dicho Klaus Hänsch. Sobre la estructura: me parece importante que tengamos sólo un Tratado y que simplifiquemos, y me parece importante que ese Tratado tenga dos partes, porque la parte de las políticas tiene naturaleza constitucional; Europa no es un Estado, Europa no puede tener una Constitución de tipo clásico; las regiones ultraperiféricas, por citar un artículo que nada tiene que ver con el constitucionalismo clásico, tienen naturaleza y trascendencia constitucional para Europa.

En segundo lugar, la solución sobre las categorías de competencias. Es buena. No perdamos de vista el funcionalismo que tanto nos ha servido. No caigamos en listas de competencias, pero clarifiquemos esas competencias.

Y en tercer lugar, de las instituciones debatiremos, pero todos tenemos claro que queremos más Europa, que queremos una Europa más integrada y que queremos la prevalencia del método comunitario allí donde pueda haber lugar a él. A partir de aquí, debatamos y pongamos como tercera fase esa Constitución que los ciudadanos están esperando. <BRK>

2-059

EN

Duff (PE). - Mr President, I, too welcome the publication of this draft. I believe it will serve as a splendid basis for our future work.

But can I ask by what type of process are we going to agree the structure and architecture of the Treaty? Clearly, we are not able to complete the debate this morning, but it is important that a strong consensus forms upon the structural format.

I would have preferred a clearer definition of who the Union's legislature is, and who is its executive. I do not think that the citizen will be satisfied if all we deliver is a series of procedures. A clearer commitment to explaining our law-making and executive processes will be essential.

I question the necessity of a clause on reinforced co-operation. Amsterdam has proven there is no need for such a luxury, and I would prefer an associate membership for Member States who are unable to accept the political objectives of the EU.

I would also like to see in the first article, a reference to the people. "We, the people" is perhaps going too far, but a complete absence of a reference to popular sovereignty to complement state sovereignty seems to be a mistake.

I will have to stop there, but I have 44 more points that I could have made.

(Laughter) <BRK>

2-060

FR

Le Président. – Monsieur Duff, dans ma première rédaction, je parlais des peuples. Le Praesidium, plus raisonnable, a enlevé cette proposition que je reprendrai dans la suite des débats. Et je vous invoquerai comme parrain. <BRK>

2-061

FR

Barnier (CE). – Monsieur le Président, je voudrais effectivement faire deux ou trois observations rapides. La première, comme Karl Hänsch et d'autres l'ont dit, vise à faire remarquer que le travail proposé sous votre impulsion par le Praesidium a débouché sur un document clair, cohérent, une sorte de colonne vertébrale, terme que je préfère à squelette, sur lequel maintenant, à partir des groupes de travail, nous allons devoir mettre des muscles, de la chair, en d'autres mots créer cette Constitution.

Je veux dire aussi que c'est un document qui exprime une démarche courageuse puisque nous nous proposons à nous-mêmes de refonder, de restructurer l'ensemble des Traités, en quelque sorte dans un moment historique où l'Union s'élargit, où l'Europe se réunifie. Nous faisons une mise à plat, nous refaisons le point ensemble et nous nous proposons de réaffirmer l'engagement de tous les peuples.

Je me permettrai une observation en faisant une relecture précise de l'article 14 afin d'éviter un malentendu. Dans cet article, Monsieur le Président, on peut lire entre le premier alinéa et le deuxième, que, s'agissant des Institutions de l'Union dont nous parlerons dans quelques temps, il faut éviter une inquiétude ou un risque. Nous réaffirmons dans le premier alinéa que l'Union dispose d'un cadre institutionnel unique et, dans le second, il est proposé une distinction entre l'exercice des compétences qui appartiennent, dans leur totalité ou en partie, à l'Union et l'exercice de compétence exercé conjointement par les Etats membres. Depuis Maastricht, il me semble que cette distinction-là, qui a été très prononcée à une certaine époque entre la Communauté d'un côté et les Etats membres de l'autre a été abandonnée. Quand Javier Solana s'exprime devant le Conseil de sécurité, il ne le fait pas au nom des Etats membres conjoints, il le fait au nom de l'Union. Quand Monsieur Moratinos représente l'Europe au Proche-Orient, il le fait au nom de l'Union et non pas au nom des Etats membres conjoints. Je voulais simplement vous dire la lecture que je fais de ce passage en souhaitant qu'on ne revienne pas en arrière, à un vocabulaire qui appartient à une autre époque de l'Union et de la construction européenne mais que l'on aille bien de l'avant comme vous nous y avez invité hier. <BRK>

2-062

EN

Martikonis (Gouv.-LT). - Mr President, at the start of the Convention in the spring, you called upon us to work upon the Constitutional Treaty. I think, as I thought then, that this is a great objective.

I must confess that in Lithuania at the moment, the enlargement debate is taking precedence over the debate on the future. I can however assure you that we will do our best to make an appropriate contribution to this debate and I can only welcome, as previous speakers have, the fact that we were able to stick to the goals foreseen at the beginning of the Convention.

We will continue our discussion by putting flesh on the draft project which you presented to us, and strive to improve and increase its clarity by consolidating its content. This is a real requirement. Some gaps need filling in. But it is my understanding that the reshaping of the architecture of the Union will not change its political and legal nature. If I understand it correctly, the draft does not imply this.

The reason I say this is because there will soon be ten countries who will be subscribing and ratifying the existing Treaties and the architecture of the Union, perhaps even by referendums. To some of us, it is an historical and important political act. I would ask for the assurance that none of our discussions or decisions give the impression that the present architecture, principles or institutions are unimportant or indeed obsolete. This is very important to my country, and we will make every effort to ensure that the transition is consistent and coherent. I count on your support. <BRK>

2-063

FR

Haenel (Parl.-FR). – Merci Monsieur le Président. Au stade où nous en étions dans les débats de la Convention, nous avons besoin d'un cadre général de travail. L'avant-projet de Constitution répond tout à fait à cette nécessité. Il vient à point nommé.. C'est un document de travail indispensable à ce stade de nos travaux.

Cependant, j'aimerais faire deux remarques. La première est que dans le projet de Constitution, on distingue une première et une deuxième partie. Mais tant qu'on ne précise pas les mécanismes de révision entre la première et la deuxième partie, il n'est pas possible, selon moi, de se prononcer sur la pertinence de la répartition des différents sujets entre la première et la deuxième partie.

La deuxième est qu'il n'y a pas de disposition relative aux Parlements nationaux. Or, je rappelle, que dans le Traité d'Amsterdam, il y avait un protocole sur le rôle des Parlements nationaux. Il me paraît assez logique qu'après Nice et Laeken, il y ait des dispositions spécifiques aux Parlements nationaux incluses dans la Constitution. Je crois que les débats que nous avons eus hier sur le rapport de Gisela Stuart ont bien démontré la nécessité, quelque part dans la Constitution, d'une référence au rôle des Parlements nationaux. <BRK>

2-064

ES

Borrell Fontelles (Parl.-ES). - Señor Presidente, ciertamente necesitábamos un marco y lo tenemos. Hay que felicitar por ello, porque la Convención va avanzando y demuestra que es posible pasar del Tratado a la Constitución. Que es posible pasar, de los acuerdos entre Estados, a la voluntad de un pueblo europeo que emerge.

Habr  mucho que discutir todav a, pero tenemos un marco de referencia y la opini n p blica saluda positivamente que lo tengamos.

En mi opini n, hay que hacer sitio a los Parlamentos nacionales. Quiero secundar las palabras del representante del Parlamento franc s. Hay que hacer m s sitio a la dimensi n social de Europa, en este esqueleto no hay suficiente. Me congratulo que se hable de cohesi n econ mica, social y territorial. Pero los aspectos de la Europa social deben ser m s desarrollados. Quien haya hecho el esqueleto no les ha dado la importancia que, en mi opini n, tienen las materias sociales y de empleo. Y una de las caracter sticas fundamentales de la Europa que hemos hecho y queremos hacer es precisamente su dimensi n social. Los ciudadanos esperan de la construcci n europea que contribuya a resolver sus problemas cotidianos, que contribuya a aportar soluciones a sus problemas existenciales: la protecci n frente a la vejez y a la enfermedad, el empleo, la formaci n, el acceso al saber y al bienestar. Saben que los pa ses solos no pueden ya aportar respuestas eficientes a estos problemas.

Si la Constituci n Europea no los recoge plenamente, a nivel de los valores, de los principios que la sustentan y las pol ticas que debe desarrollar, los ciudadanos echar n algo en falta.

Entre los valores hay que hacer lugar tambi n al valor de la solidaridad -que no est  presente-, y al de la igualdad de oportunidades entre hombres y mujeres -que tampoco lo est -, y al desarrollo sostenible -que no lo est  suficientemente. Europa no puede ser s lo un mercado, es lo que ha servido para construirla, pero, de cara a ma ana, los valores de la solidaridad, del desarrollo sostenible, de la igualdad entre g neros, tienen que ocupar un lugar m s claro del que tienen.

Hay que insistir en que los procedimientos de toma de decisiones deben permitir una Uni n m s eficiente. S  que ese tema todav a no ha sido objeto de la discusi n necesaria. Me permito simplemente se alarlo.

En su conjunto, pues, se or Presidente, satisfacci n por el paso que hemos dado en este Pleno de la Convenci n y buen  nimo para acabar de rellenar, como dec a el Comisario Barnier, con carne, con m sculo, con fuerza, la estructura que hoy conocemos. <BRK>

2-065

PT

Lopes (Ch.E/G.-PT). - Senhor Presidente, caros colegas, quanto ao esquema geral da arquitectura constitucional, parece-me de uma forma geral bem estruturado; com alguns ajustamentos, constitu i uma boa base de trabalho. Gostaria de acrescentar alguns pontos de refer ncia:

- o nome da entidade que somos todos n s, Estados e povos, e que esperamos ver dotada de personalidade jur dica. De entre as quatro hip teses apresentadas, inequivocamente "Uni o Europeia"   o que n s somos e o que queremos ser;
- quanto a compet ncias, considero prejudicial ao desenvolvimento futuro da Uni o a elabora o de um cat logo expl cito ou impl cito de compet ncias; seria um factor de rigidez no processo de integra o;
- no que toca   composi o da Comiss o, devemos assegurar um comiss rio por cada Estado-Membro;
- quanto   presid ncia do Conselho, devemos manter conscientemente o sistema de rota o semestral;
- referindo-me ao congresso dos povos da Europa, n o encontro raz o substantiva para a sua cria o;
- no que toca ao equil brio institucional, importa preservar e aprofundar o tri ngulo Comiss o-Conselho-Parlamento e fortalecer o m todo comunit rio. Consequentemente, deveremos assegurar o desenvolvimento adequado do papel da Comiss o. <BRK>

2-066

EN

De Vries (Gov.-NL). -Mr President, colleagues, we are about to embrace ten new Member States in the European Union. That is a very positive thing. It will make the Union more European. But at the same time, it entails certain risks, and we should be aware of them: risks of greater complexity, and greater difficulty in reaching decisions.

We will see more centrifugal forces in the Union. We therefore need to counterbalance those forces with forces that help the Union to act effectively. We do not need, I believe, a more inter-governmental Union. We need a more integrated Union, a Union that is at the same time more effective, and more democratic.

For the Netherlands, there are two essential points that we would like this Convention to agree upon. Firstly, to maintain the balance among the institutions of the Union, and secondly, to strengthen each of these institutions. Let me be more explicit. The secret of the success of the Union has been firstly, the right of initiative of the European Commission, secondly, qualified majority voting in the Council, thirdly, co-decision of the European Parliament in legislative matters, and finally, the role of the Court of Justice as a final arbiter.

In the end, power must be subject to the law. So I will judge our proceedings on the basis of whether these four principles can be maintained and further strengthened.

It is difficult to say whether the draft we have in front of us will end up doing that. That will very much depend on our further discussions about substance. At the end of the day we have to agree about substance first and then form will follow. We should not agree the form, before we have had a full debate about the substance, including the institutions.

Two questions at this stage: first, and I echo Mr Lopes here, is it really necessary for the Union to have a fixed catalogue of competencies or should we perhaps retain the current system in the Treaty, which talks about the instruments of the Union, without fixing competencies concretely?

Secondly, do we really need new institutions, such as a fixed Presidency of the European Council and a new Assembly? I am doubtful about that. It seems to me the Luxembourg Prime Minister, Mr Juncker, was right, when he remarked that perhaps our Union does not need more institutions, it needs more ambition, it needs more effectiveness and more democracy.

So I welcome this draft, President, but I would like to reserve my final judgement until we have had the debate about substance, and about the strengthening of the four institutions, that make up the success of our Union. <BRK>

2-067

FR

Le Président. – Je vous rappelle qu'il n'y a pas de débat sur le fond. Nous ne pouvons pas aborder le débat sur le fond par quelques remarques sur une Institution ou sur une autre. Il s'agit là de l'architecture, c'est-à-dire de l'ordre dans lequel les problèmes seront traités. Cette demande d'architecture a été formulée par la Convention en mai et en juin. Nous avons répondu à sa demande. Il va de soi que les questions de fond feront l'objet de débats ultérieurs. La parole est à Monsieur Lamassoure. <BRK>

2-068

FR

Lamassoure (PE). – Je vous remercie Monsieur le Président. Pour ma part, je fais partie de ceux qui trouvent que c'est une bonne architecture. Et je tiens à vous en féliciter ainsi que le Praesidium. Je voudrais insister sur la méthode de travail qui va être la nôtre maintenant. Parce qu'au fond, quand on fait le bilan de la première génération des groupes de travail, on se rend compte que ce bilan est globalement assez décevant. Pourquoi? Parce que les groupes de travail n'avaient pas de grandes orientations. Puisque maintenant nous avons une architecture qui fait l'objet d'un large consensus, il est souhaitable que nous engagions maintenant le débat de fond, le débat sur les Institutions que nous souhaitons, en le faisant précéder d'un débat sur ce que nous attendons de l'Union, en reprenant, en approfondissant le débat du printemps.

En effet, on se rend compte, à partir des travaux de la première génération de groupe de travail, que par rapport à une fédération classique, nous attendons de l'Union européenne deux choses de caractère complètement différent. D'une part, nous lui attribuons des compétences, complètes ou partagées avec l'Union. Ce sont là des problèmes que nous avons traité, nous avons quarante ans d'expérience et nous voyons comment nous pouvons améliorer le triangle institutionnel. Mais d'autre part, et c'est là la particularité de l'Union européenne, nous voulons aussi coordonner ensemble des politiques qui restent fondamentalement des politiques de compétence nationale, et je dirais même de compétence nationale à cent pour cent. C'est le cas des politiques budgétaires depuis l'Union monétaire et ce sera vraisemblablement le cas d'autres politiques comme la politique de défense. Or, l'exemple du budget montre que nous sommes incapables de coordonner des politiques nationales. Cela ne se passe pas bien aujourd'hui pour le budget et il est à craindre que cela ne se passe pas bien non plus pour d'autres politiques demain. Ce sont des problèmes nouveaux par rapport aux problèmes communautaires. Je citerai deux exemples. Premièrement, peut-on prétendre coordonner des politiques nationales qui sont au coeur des pouvoirs des Parlements nationaux sans y associer, d'une manière ou d'une autre, les Parlementaires nationaux ? Selon moi, la réponse est non. Deuxièmement, s'il y a des Etats en infraction par rapport à une règle de coordination, qui va les condamner? Si c'est le Conseil, comment éviter que les grands pays n'aient plus d'influence que les petits. Le Conseil osera-t-il condamner un grand Etat ? On voit bien que ce n'est pas le cas aujourd'hui. Et si c'est la Commission, quelle légitimité démocratique ou politique donner à la Commission pour qu'elle ait ce pouvoir véritable et éviter ainsi qu'un Parlement national qui vient d'être élu, par exemple, ne rejette d'un revers de la main les critiques de la Commission en demandant ce que sont ces avis de technocrate apatride. Ces exemples démontrent que pour ces fonctions-là, que nous attendons de l'Union, nous avons des problèmes très différents de l'exercice des compétences, encore une fois qu'elles soient exclusives ou partagées. Je propose donc, Monsieur le Président, que nous commençons à débattre de cela. Le squelette est beau. Avons-nous besoin, à partir de là, de créer une femme, un homme ou un couple? On a besoin de le savoir pour y mettre la chair. Je vous remercie. <BRK>

2-070

EN

Hain (Ch.E/G.-GB). - Mr President, I agree with Mr Peter De Vries of the Netherlands, that we need to maintain the institutional balance, and strengthen each institution. This text is a good start. I welcome it as an important step towards settling our constitution for a generation or more.

Some comments: firstly, I would like to see an inspirational preamble to this Treaty. However, I would like it to be as short a text as possible, setting up what the European Union is, what its objectives and values are, and who does what.

The EU will only reconnect with its citizens if we have a concise constitution that people can read and really understand. Secondly, the draft adopts the technique of including the common foreign and security policy provisions throughout the text, rather than as a freestanding chapter. This could work, but our citizens will want to be absolutely clear that different ways of working apply to the common foreign and security policy.

Thirdly, I do not favour this Convention debating a name change. I agree with Mr Lopes from Portugal. The European Union is a successful brand name, a name we are all proud of. Let us not open an unnecessary debate. Frankly, The United States of Europe, or indeed United Europe are not acceptable names. United States of Europe implies a super-state. United Europe looks to me like a football team.

Nor are the words about citizenship acceptable in the draft. We are already citizens of the European Union. We do not have to choose between national and European identity: we can, and do, have both. To create a separate, freestanding European citizenship, as implied, is an unnecessary confusion. As we try to find agreement on a final text, our watchwords must be clarity, democracy and efficiency, in a New Europe that is a union of sovereign states. Well done, and let us keep at it! <BRK>

2-071

EN

Piks (Parl.-LV). - Mr President, dear colleagues, the discussion on the EU basic treaty has just started.

Yesterday, the President of the Convention presented the first draft for the basic Treaty, which marks the beginning of a new stage in the Convention's work, and I would like to congratulate the Presidium. The basic structures have now been created. These must now be completed with formulations and details.

It is my strong belief that the basic content of the Treaty will be rooted in the outcome of the discussions at the Convention plenary sessions and working groups. What the basic Treaty must do is place the individual at the heart of its activities. It should also contribute to the preservation and development of European common values, while also respecting the diversity of cultures, traditions and language. The uniqueness of the nation states, and identities of the regions should continue to be respected.

The Charter of the EU institutions should envisage the maintenance of the current division of competencies, between the Commission, the Council and Parliament in the legislative process. A gradual transition from unanimity to qualified majority is necessary to preserve the efficiency of the decision-making process in an enlarged EU. However, unanimity should continue to be used in highly sensitive areas, such as defence policy.

The general arrangement of the European Union institutions and their role should be maintained. The working practices of the institutions must fully respect the principle of transparency. The Community method has ensured success in establishing a common EU market, economic and monetary union. By strengthening the Commission's role in the EU policies, the Commission's capacity to define common EU policies and act as a guardian of the common interest could be extended.

In the light of enlargement, the importance of the question of co-operation with neighbouring countries will become even more important. We are therefore in favour of creating a framework of privileged licensing between the Union and its neighbouring states. The remaining question is whether these provisions will be included in the basic Treaty. <BRK>

2-072

EN

Hübner (Gouv.-PL). - Mr President, I agree with those colleagues who said that the real challenge would be to fill this otherwise excellent draft with more substance. Today, I would like to raise an important issue.

The subject of the session is the "Preliminary Draft Constitutional Treaty", but then in the text, the word "Constitution" appears, and I am strongly in favour of calling our efforts the "Convention work on the Constitution", not the "Constitutional Treaty".

I believe, Mr President, that aiming for a constitution has already had a positive impact on the contents. Selecting a constitutional path, due to the very nature of the constitution, is also an excellent way of simplifying the Treaty. It is also very positive for the citizens as the word "Constitution" has a solid value. I also believe that "Constitution" builds what I would call the "citizens' identity", something we all care about. From the legal point of view, I believe that the EU deserves a solid document, and the Constitution lives up to this requirement.

Last but not least, we have had several Treaties, so far, and I believe that the time has come, for something of greater significance. We should move from the idea of just the Treaty to something we could call a Constitution. <BRK>

2-073

IT

Follini (Parl.-IT). - Signor Presidente, gli antichi filosofi greci ci hanno spiegato che la tartaruga arrivava prima del velocissimo Achille e quindi io, memore di questo, desidero rivolgere a lei e alla sua tartaruga gli apprezzamenti per il lavoro che ci ha presentato.

Mi permetto tre osservazioni telegrafiche. La prima: abbiamo intrapreso la strada della semplificazione e credo che su questa strada dobbiamo proseguire, anche a costo di qualche difetto di immaginazione. Con questo spirito io ritengo che l'articolo 19 - quello riguardante il Congresso dei popoli d'Europa - possa essere essere tralasciato.

La seconda: c'è una sequenza per la quale il Consiglio precede il Parlamento e il Parlamento precede la Commissione. Io non so se si tratti di una priorità logica, di una priorità politica; se però non si tratta, come mi pare di capire, di una priorità casuale, credo che questo equilibrio, questo assetto dei poteri si giustifichi se, d'altro canto, sugli articoli 29 e 30 e sull'articolo 41 - quelli che riguardano la politica internazionale e l'azione dell'Unione nel mondo - siamo in condizioni di tracciare delle soluzioni molto forti e molto chiare.

Terza e ultima osservazione: la vita democratica dell'Unione richiede che vi sia un elettorato europeo, che si esprima in quanto tale e non come somma dei diversi elettorati nazionali. Definire questo elettorato europeo mi sembra appropriato. Se riuscissimo a farlo già a partire dalla convalida di questo Trattato, la tartaruga avrebbe fatto un passo da giaguaro. <BRK>

2-074

EN

Roche (Ch.E./G.-IE). - Mr President, first of all I would like to congratulate and compliment you on the excellent work you have done. This is a draft that everyone can welcome. The idea of a single, simplified Treaty will make the whole Union more intelligible to the citizens, and that must be welcome. I very much agree with you that a single, institutional structure, as envisaged in the draft, does not imply uniformity of procedural arrangements across the policy areas.

I share some concerns that have already been voiced here about the institutional arrangements. We have a shared interest, I believe, in strengthening all the institutions: the Commission, the Council, and the Parliament. We also have a shared interest, I believe, in maintaining the balance.

One concern that I would mention, even at this very early stage, is a concern that I have about the concept of a President of the European Council, distinct from the Presidency of the Council of Ministers. I fear that this would create a source of potential tension.

I agree with Mr Lopes, and others, regarding the name of the Union. The idea of a United States of Europe is not attractive. "The European Union" is a name we have learned to live with and to accept. The rotation of the Presidency is going to be very important in the future, again Mr Lopes has raised this, and we can deal with it another day.

I would like, Mr President, at this stage to thank you and compliment you for the work. In the period ahead, we now have a framework within which we can operate - a framework that will produce a more coherent Europe, and a Europe that will be closer to the citizens. <BRK>

2-075

EN

Tiilikainen (Ch.E./G.-FI). - Mr President, I also would like to thank the Presidium for having the courage to put the draft treaty on the table at this stage. So far the Convention has not taken decisions on many issues and that is why I do not think there can be much content in the Treaty.

On some points however the strategy goes too far. I refer to the previous statements made here today. In some cases, it even undermines the role of the Convention, particularly in the field of the institutional issues. I refer to the fact that, whereas we have not been debating institutional issues, the whole debate has not been open for the Convention. There is very little in the Treaty that will guide our future deliberations in this field. In this respect there are statements concerning various presidencies' references to possible amendments to the structure of the Commission that should not be there.

Even the idea of a People's Congress did not gain any remarkable support here yesterday, so I share the view of Mr Lopes and Mr de Vries that instead of creating new institutions, we should strengthen the present ones that have proved successful. I refer to the Community method and to the Commission as a promoter of the common interest.

Another arrangement that should not be included in the new Treaty as it currently stands is the way the common foreign and security policy is placed in terms of the categories of competencies implementation and instruments. Mr Dehaene's group on External Affairs is currently discussing the best means of increasing the coherence of external relations. I think the result of this working group should define the place of the whole range of external relations in this new Treaty.

Lastly, I would like to repeat the question of Mr Duff, concerning the way in which we are to take decisions on this new structure. <BRK>

2-076

EL

Γιαννάκου-Κουτσίκου (Parl.-GR). - Κύριε Πρόεδρε, θα είμαι επιγραμματική. Μπράβο στο Προεδρείο για το σχέδιο αυτό που θα διευκολύνει και τους αναγκαίους συμβιβασμούς, γιατί πρέπει να υπάρξει μία πρόταση προς το Ευρωπαϊκό Συμβούλιο. Η Ευρωπαϊκή

Ένωση, νομίζω, θα μπορούσε να ονομαστεί Ηνωμένη Ευρώπη, να έχει ενιαία νομική προσωπικότητα και να έχει ένα σύνταγμα κατανοητό στους πολίτες, χωρίς σύγχυση αρμοδιοτήτων.

Πρέπει να περιλαμβάνεται ένα προοίμιο που θα αφορά στις αξίες και τις αρχές. Γιατί οι αξίες και οι αρχές δημιουργούν κοινό συμφέρον για τους ευρωπαίους πολίτες, αλλά και για τις ηγεσίες τους. Η ιθαγένεια και ο Χάρτης των Θεμελιωδών Δικαιωμάτων είναι εκ των ων ουκ άνευ για το στόχο αυτό. Είναι απόλυτη ανάγκη να αποκτήσουμε ενιαία πολιτική δικαιοσύνης, ασφάλειας, εξωτερικών σχέσεων και άμυνας, γιατί μόνο έτσι θα ενισχύσουμε τη διεθνή μας παρουσία.

Το Ευρωπαϊκό Συμβούλιο, κύριε Πρόεδρε, δεν χρειάζεται ένα μη οργανικό μέλος του ως Πρόεδρο, διότι θα δημιουργηθούν νέοι γραφειοκρατικοί μηχανισμοί. Ούτε πρέπει να αποδυναμωθεί η Ευρωπαϊκή Επιτροπή. Ούτε τα εθνικά Κοινοβούλια πρέπει να παρεμβαίνουν ex ante στο ρόλο των υπερεθνικών αρχών. Τα εθνικά κοινοβούλια ας πάρουν εξουσίες από τις κυβερνήσεις τους, που δεν τους παραχωρούν τις πραγματικές εξουσίες που έπρεπε να τους έχουν παραχωρηθεί.

Το άρθρο 42 είναι σημαντικό. Η Ευρώπη δεν μπορεί να επεκτείνεται συνεχώς άκριτα προς πάσαν κατεύθυνση. Πρέπει να αποκτήσει ειδικές σχέσεις με τρίτες χώρες.

Τέλος, κύριε Πρόεδρε, το σημαντικότερο από όλα είναι το εξής: εκεί που μπορούμε να ασκήσουμε πολιτικές είναι η καθημερινότητα των πολιτών, δηλαδή τα ζητήματα της απασχόλησης, τα προβλήματα του περιθωρίου, της εκπαίδευσης, της υγείας, του πολιτισμού. Εκεί είναι οι εστίες κινδύνου για την Ευρώπη, εκεί όπου κατά τα άλλα η ευημερούσα Ευρώπη μπορεί να αναπτύξει, δυστυχώς, περιθώριο και πολιτικά άκρα. <BRK>

2-077

NL

Maij-Weggen (PE). - Voorzitter, in de eerste plaats mijn waardering voor deze globale opzet. Ik denk dat deze goed beantwoordt aan wat de Conventie heeft gevraagd en ik denk dat we er ook allemaal heel blij mee kunnen zijn. Ik ben erg blij dat er een constitutioneel gedeelte zit in het ontwerp en dat wordt voorzien in opname van het Handvest. Ik ben ook positief over de federale inslag en de bevoegdheidsverdeling, een beetje in lijn met de heer Lamassoure. Ik ben heel blij dat de pijlers opzij geschoven worden, dat lijkt me een goede zaak. Het is ook goed dat er wordt voorzien in eigen middelen - ik denk dat we daar nog een goede discussie over moeten hebben -, dat het lidmaatschap nader wordt beschreven en dat er sprake kan zijn van schorsing, maar ook van de mogelijkheid om uit te treden.

Er zijn ook een paar punten waar ik niet tevreden over ben. Ik denk dat we de naam van de Europese Unie niet ter discussie moeten stellen. Het woord Europese Unie is prima. Ik denk ook dat we niet de suggestie moeten wekken dat er nu plotseling een Europees burgerschap ontstaat: dat stond al in artikel 8 van het Verdrag van Maastricht.

Derde punt, ik vind dat het accent te veel ligt op de Europese Raad en de Europese ministerraad. Verder lijkt het mij geen goed idee om het permanent voorzitterschap voor de Europese Raad te creëren, en ook niet om de Hoge Vertegenwoordiger te institutionaliseren: die moet mijns inziens samenvallen met de commissaris voor de externe betrekkingen in de Europese Commissie. Zo ontstaat namelijk bij mij het ongemakkelijke gevoel dat de intergouvernementele inslag in dit ontwerp te groot is ten koste van het communautaire. Als dat zo is, dan zullen we daar corrigerend moeten optreden.

Tenslotte, voorzitter, ik ben ook geen voorstander van instelling van een congres. Ik zou het wel goed vinden als de Conventie verankerd werd in het VEU. Maar globaal gesproken ben ik positief over het ontwerp en over de rest zullen we zeker nog in het komend half jaar met elkaar te spreken komen. <BRK>

2-078

DE

Brok (PE). - Herr Präsident! Ich möchte Ihnen als Präsidium meinen Glückwunsch zu diesem Entwurf aussprechen. Ich glaube, dass es das entsprechende Gerüst liefert, auf dessen Grundlage wir die Arbeiten der nächsten Wochen und Monate in Angriff nehmen können, und ich glaube, dass es nicht notwendig ist zu streiten, ob etwas in Artikel 7 oder Artikel 12 steht, sondern ich glaube, dass dies eine Grundlage ist, die einen fairen Kompromiss darstellt. Wir wollen eine Europäische Union aus unserer politischen Familie heraus, ein integriertes Europa, kein intergouvernementales. Deswegen sollte die Möglichkeit des Intergouvernementalismus, die ja optional in diesen Vorschlägen noch enthalten ist, sorgfältig beachtet und möglichst umschifft werden. Das wird natürlich die Aufgabe sein, die wir im Rahmen dieses Konvents weiter zu erörtern haben.

Ich hätte noch einige wenige Vorschläge zu machen, die man vielleicht hinzufügen könnte, wenn man von den Ausgangspositionen ausgeht. Sie sprechen in Artikel 1 von den Staaten Europas. Wir sollten betonen, dass es eine Union der Staaten und der Völker Europas ist. Ich glaube, beides zusammen macht die Europäische Union aus, und ich glaube, dass wir uns auch auf dieser Ebene finden könnten. Auch die Austrittsklausel ist ein Problem. Wenn ein Staat wirklich ernsthaft austreten will - das zeigt das Beispiel Grönland - gibt es keine Schwierigkeit damit -, aber dieses als ständiges Angebot zu haben, ist eine Verführung für manche innenpolitischen Diskussionen, und ich glaube, dass man das unter solchen psychologischen Gesichtspunkten noch einmal nüchtern untersuchen sollte. Wichtig scheint mir zu sein, dass die Grundrechtecharta vielleicht nicht erst in Artikel 6 oder 7 auftaucht, sondern dass dies als Beispiel für das Europa der Bürger an der Spitze steht.

Wir müssen natürlich großen Wert darauf legen, dass bei der Zweiteilung, die hier vorgenommen wurde, die wesentlichen Bestimmungen, die Beantwortung der Machtfrage der Europäischen Union, in dem ersten Teil beinhaltet ist. Ich glaube, auch darüber müssen wir uns, wenn es um die Detailaufteilung geht, im Einzelnen noch unterhalten. Es ist eine ganz entscheidende Frage, ob uns dies gelingen könnte.

Ich möchte das gerne so zusammenfassen: Sie haben einen Vorschlag unterbreitet, in dem sie von einer bundesstaatlichen Struktur ausgehen. Der Vorschlag enthält aber immer noch einige intergouvernementale Fallstricke, und diese Fallstricke sind offengelegt, so dass wir sie leicht umgehen können, wenn wir es denn wollen. <BRK>

2-079

FR

Fayot (Parl.-LU). – Monsieur le Président, il est significatif que vous nous ayez présenté cette architecture d'une Constitution à peu près au même moment où le Conseil européen décidait de l'élargissement de 15 à 25. Je trouve que c'est une coïncidence sinon historique, en tout cas fort significative. Cela va nous forcer à pousser l'intégration de l'Union européenne afin d'éviter que cette Union européenne ne devienne une zone de libre-échange.

Nous avons donc l'obligation dans ce travail sur la Constitution européenne de pousser à l'approfondissement de la construction européenne.

L'architecture que vous nous proposez présente de nombreux aspects intéressants. Je pensais effectivement que c'est maintenant que commence véritablement le travail de notre Convention sur des textes. Il sera important de voir exactement comment se fera ce travail, si nous constituerons des groupes de travail, si nous travaillerons en plénière par des amendements, si nous aurons la possibilité de discuter à fond de ce texte que je n'appellerai par un texte martyre, Monsieur le Président, par respect pour vous. En effet, je pense que c'est tout de même un texte par rapport auquel nous allons garder toute notre liberté, surtout en ce qui concerne les différents points un peu plus controversés.

Je souhaiterais apporter une dernière remarque. Personnellement, je trouve que les titres 1 et 2 pourraient être plus centrés sur les citoyens européens. Je pense que nous rédiger une Constitution dans laquelle devrait apparaître, comme l'a dit Monsieur Brok, en premier lieu la Charte. Ce premier titre centré sur le citoyen européen "L'Union conçue comme une communauté de citoyens réunis par les mêmes valeurs et des objectifs communs" pourrait rapprocher une nouvelle fois la Constitution de nos citoyens. C'est l'objectif essentiel que nous devons essayer d'atteindre. Merci. <BRK>

2-080

EN

Frendo (Parl.-MT). – Mr President, I warmly welcome this document, as I believe it to be an important basis for our discussion. It is crucial for our Convention that such a document be adopted, both for the credibility of the Convention, and to show that the Convention itself has been a success.

I have a few points to make. The first one relates to fundamental rights. I think that fundamental rights should, in fact, be in a chapter of their own. Fundamental rights refer to rights that are applicable throughout Europe, and therefore are something that should be treated separately in the document.

I also think it important that in the structure of the constitutional document itself there should be a clear distinction between those legislative processes which are binding and those which are not. I am sure the citizens of Europe would like to understand this distinction as well.

Thirdly, it seems to me that the principle of solidarity is missing from the text. The issue of solidarity was raised in this Convention a number of times, and you, Mr President, also embraced it at one of the earlier meetings. I truly think we need a specific clause on the concept of solidarity. This has been one of the fundamental reasons for the success of the Union. It should, in my view, be a principle of governance. We could discuss later whether this should be a principle of justice. <BRK>

2-081

EN

McAvan (PE). – Mr President, I think the document shows that we are now on the home strait of our work, and we will deliver what we set out to do. It is a skeleton and I would now like to add my own pound of flesh to it.

Yes, of course we need solidarity. It is a very important principle of the Union's work. We also need equality between men and women. That cannot be omitted. There are very few women here, and we must not overlook half the population.

Thirdly, something people have not mentioned - Europe is a multicultural society. We already have a declaration against racism and xenophobia. Let us now add something about that in the values of the European Union. Never has this been more relevant than at this period of time, when the far right and xenophobia are growing on our continent.

There were, however, a couple of surprises, Mr President. For example, the big debate on the name. I do not think we need to re-brand the Union at the moment, as people know what it is. As for the concept of dual citizenship, I am not sure where that idea comes from. It is not one we have discussed here before, and I am unsure how helpful these two items have been in the context of debating these things with the public.

Peter Hain mentioned a preamble. He spoke about an inspirational text, and he is right. We need something which explains the whys and wherefores of the European Union, which can be talked about in schools, colleges, and pensioners' groups, so that people understand what the European Union is about.

As Mr Fayot has just said, timing is important. It is another piece in the jigsaw, which will bring us towards the enlarged Union. It is another piece that will result in a Union based on democracy. <BRK>

2-082

SV

Hjelm-Wallén (Ch.E/G.-SE). - Herr ordförande! Jag vill också säga att jag anser att strukturen är god på det upplägg som vi har fått. Jag hoppas att vi under resans gång skall komma ihåg att det allra viktigaste är att vi gör hela dokumentet begripligt för en allmänhet. Att allmänheten förstår vad EU är till för och hur besluten i huvudsak går till är utomordentligt viktigt.

Mycket återstår naturligtvis att göra vad gäller innehållet. En del saker saknas. Linda McAvan nämnde just jämställdhetsfrågan, dvs. jämställdhet mellan kvinnor och män, och även det multikulturella Europa. En annan fråga som inte tas upp är ombudsmannen. Jag tycker också att innehållet ibland kan vara för omfattande. När det skapas en särskild rubrik i andra delen som heter försvarsfrågor, så ifrågasätter jag det. Det kan nämligen inte jämföras med externa åtgärder eller den inre politiken, utan det blir en ojämnhet som jag tycker måste ses över.

Slutligen vill jag säga att jag beklagar att den utåtriktade debatten i flera av våra länder har startat med rubriker som egentligen handlar om ett enda begrepp, nämligen "Europas förenta stater". Så vitt jag vet, har benämningen på vårt framtida samarbete överhuvudtaget inte diskuterats i konventet. Jag tycker därför att det är väldigt olyckligt att vi nu genom denna benämningsfråga har startat en pseudodebatt som inte har någonting med innehållet att göra. Jag hoppas att det skall kunna rättas till så snart som möjligt. <BRK>

2-083

DA

Bonde (PE). - Hr. formand, jeg har for mange dage siden indskrevet mig på talerlisten til debatten om charteret og til dette punkt. Jeg har omhyggeligt forberedt to taler og får nu alt i alt et minut. Må jeg ikke opfordre til, at man næste gang tilrettelægger møderne noget bedre.

Jeg vil rejse et punkt, og det er Giscard's forslag om kun at lave en føderation for dem, der godtager det nye. Hvis et land spørger sine borgere, om de stemmer nej, så er det ud af EU. Giscard stillede sit forslag i "Der Spiegel", uden at det var diskuteret i Konventet. Kan vi ikke få punktet sat på dagsordenen til en særlig debat, så vi kan få en fornemmelse af, om vi skal deltage i et retskaffent Konvent eller en fransk revolution. Og så er jeg enig i, at vi skal have Ombudsmanden med ind i teksten. <BRK>

2-084

FR

Moscovici (Ch.E/G.-FR). – Monsieur le Président, je voudrais d'abord vous féliciter, ainsi que le Praesidium, pour la qualité du travail effectué et que vous avez présenté hier. C'est un moment important et je crois que le squelette ou la colonne vertébrale répond effectivement à nos attentes sur trois angles : tout d'abord, en répondant à la préoccupation que nous partageons tous d'un texte simple, lisible et facile d'accès afin de permettre aux citoyens européens de mieux s'approprier de l'Europe et de son projet; deuxièmement, c'est tout à votre honneur, en prenant fidèlement en considération les réflexions et les contributions qui ont été apportées à la Convention depuis plusieurs mois tout en laissant ouvertes de très nombreuses possibilités institutionnelles prometteuses; et troisièmement, en mettant, selon moi, la Convention face à ses responsabilités à partir d'une approche ambitieuse. Il y a là un dessein de rénovation de la méthode communautaire et c'est tout à fait fondamental. Nous disposons donc maintenant d'une base de travail incontestable et je l'entends ici, tout à fait incontestée.

Vous avez dit vous-même, Monsieur le Président, qu'il ne s'agissait pas aujourd'hui de se pencher sur le fond. Je me contenterai donc de deux réflexions. La première vise à répondre à Peter Hain au sujet de l'Europe Unie. Car le fait que cela fasse penser à un club de football tel que Manchester United, Leeds United, etc. devrait plutôt le conforter dans ce choix parce que ceci est très britannique au fond. Il faudrait donc qu'il y réfléchisse. Ma deuxième réflexion est plus sérieuse. Elle porte sur ce que nous devons ajouter, à savoir la chair. Il y a un squelette, il y a une architecture institutionnelle bien pensée mais il faudra aussi penser au contenu, c'est-à-dire aux politiques communes, dont il me semble que nous pourrions encore davantage développer la place dans la première partie du Traité. <BRK>

2-085

FR

Le Président. – Voilà, il nous reste maintenant dix orateurs. Nous avons regardé les possibilités et je crois que la meilleure solution, c'est de les inscrire en tête de notre débat de la prochaine session, le vendredi matin. Nous garderions une heure, cela leur permettra d'avoir suffisamment de temps pour s'exprimer. Si, en effet, nous continuions, je ne pourrais pas vous répondre, ce qui serait quelque peu regrettable pour les interventions puisque nous devons interrompre nos travaux à 13 h. Donc, à partir de M. Lekberg, et je m'en excuse auprès de lui, jusqu'au trentième qui est M. Farnleitner, ce serait le vendredi de la prochaine session à 9h30, on garderait une heure pour vos interventions, si vous en étiez d'accord.

Je voudrais essayer de répondre à vos observations très pertinentes et parfois même bienveillantes qui ont été faites au cours de ce débat.

Je commencerai par le début, à savoir les remarques de M. Hänsch et de Mme Palacio, lesquels siègent au praesidium et ont donc été associés naturellement à l'élaboration de ce document qu'ils connaissent fort bien. M. Duff a posé comme question principale, la question sur la suite. Et si vous me le permettez, je la garderai pour la fin de mes réponses. Cette question est, en effet, évidemment fondamentale.

M. Barnier a salué le progrès que constitue le passage à un système institutionnel unique. Je ne voudrais pas, tout de même, que dans la Convention, et je crois que ce serait une erreur psychologique, quand nous faisons des avancées importantes, nous les sous-estimions. Voilà des années qu'on parle des trois piliers. Nous ferions disparaître les trois piliers. Nombreux sont ceux d'entre vous qui, ici ou là, ont dit: sera-t-on jamais débarrassés de ces trois piliers? Nous le proposons. Donc, on créerait un système institutionnel unique. C'est une avancée importante de l'organisation de l'Union européenne. Naturellement, les modes d'emploi des Institutions, et M. Lamassoure le disait tout à l'heure, seront adaptés au système de compétence, comme dans toute Constitution où il y a, en effet, des procédures particulières en fonction des questions traitées ou des systèmes de compétences. Il ne faut pas avoir l'idée simpliste – et je ne pense pas qu'ici, qui que ce soit ait des idées simplistes – que parce qu'il y a un système institutionnel unique, il y a une seule procédure. Non! Il y a des procédures adaptées à la nature des compétences puisque nous savons, nous l'avons répété, vous l'avez dit vous-mêmes, qu'il y aurait plusieurs systèmes de compétences.

Je crois que c'est M. Lopes qui a posé la question des procédures de révision. Nous n'avons pas abordé ce sujet, la question de savoir s'il devait y avoir ou non des procédures de révision différentes, c'est-à-dire pour la première partie et les parties suivantes. C'est une idée qui avait été avancée à certains moments du débat, à l'extérieur de notre Convention, mais que nous avons entendue. C'est assez complexe, parce qu'il n'y a pas une partie noble et une partie moins noble dans une Constitution. Tout est important. Et, d'ailleurs, on rappelait tout à l'heure qu'il faut mettre dans la partie constitutionnelle, par exemple, les procédures essentielles de décision. La procédure législative fait partie du dispositif constitutionnel. Et s'il y a des procédures nouvelles adaptées à l'Union européenne, comme la coopération ouverte, c'est à mettre aussi dans la partie constitutionnelle.

D'autre part, on risque d'avoir, chez certains membres de l'Union, un doute s'ils ont le sentiment qu'il y a une partie plus souple, plus incertaine du dispositif qui pourrait être modifiée de façon plus facile. On a souffert, dans le passé, du fonctionnement de certains articles dans lesquels il y avait bien une procédure de modification des compétences, d'élargissement des compétences, mais qui a été interprétée avec le temps de telle manière que le processus était insuffisamment transparent et se terminait finalement par une décision au Conseil qui n'était pas d'ailleurs une décision toujours du niveau des dirigeants véritables du Conseil. Je crois qu'il faut regarder ce point, nous ne l'avons pas traité. Nous verrons s'il faut une seule procédure de révision ou plusieurs.

Il a posé la question de la référence dans la Constitution, et je reviendrai tout à l'heure sur les Institutions, aux Parlements nationaux. Je vous dirai franchement qu'on ne peut pas considérer les Parlements nationaux comme une Institution de l'Union. Pas plus que les gouvernements ne sont d'ailleurs des Institutions de l'Union. Par contre, puisque l'on va donner des rôles aux Parlements nationaux, et notamment vous paraissez être d'accord sur un rôle concernant le système d'alerte précoce s'agissant de la subsidiarité, il y aura bien dans le texte des références aux Parlements nationaux. Et il faudra que ces références soient telles que l'implication de ces Parlements apparaisse clairement. Cela peut d'ailleurs intervenir à propos d'autres sujets ou d'autres Institutions.

Alors, Monsieur Lopes, c'est difficile pour nous. On nous dit, à Nice, "précisez les compétences". Et vous nous dites: "pas de catalogue de compétences". Que faire? Nous avons parlé de ce problème des compétences au début des travaux de la Convention. D'abord, il faut savoir qu'il y a un catalogue de compétences, que ce n'est pas une invention. L'article 3 du Traité de Rome est une énumération de compétences. On ne va pas le supprimer. Et d'ailleurs, s'il doit y avoir des compétences exclusives, il faut bien qu'elles soient dénommées. On ne peut pas dire qu'il existe des compétences exclusives et ne pas les citer.

La position qui a été prise par la Convention – ce n'était pas la mienne, mais je l'ai acceptée bien volontiers – est de dire qu'on ne fait pas deux catalogues de compétences, un catalogue pour l'Union, un catalogue pour les États, ce qui était la position de certains pays au départ de nos travaux. Mais il est bien évident que les compétences exclusives et partagées devront être énumérées comme elles le sont dans les traités actuels. Et donc, sur ce point, ce n'est pas du tout un recul, c'est simplement la confirmation des traités actuels.

Monsieur De Vries a dit: "il faudrait se mettre d'accord sur le fond avant de parler d'architecture". Je veux bien, mais, en fait, aux mois de mai et de juin, beaucoup d'entre vous ont dit: "c'est très difficile d'avancer si on n'a pas une carte de la route", c'est-à-dire si l'on ignore où les différentes questions trouveront leur place dans l'architecture. Nous en avons beaucoup parlé au sein de praesidium, nous avons travaillé sur ce texte et, par ce texte, nous avons répondu à une demande. Il ne s'agit pas là d'une initiative arbitraire du praesidium ou de la présidence.

La question centrale, en effet, qui a été posée par certains, est: "Est-ce une bonne architecture?". Et le véritable point, qui d'ailleurs curieusement n'a pas été évoqué, est la question de savoir: "fallait-il mettre les Institutions avant les compétences ou les compétences avant les Institutions?" Dans toutes les Constitutions, dans la plupart, en tout cas dans celles que je connais, on met les Institutions d'abord, et on met les compétences après. On a pensé que la construction européenne, compte tenu de sa nature, plusieurs d'entre vous l'ont dit, ne peut pas se doter d'une constitution qui serait celle d'un Etat existant qui organise ses pouvoirs. Il s'agit de la Constitution d'un ensemble de peuples et d'Etats – je dis volontiers de peuples et d'Etats – qui veulent organiser leur démarche et leur avenir. Le système est donc déterminé, en réalité, par les objectifs et par les compétences. C'est pourquoi nous avons pensé qu'il fallait mettre les objectifs – on en dira un mot – en tête, les compétences ensuite, et après les éléments plus institutionnels.

M. Folini, avec malice, s'est interrogé sur l'ordre dans lequel nous avons évoqué les institutions. Il n'y a aucune malice. C'est l'ordre qui résulte de la combinaison des traités de Maastricht et du traité de Rome. Dans le traité de Rome, qu'il faut relire, l'ordre est: Parlement, Conseil, Commission. Le Parlement, c'est un salut à la légitimité démocratique. Où fallait-il mettre le Conseil européen? Nous nous sommes reportés au traité de Maastricht, qui le met en tête, parce que c'est une institution qui doit donner une impulsion à l'ensemble. Il est donc normal qu'il figure en tête. C'est pour cela que nous avons pris comme ordre: Conseil européen, Parlement, Conseil, Commission.

Mme Tiilikainen nous a dit: "Mais il faut attendre pour la PESC les travaux qui sont en cours, les travaux du groupe de Michel Barnier". Bien entendu. Nous disons simplement que si on arrive à des propositions, voilà où ces propositions figureront dans le traité constitutionnel. D'ailleurs le traité de Maastricht prévoit qu'il doit y avoir une politique commune de défense et qu'elle doit aller vers un système européen. Ce n'est donc pas non plus quelque chose qu'on introduit, mais quelque chose qu'on met en mouvement. Nous attendons de voir où il conviendra de le faire figurer.

M. Brok avait insisté pour que les questions de pouvoir figurent dans la partie constitutionnelle. Il a tout à fait raison. Nous sommes de cet avis. Il peut y avoir des points de procédure, de procédure pure. Et il faudra voir où les inscrire. Mais je crois d'abord que les procédures peuvent être simplifiées. Je pense aux deux grands articles qui décrivent la "navette" au sein de la procédure de codécision, articles qui sont d'une rédaction compliquée, ce qui avait d'ailleurs été signalé par Giuliano Amato. Mais je crois que ces articles pouvant être simplifiés, ils auraient leur place, eux aussi, dans la première partie. Parce que la procédure législative, dans la plupart des grandes démocraties, c'est un ensemble de la vie institutionnelle du pays.

M. Fayot a posé la question des titres 1 et 2, demandant s'ils ne pourraient pas être plus centrés sur les citoyens. Nous avons, en fait, des complications concernant ce passage, parce qu'on nous a demandé qu'il y ait un préambule à la constitution. Il y a toujours un préambule à la constitution. C'est en général un texte assez court, de l'ordre d'une page, une page et demie. Mais il y a également le préambule de la Charte. Ensuite, il y a deux définitions possibles des droits. Il y a la définition dans la constitution et il y a la définition donnée par la Charte. Il faut arriver à ce que tout ceci soit assez clair, qu'il n'y ait pas de redite, et il faut donc qu'il y ait un préambule pour la constitution, un article intitulé "création du système politique, de l'entité politique", et ensuite, vous avez raison, des titres centrés sur les citoyens, mais en essayant de faire une synthèse, ou en tout cas de regrouper les dispositions concernant les droits des citoyens.

M. Frenco a salué la référence au principe de solidarité. Je n'ai pas voulu vous proposer trop de choses, parce qu'il faut laisser la spontanéité de la Convention, et lui laisser le temps, le loisir de s'épanouir elle-même. Mais j'avais réfléchi à une devise pour l'Union et je l'avais proposée au praesidium, qui avait répondu: "pas de devise, on verra plus tard". La devise à laquelle j'avais pensé était: "liberté, justice et solidarité". Parce que je crois que si on prend le système tel qu'on l'imagine, et ne peut pas mettre beaucoup plus de mots dans une devise. Je pense que la solidarité est un des points centraux, à la fois de la société européenne et en même temps des relations possibles de l'Union européenne avec le reste du monde.

Mme McAvan s'est préoccupée de la citoyenneté, mais elle existe déjà. Elle est dans les traités. Je crois que nous devons la mettre à un endroit qui est important pour l'opinion publique, parce que la citoyenneté est un droit, elle est porteur de droits, ces droits doivent être énumérés dans la constitution, comme c'est le cas dans toutes les constitutions. En réalité, on ne propose pas de droits nouveaux, puisqu'ils sont déjà énumérés dans les différents traités, mais on les regroupe avec une certaine solennité, de façon à ce que les citoyens européens, qui restent des citoyens nationaux, sachent quelle est la panoplie de droits qu'ils peuvent exercer à ce titre.

Mme Hjelm-Wallén a posé la question de la défense et de savoir s'il fallait mettre en place un dispositif spécial pour les affaires étrangères, pour la diplomatie et pour la défense. Je pose une question très simple à tous les représentants nommés par les gouvernements, qui sont ici, les 28: Y a-t-il un seul pays dans lequel c'est la même personne qui est chargée des politiques étrangère et de la défense? Je n'en connais pas, parce que ce sont des problèmes spécifiques. Le problème de la défense, et on attendra les rapports du groupe de M. Barnier, porteront très vraisemblablement sur des problèmes assez techniques de la défense, c'est-à-dire une agence pour l'acquisition et la normalisation des armements, la mise en place de certaines structures communes. Je crois qu'il est normal, au moins à ce stade de nos travaux, que nous ayons une rubrique pour les Affaires étrangères et une rubrique pour la défense.

Monsieur Moscovici, vous avez eu le courage rare de vous amuser sur l'appellation de l'Union. Cela veut dire deux choses: la première est que, à partir du moment où nous fusionnons les traités, il n'y a plus de nom, puisque nous avons à la fois la Communauté européenne et l'Union. De toute façon, il faut choisir. On ne va pas l'appeler la Communauté-Union européenne. Il n'y a plus de nom. Il faut en choisir un. S'il faut en choisir un, il faut le faire librement, ouvertement. Il faut consulter les citoyens. Il faut regarder de quoi les mots seront porteurs, non pas actuellement, mais dans dix ans, dans vingt ans. Quand, dans vingt ans, les jeunes parleront de l'Europe dans une réunion internationale, préféreront-ils dire l'Union, ou l'Europe? Il faut regarder, écouter. La Convention n'a pas été consultée, donc on ne tranche rien. Mais je vous demande de vous mettre à l'écoute des citoyens et des citoyennes et de vous dire: quand on choisit un nom – c'est vrai pour une compagnie, pour un produit – il faut choisir un nom qui soit porteur d'images pour le système. Quel est le nom qui sera porteur d'images pour l'Europe? Non pas aujourd'hui, bien sûr, mais dans dix ou vingt ans.

Vous avez fait quelques remarques sur le contenu, mais vous avez dit vous-même que nous renvoyons la discussion, sur le contenu, aux différents retours de nos groupes de travail.

J'en viens à la question de M. Duff. Nous en avons parlé et je voudrais que vous vous imprégniez de l'idée que notre convention est une structure libérale. On ne cherche pas à imposer des méthodes, des contraintes. Un débat prolongé sur l'architecture ne serait probablement pas très productif actuellement. Vous avez fait vos remarques, il reste d'autres remarques à faire. Elles seront donc faites le 8 novembre au matin, et nous aurons vos réactions sur l'architecture. Ce qui sera important, comme d'autres l'ont dit, c'est ensuite la relation entre l'architecture et la substance. Et quand on verra arriver la substance à la suite du retour des travaux des groupes de travail – j'en cite quelques-uns: le groupe de travail sur la simplification, qui va apporter des éléments très importants sur le fonctionnement institutionnel, le groupe de travail de Jean-Luc Dehaene sur la présence internationale de l'Union, qui va aussi apporter des éléments importants –, c'est à ce moment-là qu'on verra si l'architecture proposée est la bonne ou s'il y a des modifications, des améliorations à apporter.

Il me semble – mais ceci n'est pas dogmatique et on en reparlera – que nous allons terminer ce débat le 8 novembre. Ensuite, dans nos sessions suivantes, nous allons avoir le retour des travaux des groupes de travail. Il faudra accueillir ces travaux, y compris ceux, très importants, sur la gouvernance économique et sociale qui, du point de vue du fonctionnement de l'Union, a une importance considérable. Ayant reçu ces travaux, en ayant débattu, nous serons amenés probablement à vous présenter un nouveau schéma. Ce schéma pourra-t-il être beaucoup plus détaillé? Se contentera-t-il d'incorporer les éléments qui auront été décidés jusqu'ici, comme par exemple la subsidiarité, la Charte, l'unicité juridique? Nous le verrons. Mais je pense que c'est au début de l'année 2003 qu'on devrait passer de l'avant-projet d'architecture à un projet d'architecture, à quelque chose de plus descriptif. Et ensuite nous aborderons bien sûr les différents sujets que vous avez déjà évoqués vous-mêmes. Je pense que pour les questions institutionnelles, je vous le dis franchement, il faudra les débattre en séance plénière. Je crois que c'est difficile de faire des groupes de travail, parce que les groupes de travail ne seront pas nécessairement représentatifs. D'autre part, ils peuvent céder à la tentation qu'iront dans les groupes de travail ceux qui sont en faveur du rôle particulier d'une institution ou d'une autre, et donc il me semble que les grandes questions institutionnelles devront être débattues en séance plénière. Par contre, il y aura certainement ensuite des points techniques, c'est-à-dire que lorsqu'on aura à trancher, vu un certain nombre de problèmes institutionnels, certaines modalités particulières concernant des désignations, certains fonctionnements, qui devront faire l'objet de travaux plus fouillés. Mais il ne s'agira pas de mettre en place des groupes de travail au sens global du terme. Ce seront plutôt des groupes d'expertise composés des membres de la Convention qui s'intéresseront à un problème particulier.

Voilà, Monsieur Duff – je ne sais pas si j'ai bien répondu à votre demande –, comment nous imaginons à l'heure actuelle la poursuite de nos travaux.

Je vous remercie.

(Applaudissements)

Nous nous retrouverons donc les jeudi 7 et vendredi 8 novembre. Pour ce qui est du jeudi 7: groupe de travail sur les compétences complémentaires, M. Christophersen, et sur la gouvernance économique et sociale, M. Hänsch. Le lendemain, poursuite des travaux sur l'architecture pour ceux auxquels nous n'avons pas pu donner la parole.

(La séance est levée à 13 h 10) <BRK>

THE EUROPEAN CONVENTION

THE SECRETARIAT

Brussels, 11 March 2003 (12.03)**(OR. en,fr)****CONV 601/03****NOTE**

**Subject : Summary report on the plenary session ¹
– Brussels, 27 and 28 February 2003**

I. Debate on the amendments to Articles 1 to 4 of the draft Constitution**Article 1**

1. Chairman Giscard d'Estaing presented the amendments received, pointing out that, unsurprisingly, Article 1 and Article 2 had given rise to many amendment proposals. Article 1 is the article which defines the Union and is the foundation of the whole construction. The Chairman reminded the meeting that the Treaty is establishing a constitution. The substance of the text under discussion is a constitution, but one which takes the legal form of a treaty since, in contrast to a national constitution, the powers conferred on the Union derive from the States which conclude the Treaty. The Chairman stated that the Praesidium was willing to clarify this point by means of more appropriate wording if the Convention so wished. However, given that Article 1 was already an integral part of the constitution, it was not necessary to mention the High Contracting Parties again in that article, since they would appear in the preamble.
2. As regards the actual definition of the nature of the Union, the Chairman pointed out that a large number of Convention members found it too weak, while an equal if not larger number were opposed to the term "federal".

¹ The verbatim record of the plenary session is available on the website:
<http://european-convention.eu.int>

Article 4

8. The debate confirmed that there was broad consensus on this provision giving legal personality to the Union.

II. Debate on the amendments to Articles 5 to 7 of the draft Constitution

Article 5

9. Vice-Chairman Dehaene introduced the debate on this article by underlining that the Praesidium had attempted to express, in a single provision, the two elements of the consensus that had been reached, i.e. the integration of the Charter into the Constitution and a clause allowing the Union to accede to the European Convention on Human Rights.
10. The debate confirmed that there was broad agreement on these two elements. Moreover, a large number of speakers expressed their preference for either inserting the Charter into the first part of the Constitution (which they argued would facilitate the wording of Articles 2 and 3 or – and this second alternative was acceptable only as a compromise solution to some members - establishing that the Charter constituted a second part of the Constitution, to be inserted between the first part and the part on the Union's policies. Some members supported including the text of the Charter as a protocol. Others emphasised the importance of the amendments to the wording of the Charter suggested by Working Group II and of completing the "Explanations" on the Charter drawn up by the Praesidium of the previous Convention.
11. Various speakers wanted paragraph 2 strengthened by laying down an obligation for the Union to apply for accession to the ECHR, with a view to minimising the risk of accession being blocked under the unanimity rule. Some speakers also called for mention to be made in this paragraph of possible accession to other international conventions on human rights.

Articles 6 and 7

12. In presenting the amendments made to the draft wording of Article 6, and also in relation to Article 7, Vice-Chairman Dehaene highlighted the major question of whether – and to what extent – these provisions overlapped with those of the Charter. He explained that the Praesidium had nonetheless considered it appropriate to include these provisions on non-discrimination and citizens' rights in the first part, in view of their overriding importance. He also pointed out that, with its draft Article 6, the Praesidium wished to confirm exactly how the law stood at present.
13. The question of overlapping was at the heart of the debate, and a number of speakers argued that if the Charter was integrated into the first part or into a new part 2, then the current Article 6 could be deleted and Article 7 could be considerably shortened since it would no longer have to list citizens' rights. Others favoured keeping such a list. Some speakers observed that, in addition to the articles in the Charter, it would be necessary in any event to establish the necessary legal bases by incorporating those of Articles 12, 13 and 18 to 22 TEC, which could be done in the part of the Constitution on policies.
14. In relation to Article 6, a number of speakers called for the prohibition to be extended to other forms of discrimination.

III. Presentation of draft Articles 24 et seq. on the instruments

15. The President underlined that in drawing up its draft for Title V, the Praesidium had kept in view the important objective of simplification as set out in the Laeken declaration. It had based its drafting on the results of the Working Group, as well as the debate in plenary on this issue.

4-001

DA

**DET EUROPÆISKE KONVENT
TORS DAG DEN 27. FEBRUAR 2003**

DE

**EUROPÄISCHER KONVENT
DONNERSTAG, 27. FEBRUAR 2003**

EL

**ΕΥΡΩΠΑΪΚΗ ΣΥΝΕΛΕΥΣΗ
ΠΕΜΠΤΗ 27 ΦΕΒΡΟΥΑΡΙΟΥ 2003**

EN

**EUROPEAN CONVENTION
THURSDAY, 27 FEBRUARY 2003**

ES

**CONVENCIÓN EUROPEA,
JUEVES, 27 DE FEBRERO DE 2003**

FR

**CONVENTION EUROPÉENNE
JEUDI 27 FÉVRIER 2003**

IT

**CONVENZIONE EUROPEA
GIOVEDÌ 27 FEBBRAIO 2003**

NL

**EUROPESE CONVENTIE
DONDERDAG 27 FEBRUARI 2003**

PT

**CONVENÇÃO EUROPEIA
QUINTA-FEIRA, 27 DE FEVEREIRO DE 2003**

FI

**EUROOPPA-VALMISTELUKUNTA
TORSTAINA 27. HELMIKUUTA 2003**

SV

**EUROPEISKA KONVENTET
TORS DAGEN DEN 27 FEBRUARI 2003**

4-002

FR

PRÉSIDENCE DE M. V. GISCARD D'ESTAING*Vice-président**(La séance est ouverte à 15h10) <BRK>*

4-003

DA

Indledning og arbejdsplan

DE

Einführung und Arbeitsplan

EL

Εισαγωγή και διάταξη των εργασιών

EN

Introduction and order of business

ES

Introducción y orden de los trabajos

FR

Introduction et Ordre des travaux

IT

Introduzione e ordine dei lavori

NL

Inleiding en regeling van de werkzaamheden

PT

Introdução e Ordem dos trabalhos

FI

Käsittelyjärjestys

SV

Inledning och arbetsplan

4-004

FR

Le Président.- Chers conventionnels, personne ne comprendrait, je crois, que nous reprenions les délibérations de la Convention sur l'avenir de l'Europe sans prendre en compte l'aggravation de la situation internationale et les divisions qu'elle provoque au sein de l'Union européenne.

La crise concernant l'Irak et les débats au Conseil européen ainsi qu'au Conseil de sécurité font peser une ombre et une angoisse sur nos travaux. Aussi loin que l'on remonte en arrière, jusqu'à la période autrement périlleuse de la guerre froide, on ne trouve l'exemple d'une Europe qui affiche aussi ouvertement ses désaccords sur la scène internationale. Quelle est la responsabilité qui nous incombe en tant que membres de cette Convention?

D'abord, me semble-t-il, nous devons demeurer l'enceinte où se retrouvent celles et ceux qui entendent répondre à l'aspiration majoritaire des peuples d'Europe qui demandent à ce qu'un jour l'Europe réussisse à s'exprimer d'une seule voix. Ensuite, la

responsabilité est de constater que les textes et les structures institutionnelles, même les mieux conçus, ne sont pas utiles s'il n'existe pas la détermination de les utiliser. Les engagements de Maastricht en matière de politique étrangère et de sécurité commune ont été pris de bonne foi. Or, nous sommes aujourd'hui, treize ans plus tard, bien en arrière des engagements du Traité de l'Union européenne. Si ces engagements avaient été respectés, si des discussions approfondies s'étaient déroulées avant que des positions ne soient prises en public, s'il avait existé une volonté de tous de rechercher des positions communes, bref, si le réflexe européen avait joué, peut-être l'Europe aurait-elle pu exercer un rôle décisif. Le résultat n'était pas certain car il existait de réelles divergences de vues enracinées dans des souvenirs historiques mais cet effort valait la peine d'être tenté.

Ne nous faisons donc pas d'illusions. Améliorer les structures mises en place à Maastricht ne sera pas suffisant pour donner à l'Union européenne une voix plus forte et plus unie sur la scène internationale. Sans la volonté politique de tous, sans la réaction instinctive de consulter d'abord ses partenaires européens, sans le rétablissement de la confiance mutuelle aujourd'hui ébranlée, les structures n'auront guère d'efficacité. Mais notre responsabilité à nous, les conventionnels de l'an 2003, c'est d'accomplir la mission pour laquelle la Convention a été créée. Nous ne devons pas nous permettre de nous distraire de notre travail ou, au pire, de nous laisser aller à la résignation. Avec les neuf articles nouveaux et les deux protocoles que nous présenterons demain, nous avons déjà beaucoup accompli. En ce qui concerne la personnalité juridique unique de l'Union, la Charte, la clarification des compétences et la simplification des procédures, le rôle plus étendu, reconnu aux Parlements nationaux, les demandes du Traité de Nice sont pratiquement déjà réalisées. Maintenons donc le rythme de notre travail et augmentons-le si nécessaire, pour traduire, dans une langue simple et vigoureuse, les points d'accord explicites ou implicites qui ont émergé de vos débats et de vos contributions. Souvenons-nous également qu'une crise peut avoir un effet salutaire. Le Conseil européen est né dans la décennie 70 de la secousse créée par le premier choc pétrolier avec le Moyen-Orient en flammes et le terrorisme qui secouait les rues de nos villes d'Europe. Peut-être les événements qui risquent de se dérouler bientôt vont-ils déclencher une prise de conscience positive de l'intérêt commun des Européens. C'est pourquoi nous devons étudier et proposer le schéma institutionnel qui devrait permettre un jour, qui n'est pas aujourd'hui, de mettre en place un mécanisme d'incitation permettant aux dirigeants européens de progresser en direction d'une diplomatie commune. Et, après tout, ne nous laissons pas abattre si la montée devient plus rude, car c'est toujours l'Europe qui nous attend au bout du chemin.

Je vous suggère donc que nous en venions à notre travail d'aujourd'hui. Nous franchissons, en effet, une nouvelle étape d'élaboration du Traité constitutionnel. Nous allons débattre d'un premier groupe d'articles : ceux qui définissent l'Union, ses valeurs, ses objectifs et ses compétences. Nous n'avons pas été surpris, et vous ne l'avez pas été non plus j'imagine, par le grand nombre de propositions, de commentaires et d'amendements que les membres de la Convention ont transmis au sujet de ces articles. 1187 amendements au total, donc 435 sur les trois premiers articles, ce qui ne laisse même pas la place à cette tribune à ma tortue favorite. Ces articles constituent la première fondation de notre construction. Et je vous dirai franchement que je ne suis pas du tout choqué par le nombre d'amendements et de propositions d'autant plus, d'ailleurs, que beaucoup d'entre eux se recoupent ou se contredisent. Et il est normal que chacun souhaite contribuer. C'est dans cet esprit et pour assurer la pleine transparence de notre débat, que toutes les propositions à tous les commentaires ont été diffusés sur le site Internet. Le secrétariat, que je remercie, a établi une note d'analyse et de synthèse de ces propositions, parfois incomplète ou incorrecte à cause du nombre important de commentaires reçus et du délai imparti pour ce travail.

Comment allons-nous procéder ? Le *praesidium* souhaite que vous puissiez vous exprimer sur le projet d'articles. Mais vous êtes très nombreux à vouloir le faire. En outre, ce type d'expression n'est pas celui d'un discours mais celui d'un commentaire d'une proposition ou d'un amendement. C'est pour cette raison que nous vous demandons de réduire la durée de vos interventions d'aujourd'hui et de demain à deux minutes pour défendre un point de vue ou expliciter une proposition. En même temps, cela nous permettra d'accorder beaucoup plus souvent la parole à un carton bleu de façon à avoir un débat plus animé. Vous avez constaté que les propositions ne vont pas toutes dans le même sens. Peut-être que l'instinct, au départ, est de s'imaginer qu'il s'agit d'un dialogue entre le *praesidium* et les conventionnels. En réalité, les idées que vous exprimez sont souvent en contradiction avec les idées des autres. Ce qui est parfaitement normal. Il faut donc que vous expliquiez vos positions et que chacun écoute les explications des autres. La présidence vous écouterait mais il faut aussi vous écouter les uns et les autres.

Etant donné le nombre d'interventions et de documents, il est difficile d'épuiser l'examen d'un projet de texte uniquement lors des sessions actuellement prévues. C'est pourquoi nous vous proposons de poursuivre et d'approfondir cet examen par des sessions supplémentaires qui viendront s'intercaler entre les sessions plénières. Les deux premières se tiendront l'une le 5 mars et l'autre le 26 mars, toujours dans les locaux du Parlement européen que je remercie pour son hospitalité. Ces deux sessions prolongeront, comme il est vraisemblable, nos débats d'aujourd'hui et de demain.

On vous a annoncé que nous allions débattre d'abord des questions liées aux articles 1 à 4. J'introduirai cette partie. Ensuite, nous discuterons des questions relatives aux articles 4 à 7. Le vice-président Jean-Luc Dehaene introduira cette discussion. Demain matin, nous discuterons des articles sur les compétences. Le vice-président Amato conduira ce débat. Au début de chaque discussion, nous vous ferons une intervention, aussi brève que possible, qui vous donnera les arguments qui ont conduit le *praesidium* dans l'élaboration de son projet et qui, en même temps, identifiera les points essentiels, les questions principales qui ressortent de vos amendements et qu'il conviendrait d'approfondir.

Demain matin, avant le débat sur les articles concernant les compétences, je vous présenterai une deuxième section de textes. Il s'agit du projet d'article 24 et suivants sur les instruments, ainsi que deux protocoles importants, dans leur forme désormais achevée ou en tout cas proche de l'achèvement, sur la subsidiarité et sur le rôle des parlements nationaux. Le *praesidium* entend, comme je vous l'avais annoncé au mois de décembre, remplir son engagement, à savoir vous permettre de disposer d'un avant-projet complet de textes pour la fin du mois d'avril.

Comment vont se passer nos prochaines réunions? La session des 17 et 18 mars serait consacrée à l'examen des textes que je vais vous présenter demain matin. En outre, vous auriez à cette même session, la présentation des textes concernant le titre 7 sur les finances de l'Union, les articles tant de la partie 1 que de la partie 2 sur l'espace de liberté, de sécurité et de justice ainsi que le document de base, pour la deuxième partie - politiques de l'Union-, résultant du travail des experts des services juridiques, document très important et évidemment lourd à manier. Lors de la session des 3 et 4 avril, vous auriez la présentation de l'article du titre 9 qui concerne les rapports de l'Union et de son environnement proche. Vous auriez de nouvelles dispositions pour l'insertion dans le Traité de la méthode ouverte de coordination et, enfin, une première proposition de la partie 3 du Traité contenant les dispositions générales et finales. Pour ce qui est des institutions et de la vie démocratique de l'Union, les projets de texte pour les titres 4 et 6 de la partie 1 seront diffusés avant la session des 24 et 25 avril, entre le 10 et cette période, de façon à ce que vous puissiez avoir un premier échange de vues sur les institutions et la vie démocratique de l'Union au cours de la session des 24 et 25 avril. La deuxième partie, qui aura fait l'objet d'une première présentation - présentation des politiques de l'Union -, ainsi que la première partie révisée, c'est-à-dire dans son état de quasi-achèvement, vous seront présentées dans la première quinzaine du mois de mai. Il faut, en effet, nous assurer que nous aurons suffisamment de temps entre cette présentation et le Conseil européen de juin. En effet, vous ne pourrez porter de jugement sur l'ensemble du projet que lorsque vous verrez les rapports, les relations des parties entre elles. Vous ne pouvez pas porter ce jugement section par section. Il faudra donc que chaque conventionnel puisse avoir une vue d'ensemble du projet avant d'en faire une évaluation définitive.

J'espère vous avoir apporté, avec ces indications, une réponse à votre attente légitime et normale de connaître à l'avance l'organisation de nos travaux et votre envie de vous engager à fond dans notre projet commun. Toutes ces indications figurent d'ailleurs dans un document qui sera diffusé dans notre salle.

J'ai une demande de parole de M. Bonde. Je vous en prie. <BRK>

4-005

EN

Bonde (PE). – The deadlines for amendments are too short. We cannot prepare them with those who support us. Two minutes is not enough time to discuss the entire first part of the draft constitution. We need to discuss the details in working groups and to have more meetings, as you have already suggested. Why not move the June deadline and schedule meetings until Christmas? It is not practical for us to receive the new dates so late. The four non-represented political families have a special problem. We asked for access to documents but have not yet received an answer. That is in breach of Community rules. The Community rules on transparency also cover the Praesidium. We insist on equality among Members in regard to access to information from the Praesidium. This will also help us to prepare the amendments. <BRK>

4-006

FR

Le Président. – Sur toute cette affaire, nous sommes pris entre deux demandes contraires et il faudrait que les uns s'adressent aux autres. Nous avons les demandes du Conseil européen, c'est-à-dire des gouvernements, qui nous demandent avec insistance de terminer pour la fin du mois de juin. Et ils le répètent, je prends à témoin ceux d'entre vous qui siègent au Conseil européen. En sens inverse, naturellement, il y a le désir, que je comprends très bien, de disposer de délais plus longs. Mais il faut choisir. D'une part, nous avançons, comme vous l'avez vu, la publication de nos textes. Nous essaierons que vous ayez entre la publication des textes et le dépôt final des amendements un délai de l'ordre de deux semaines. Si l'on pense qu'il va y avoir plusieurs sessions répétitives, nous ne pouvons pas aller plus loin dans cette durée. Ou alors, adressez-vous aux gouvernements afin qu'au Conseil européen du mois de mars, ils modifient éventuellement le calendrier qu'ils proposent. Mais, à l'intérieur de ce calendrier, nous faisons le maximum, je prends à témoin les membres du secrétariat, pour que vous disposiez du délai nécessaire pour déposer vos amendements. D'ailleurs, la pile qui est là montre malgré tout, que nos pratiques n'ont pas été, semble-t-il, très restrictives. On essaiera de faire en sorte que vous ayez au total deux semaines. Mais nous ne pouvons pas aller plus loin ou alors il faudrait reporter officiellement la date d'achèvement de nos travaux.

Je m'excuse, je ne voudrais pas vous donner le sentiment que je monopolise la parole. On va aborder maintenant les premiers articles. Je voudrais vous dire le contenu des amendements et comment on va les discuter. On les a regroupés parce qu'en fait, il y a des parentés entre ces articles 1 à 3 -définition de l'Union, valeur de l'Union et objectifs de l'Union-. Et d'ailleurs, certains amendements portent tantôt sur l'un, tantôt sur l'autre, mais avec la même optique.

Je vous rappelle que le texte que nous préparons est un Traité qui institue une Constitution. Cela veut donc dire que le contenu de notre texte est une Constitution mais que cette Constitution prend la forme d'un Traité. En effet, les pouvoirs que nous voulons attribuer à l'Union dérivent des Etats qui concluent le Traité. C'est ce qui apparaît déjà au premier article. Dans le premier article, nous sommes déjà dans la Constitution. Certains d'entre vous disent dans leurs amendements qu'il faudrait mentionner les hautes parties contractantes. Non. On les mentionnera au préalable, dans le préambule.

Un autre point qui a provoqué beaucoup d'amendements que certains d'entre vous vont défendre, qui sont d'ailleurs contradictoires, est la définition même de la nature de l'Union. Certains considèrent que notre définition est trop timide, d'autres s'opposent au terme fédéral. Il faut savoir de toutes façons que l'entité de l'Union européenne est une entité unique. Elle n'est pas décrite dans les manuels de droit public par une définition classique. Pour certains, on voudrait y voir une enceinte de coordination et de concertation, mais ce n'est pas seulement cela. Elle est caractérisée par le fait que le transfert des compétences des Etats membres à l'Union se traduit dans

une gestion de ses compétences qui est en fait du mode fédéral. Et il n'y a pas de différence, par exemple, entre la gestion de l'euro et la gestion du dollar si vous prenez le système de gestion de l'une ou de l'autre, ces deux systèmes de gestion étant du mode fédéral. C'est donc le mode de gestion qui est fédéral, sans que l'Union soit pour autant une fédération accomplie. Vous avez une série d'amendements qui disent une chose ou qui, au contraire, préfèrent l'écarter. Le mode fédéral, et je l'indique à ceux qui s'alarment de ce mot, ne se réfère qu'à certaines des compétences attribuées à l'Union. Et par contre, qu'on le dise ou non, ces compétences sont exercées sur le mode fédéral.

Un autre point important dans vos amendements concerne le fait que dans notre Constitution, les compétences attribuées à l'Union ne puissent dériver que des Etats membres. Nous le disons clairement mais plusieurs amendements montrent que sans doute, notre texte n'est pas suffisamment explicite et qu'on peut le rendre plus explicite.

Il y a une question qui est de savoir si nous bâtissons une Union stable, c'est-à-dire un système qui aura son propre équilibre et naturellement qui évoluera dans le temps ou si nous restons dans une démarche. C'est la question soulevée par les amendements qui portent sur l'expression "Union sans cesse plus étroite". C'était une conception d'origine de la construction européenne, quand il n'y avait pas d'Union et qu'on voulait donc qu'elle devienne sans cesse plus étroite. A partir du moment où nous définissons l'Union, ses compétences, son mode de fonctionnement, il faut savoir si nous souhaitons un ensemble stable, au moins pendant une certaine période, ou un ensemble qui soit en évolution. C'est là un point sur lequel il y a des amendements.

Enfin, il y a des propositions concernant le respect de l'identité nationale. Il faut voir aussi que dans notre article 1, on trouve simplement une affirmation très courte: le respect de l'identité nationale. C'est plus tard, dans les compétences etc., qu'on indiquera ou qu'on indique la manière ou les objets de l'identité nationale qui doivent faire l'objet de ce respect. Dans certains amendements, on propose de le mettre dès le premier article. Cela ferait un premier article assez lourd. Nous, nous l'avons mis dans l'article 9, paragraphe 6, point qui devra être discuté.

Certains d'entre vous se sont exprimés à propos du nom à donner à l'Union européenne. Nous n'interviendrons pas sur ce sujet. Nous le laisserons ouvert jusqu'à la fin de nos travaux en essayant de savoir si l'opinion publique, dans ce domaine, exprime ou non une préférence.

Je vais dire quelques mots sur l'article 2 et sur l'article 3. Il faut bien comprendre ce qu'est l'article 2. Notre membre du praesidium, Monsieur António Vitorino, qui est là, aurait pu donner cette indication mais je vais la donner à sa place. L'article 2 est la définition et le contenu des valeurs de l'Union. On peut faire un catalogue plus ou moins long de ces valeurs. Il faut savoir que plus on l'allonge dans une certaine mesure, plus on l'affaiblit parce que l'addition, l'énumération affaiblissent un peu la portée du texte. Mais surtout, cet article, doit être lu en association avec l'article 45 de la Constitution qui établit la procédure pour la suspension des droits d'appartenir à l'Union en cas de violation des principes et des valeurs de l'Union de la part d'un Etat membre. Vous vous rappelez qu'un article avait été introduit dans le Traité antérieur, à la suite des incertitudes politiques dans tel ou tel Etat membre. Il portait le numéro 7 à l'époque. Donc, on ne peut mettre dans cet article 2 que des valeurs qui sont définies juridiquement de façon suffisamment solide pour pouvoir permettre l'engagement de procédures contre les Etats membres qui ne les respecteraient pas. On ne peut donc pas mettre des valeurs indicatives ou respectables mais de caractère plus émotif que juridique telles que, par exemple, l'égalité ou la solidarité. En effet, on ne voit pas bien une action juridique déclenchée vis-à-vis d'un Etat de l'Union à propos de la violation de telle ou telle de ces valeurs. Si on les mettait dans cette partie, on fragiliserait en tout cas, l'article 45 de la Constitution, parce qu'on le rendrait en réalité peu applicable. Néanmoins, certaines valeurs ont été proposées par vous comme on va l'entendre. Il y a la notion d'égalité, égalité qui est tantôt toute seule, tantôt l'égalité entre hommes et femmes, la transparence, la référence ou non à des identités nationales et régionales.

Un second type de débat concerne l'éventuelle introduction d'une référence au fait religieux ou au patrimoine religieux, qualifié par les uns de patrimoine religieux, par les autres de référence chrétienne ou de patrimoine chrétien. Il convient que vous en discutiez. C'est un sujet parmi les sujets importants de la Convention et il doit donc être traité au grand jour. Il y a des amendements sur ce point. Ces amendements devront faire normalement l'objet d'un débat. Je vous indique simplement pourquoi nous ne l'avons pas mis au départ dans notre texte. C'est parce qu'il y a trois sujets à traiter sous cet angle. Il y a un sujet qui est la déclaration sur le respect du statut des Eglises et des associations religieuses et non conventionnelles qui figure dans le Traité d'Amsterdam et que nous reprendrons dans notre propre Traité. Ce n'est donc pas dans les premiers articles que cette proposition vous sera faite. Il y a ensuite la question de savoir si dans le préambule de la Constitution, comme on l'avait envisagé à l'époque dans le préambule de la Charte des droits fondamentaux, il y a une référence, et laquelle, au patrimoine religieux de l'Union européenne. Nous vous proposerons une disposition dans ce texte, c'est-à-dire dans le préambule. Par contre, nous n'avons pas pensé que cette référence était à sa place dans l'article 2 pour les raisons que j'ai données tout à l'heure. Il était difficile d'en faire éventuellement le sujet d'un contentieux politique ou juridique dans l'Union. Mais, là aussi, je souhaite vivement que vous vous exprimiez et que vous donniez vos opinions. D'ailleurs, il y a eu des amendements assez nombreux à ce sujet et même encore tout à fait récemment.

Concernant l'article 3, il ne faut pas se tromper. C'est un article sur les grands objectifs de l'Union, en termes généraux et de manière horizontale. Ce n'est pas la description des politiques de l'Union, qui sont décrites dans la deuxième partie de la Constitution. C'est pour permettre au citoyen de répondre à la question qu'il se pose sûrement, et qui est "l'Europe, pourquoi la fait-on, pourquoi la crée-t-on, pourquoi faire?". C'est donc la définition, l'indication des objectifs poursuivis par l'Union. Et donc, lorsque vous aurez à examiner les politiques de l'Union avec la deuxième partie, vous verrez s'il y a lieu de compléter ou non ces objectifs. En tout cas, il faut avoir les deux en tête. Dans vos amendements, on a l'impression que vous avez bien accepté cette notion. Vous ne cherchez pas à mettre dans cet article la description des politiques de l'Union. Et il y a seulement quelques amendements qui veulent aller plus loin et d'autres d'ailleurs, qui veulent supprimer le premier paragraphe de cet article, de façon assez singulière, parce qu'il s'agit de la proposition que l'Union assure la promotion dans le monde des valeurs de paix, de bien-être etc. Nous ne pourrions pas mettre dans cet

article tous les éléments envisagés par les uns ou par les autres. D'ailleurs, ils se recouvrent souvent. Je vous cite simplement les groupes de questions sur lesquelles il est probable que vous allez vous exprimer. Il y a, par exemple, l'objectif de la protection de l'environnement. Dans notre texte, nous parlons déjà de développement durable. Certains d'entre vous pensent que ce n'est pas suffisant. Il y a également deux groupes qui ne disent pas tout à fait la même chose. D'un côté, on trouve ceux qui voudraient qu'on se réfère à l'économie sociale de marché et de l'autre, ceux qui voudraient qu'on se réfère au modèle social européen. Il y a également une série d'amendements qui rouvrent un débat sur la question de savoir ce qu'on met concernant l'emploi. Certains amendements souhaitent que l'on mette une notion de plein emploi et d'autres souhaitent que ce soit un haut niveau d'emploi pour tenir compte de certaines critiques qui se sont exprimées à propos du réalisme éventuel de nos ambitions. Il y a également une demande sur ce qu'on peut dire ou non en matière de cohésion territoriale afin de savoir si celle-ci est couverte par la cohésion économique et sociale ou s'il faut ajouter une notion différente de la cohésion territoriale. Il y a, enfin, des demandes concernant la diversité linguistique qui s'expriment de façon différente. En effet, la diversité linguistique n'est pas en soi un objectif de l'Union. Il s'agit plutôt de savoir comment l'Union traite la diversité linguistique et quelle est son attitude à cet égard.

Je crois que c'est l'essentiel. A la fin, certains amendements, ceux qui sont sous le bas de la pile, visent à ce que ces valeurs soient avancées dans le monde. Toutefois, la Constitution est la Constitution de l'Union européenne. L'Union européenne manifeste ses valeurs. Elle peut ensuite, et ce sera là un sujet d'intérêt, voir comment elle peut assurer leur promotion dans le monde. Toutefois, elle n'est pas en situation, naturellement, d'imposer ou même de proposer en tant que telles, ses valeurs dans le monde.

Ce sont là les points forts de vos amendements. Ils se regroupent dans cette pile. Nous allons essayer de vous écouter dans l'ordre où vous vous êtes inscrits.

Il y a eu un changement d'ordre. Nous nous occupons des articles 1 à 3. Le temps de parole est de deux minutes. Vous pouvez vous exprimer sur les trois articles ou sur l'un d'entre eux, suivant votre préférence personnelle. <BRK>

4-007

DA

Debat om udkastet til artikel 1 - 3

DE

Aussprache über den Entwurf der Artikel 1 bis 3

EL

Συζήτηση επί του σχεδίου άρθρων 1 έως 3

EN

Debate on draft articles 1 to 3

ES

Debate sobre el proyecto de artículos 1 a 3

FR

Débat sur le projet d'articles 1 à 3

IT

Discussione sul progetto degli articoli 1 - 3

NL

Debat over het ontwerp van artikelen 1 tot 3

PT

Debate sobre os projectos de artigos 1º a 3º

FI

Keskustelu luonnoksesta artikloiksi 1, 2 ja 3

SV

Debatt om utkastet till artiklarna 1-3

4-008

FR

Le Président. – L'ordre du jour appelle le débat sur le projet des articles 1 à 3. Le premier orateur est Monsieur Zieleniec. <BRK>

4-009

EN

Zieleniec (Parl.-CZ). – As you mentioned, we have now entered the crucial stage of the Convention. After a long discussion we are starting to prepare the final text of the constitution. How we approach this task is very important. We look for consensus, a common view. We can describe the consensus and common view in two ways. First, we can put together all the various views and arguments to create a text which reflects everyone's views. Secondly, we can work by reduction, and look for more general views and texts that are simple and transparent. I am convinced that we should choose the second option.

Looking at the hundreds of pages we have here, we see a great number of proposals for additional words, for additional formulations. I should like to stress that if we adopt those proposals we will end up with a constitution made up of hundreds of pages and one that is difficult to understand and not transparent.

The first articles are extremely important from this point of view - articles about various end objectives. Taking the example of the discovery of space, why do we not also mention research in the fields of cancer or Aids? Why mention the rights of children, but not the rights of women or religious minorities? This is not the way to create the final text. I encourage the Praesidium to prepare the second draft by the method of reduction, rather than by making further additions. The shortest and simplest method is the best. <BRK>

4-010

FR

Le Président. – Je vous remercie Monsieur Zieleniec. Vos remarques vont dans le sens du souhait que je forme moi-même sur la qualité et la concision du texte. L'orateur suivant est Monsieur Fayot, mais je crois qu'il a regroupé des temps de parole. Est-ce que je me trompe? Il faut une certaine souplesse dans nos débats. On peut donc envisager que plusieurs d'entre vous se groupent pour donner la parole à quelqu'un qui s'exprimerait un peu plus longtemps. Mais il faut naturellement qu'on le sache. Monsieur Fayot, vous avez donc la parole pour six minutes. <BRK>

4-011

FR

Fayot (Parl.-LU). – Monsieur le Président, les conventionnels socialistes et sociaux-démocrates m'ont demandé de vous présenter une synthèse de certains éléments fondamentaux qui trouvent leur accord sur la base des nombreux amendements introduits. Je voudrais expliquer notre démarche. Il est certain que chaque grande famille politique a ses convergences et ses divergences, qui tiennent à la situation politique et historique de ses composantes. Il serait vain de les nier et de faire comme s'il y avait unanimité sur tout. Notre effort doit aller vers la synthèse pour autant que faire se peut. C'est ce que nous avons tenté de faire ensemble et c'est ce dont je vous fait rapport ici.

En ce qui concerne l'article 1, ce qui pose problème à certains d'entre nous, socialistes, c'est le terme de fédéral. Suivant les situations nationales et linguistiques, le mot comporte des connotations qui sont difficiles pour eux d'accepter. D'autres n'y voient pas de problème parce qu'en fait, cet adjectif recouvre la réalité actuelle. C'est donc avant tout une question de vocabulaire. Mais nous voyons aussi que la formulation du praesidium est descriptive par rapport à ce qu'est l'Union à l'heure actuelle. Dans ce qu'elle fait dès maintenant, il y a des éléments supranationaux, et nous parlons à ce propos de méthode communautaire. C'est ce qui fait l'originalité de l'Union européenne par rapport aux institutions internationales courantes. Les socialistes sont attachés à cette méthode communautaire dans les domaines que les traités ont définis jusqu'ici. Quant à savoir s'il faut étendre cette méthode communautaire, la question sera traitée ailleurs. Par conséquent, sur ce point, je pense qu'il convient d'exprimer dans ce premier article, le constat, sans plus.

Dans ce même article, se pose la question de savoir d'où viennent les compétences de l'Union. En d'autres termes, quel est le souverain? On comprend facilement le débat entre les tenants d'une coopération intergouvernementale et ceux qui voudraient aller plus loin dans l'intégration communautaire. Là encore, la Constitution fait un constat de ce qu'il y a à l'heure actuelle. Les compétences de l'Union viennent évidemment des Etats. Il est donc légitime de marquer cela dans cet article, comme on le fait. Mais nous savons aussi que nos citoyens et nos peuples constituent le fondement de la construction européenne. Nous voulons les impliquer dans cette construction. Nous leur demandons leur accord par référendum ou à travers le représentant élu. Contre eux, non plus, rien n'est possible. Il faut donc mentionner aussi la volonté des peuples d'Europe et des citoyens dans ce premier article pour légitimer notre Constitution.

Nous pensons aussi qu'il faut introduire une référence à la Charte des Nations Unies pour bien marquer que l'Union européenne s'inscrit dans les efforts d'une gouvernance mondiale, essentielle pour assurer la paix et la sécurité de tous les peuples.

Un point central de nos discussions a concerné les articles 2 et 3 sur les valeurs et les objectifs de l'Union. Beaucoup d'entre nous pensent que l'accord sur ce qu'il faut mettre dans ces deux articles serait plus facile à trouver s'il était clair que nous mettons la Charte des droits fondamentaux en tête de la Constitution. En effet, un grand nombre d'éléments de la Charte se retrouvent dans les deux articles comme dans les multiples amendements apportés - la dignité humaine, la solidarité, le respect des diversités, la justice etc -. Nous parlons bien sûr de la Charte avec les articles horizontaux tels qu'ils ont été élaborés, par consensus, dans le groupe de travail afférent et que la plénière a largement approuvés, tel qu'amendés. Ces articles horizontaux précisent clairement la portée de la Charte et confirment que celle-ci ne crée pas de nouvelles compétences pour l'Union. Toutefois, cela ne l'empêche pas d'exprimer le fondement de valeurs pour les activités de l'Union dans ses différents domaines de compétences, définis par ailleurs.

Les socialistes et les sociaux-démocrates considèrent comme essentiel que dans l'article 2 apparaisse également et clairement le principe de l'égalité des femmes et des hommes.

Nous considérons évidemment aussi la justice sociale comme une valeur fondamentale de nos sociétés européennes. L'article 3, paragraphe 2, dans la version proposée par le praesidium constitue une formulation intéressante qui marque l'équilibre général entre l'économique et le social dans le cadre du développement durable. On peut certes améliorer la formulation mais, l'essentiel est cet équilibre. Le texte est clair sur la nécessité de croissance et de compétitivité économique pour atteindre un niveau de vie élevé. Suite à l'accord obtenu au sein du groupe de travail sur la dimension sociale, nous voulons encore y introduire la notion d'économie sociale de marché. Nous saluons la notion de plein emploi retenue suite à l'accord obtenu au sein de ce groupe de travail. Il est bien de marquer clairement qu'il s'agit d'un but à atteindre. Il nous tient également à cœur de bien marquer dans cet article qu'il s'agit non seulement de protéger l'environnement mais encore de l'améliorer. Nous insistons aussi sur l'importance d'affirmer la cohésion territoriale des Etats membres.

Enfin, si nous saluons que le paragraphe 4 de l'article 3 marque bien notre responsabilité face au reste du monde, il est important d'insister sur la lutte contre la pauvreté et l'exclusion sociale dans l'Union européenne même. La même chose vaut pour la protection des droits des enfants. Nous soulignons aussi qu'au paragraphe 3, on parle de respect de la diversité culturelle. La culture est un élément important de l'identité de chaque Etat comme de chaque région. Nous savons qu'elle est, de ce fait, une compétence complémentaire et que personne ne veut aller au-delà. Mais la culture est aussi un élément qui permet d'unir au-delà des frontières et les socialistes sont en faveur de confirmer cela dans notre Constitution.

Voilà, Monsieur le Président, quelques lignes de force que les socialistes européens entendent poursuivre de façon offensive dans la rédaction de ces articles. <BRK>

4-012

FR

Le Président. – Très franchement, Monsieur Fayot, je vous remercie du travail qui a été fait par vous-même et par vos amis parce que vous avez, en effet, regroupé un certain nombre d'éléments. Cela permet d'avoir une vue plus globale, plus synthétique de vos demandes. Quand vous dites que vous allez combattre, ce ne sera pas combattre. On va vous écouter sur beaucoup de points et je crois qu'il y a des éléments qui pourront, en effet, faire l'objet d'un dialogue constructif. Vous avez évoqué la question des rapports entre ce que nous disons là et le contenu de la Charte. Evidemment, ce n'est pas la peine de dire les choses deux fois. Vous dites que cela dépend de l'endroit où l'on mettra la Charte. C'est un peu vrai. Mais l'endroit où l'on mettra la Charte dépend aussi de l'architecture de lecture du texte. On dit que la Charte figure dans la deuxième partie. Lorsqu'on examinera l'article 5 sur les Droits fondamentaux, et je le dis à Jean-Luc puisque c'est lui qui présidera, je recommanderai de dire que la Charte constitue la deuxième partie. Elle en fait partie en sa substance. Faut-il, au point de vue de la présentation, la mettre en tête et donc faire que le lecteur soit obligé de parcourir toute la Charte avant d'arriver à l'examen des institutions et des compétences de l'Union ? C'est le seul problème. Mais il est évident qu'il faut avoir en tête le fait que la Charte constitue une partie du texte et que donc, il n'y a pas lieu de redire des choses qui sont bien formulées dans celle-ci.

Le prochain orateur est Monsieur Fini. <BRK>

4-013

IT

Fini (Ch.E/G.-IT). - Signor Presidente, cercherò di essere rapidissimo - se riusciamo in due minuti a dire qualcosa di sensato su tre articoli entriamo quasi nel *Guinness* dei primati - perché mi rendo conto che abbiamo dei doveri di rispetto del nostro lavoro. Con molta rapidità dunque sui primi tre articoli: il governo italiano ha presentato degli emendamenti che hanno l'obiettivo di rafforzare, innanzitutto, dei concetti che ci sembrano emersi nei gruppi di lavoro e che sono quindi condivisi, in qualche modo, da buona parte dei membri della Convenzione. E' la ragione per la quale, nell'articolo 1, pensiamo che vada messo in evidenza che l'Unione ha la doppia legittimità, degli Stati e dei popoli: un'Unione di Stati nazionali, quindi, che esercitano in modo congiunto la sovranità in determinati settori. Questa è la ragione per la quale pensiamo che sia opportuno inserire di nuovo il riferimento all'Unione più stretta tra popoli e Stati, secondo quella dizione che è presente fin dai primi documenti della costruzione europea. Questa è anche la ragione per la quale pensiamo che vada superata la logica di conflitto che sussiste tra chi dice che occorre ribadire che il metodo è federale e chi, al contrario, pensa che occorra un'espressione diversa, quale può essere confederale. E' la ragione per la quale noi pensiamo che non sia opportuno usare né l'una né l'altra espressione, soprattutto perché poi tutta l'architettura istituzionale ha certamente un aspetto comunitario.

Rapidissimamente ora sull'articolo 2: condividiamo i valori e invitiamo a distinguere bene i valori dagli obiettivi. E' la ragione per la quale crediamo che l'ultimo capoverso dell'articolo 2 sia più opportuno inserirlo nell'articolo 3. Sui valori abbiamo presentato un emendamento che invita la Convenzione a rendere esplicito il riconoscimento delle radici di quella identità europea che, secondo noi, è anche nei valori della religione cristiana, nella sua tradizione giudaico-cristiana. Questo non vuol dire attentare alla laicità delle istituzioni; è la fotografia, secondo noi, di un'identità, di un dato di verità. I laici autentici credo che debbano innanzitutto saper riconoscere le identità profonde, e l'identità europea è un'identità - penso ad alcuni valori quali il primato della persona - che difficilmente può essere considerata scissa dalla tradizione religiosa. Questa è la ragione per la quale il mio governo ha presentato un emendamento in questo senso all'articolo 2.

Mi fermo qui perché ho già impiegato due minuti e cinquantadue secondi: non entro nel *Guinness* dei primati, mi dispiace. <BRK>

4-014

DE

Teufel (Parl.-DE). - Herr Präsident, liebe Kolleginnen und Kollegen! Die vom Präsidium vorgelegten Artikelentwürfe sind eine bemerkenswerte Grundlage für unsere Arbeit. Lassen Sie mich zunächst zwei Bemerkungen zur Gesamtheit der Artikel machen. Erstens, das Sekretariat hat uns die Fülle der eingereichten Änderungsvorschläge vorgelegt. Wir dürfen aber nicht übersehen, dass es zugleich viel Zustimmung gibt. Wenn zu einem Artikel zehn Änderungsvorschläge vorgelegt werden, hat gleichzeitig die große Mehrheit unserer Mitglieder, die sich nicht geäußert hat, zum Ausdruck gebracht, dass sie mit dem Text leben kann.

Zweitens, wir müssen bei der weiteren Arbeit das Mandat beachten, welches die Nizza-Konferenz uns auf den Weg gegeben hat. Wir sollen die Verträge vereinfachen, ohne sie inhaltlich zu verändern. Für die Zuständigkeiten der Union kann das nur bedeuten, dass wir den heutigen gemeinschaftlichen Besitzstand respektieren, ohne an ihm wesentliche Veränderungen vorzunehmen.

Drittens, aus meinen Vorschlägen zu Artikel 1 bis 7 hebe ich zweierlei hervor: Die europäische Verfassung muss die Werte und die geistigen Grundlagen zum Ausdruck bringen, auf denen Europa beruht. Ein früherer deutscher Bundespräsident hat gesagt: Es gibt drei Hügel, von denen das Abendland seinen Ausgang genommen hat: die Akropolis in Athen, das Kapitol in Rom und Golgatha in Jerusalem. In diesem Sinne sollte die europäische Verfassung für die Gläubigen einen Bezug zu Gott als Quelle universeller Werte enthalten. Gleichzeitig sollte sie zum Ausdruck bringen, dass viele Menschen diese Wertvorstellungen aus anderen Quellen ableiten. Wir sollten uns hierfür an die polnische Verfassung anlehnen. Ferner sollte in Artikel 3 als Unionsziel auch der Schutz von Ehe und Familie aufgenommen werden.

Sowohl Artikel 1 Absatz 2 als auch Artikel 9 Absatz 6 bringen den Respekt der Union vor der nationalen Identität der Mitgliedstaaten zum Ausdruck. Ich plädiere dafür, dass in diesem Zusammenhang das Prinzip der lokalen Selbstverwaltung und die rechtliche Stellung der Kirchen als Teil der nationalen Identität klar zum Ausdruck gebracht wird. In welchem Artikel dies geschieht, ist dem gegenüber zweitrangig. <BRK>

4-015

EN

Andriukaitis (Parl.-LT). – The European Union has made up its mind about the anthem of the Union: Beethoven's *Ode to Joy*. Presently we are drafting an EU constitution. We do this primarily to bring the Union closer to its people. Therefore we should draft a constitution that would match Beethoven's *Ode* in its resonance. In my view, the Charter of Fundamental Rights has the resonance of the Union's anthem and should therefore constitute Part 1 of the constitution that we are drafting. It is regrettable that we are not discussing the structure of the constitutional treaty. In this respect Jo Leinen's draft is a good example of a clearer constitution.

Let me say a few words on the first draft articles. I find the title of the Treaty itself – the "Treaty establishing a Constitution for Europe" – not precise enough. I suggest that we insert the word "Union" so that it reads: the Treaty establishing a Constitution for the European Union. I also suggest that the words "on a federal basis" be omitted in Article 1(1) and transferred to Article 8(1). In Article 1 of the draft it is important to emphasise that we are not establishing a new Union; we are only drafting a new constitutional treaty which consolidates and expands on the principles and provisions of the existing Treaties. It is especially important that this treaty is being drafted not only for people and states, but also for citizens.

In the list of the Union's values I missed one of the principal ones: equality. This mistake should be rectified. The same is true concerning respect for national identity. We should not refer only to national identity but also to the sovereignty of Member States. <BRK>

4-016

EN

Vitorino (CE). – Our task is to rewrite the Treaties in order to simplify them. However, at the same time we should avoid moving back from current European Union law. We are rewriting, not receding. Therefore the possible inclusion of the principle of the primacy of Community law in Article 1 would be welcome. It is a long-standing principle that has been applied without interruption since the founding of the European Community. Therefore it is worth mentioning in the first article of the draft constitution, immediately after respect for the Member States' national identity, which is equally important.

I strongly support the maintenance of the principle of the double legitimacy of the Union. We are writing a new treaty endorsed by Member States; but the source of legitimisation of the new treaty establishing a constitution is that it makes the Union a union of states and of peoples. This is the starting point of the exercise. It should also be the starting point of the constitution.

On specific amendments, I welcome the amendment that clarifies that the Union administers certain common competencies on a federal basis, but at the same time the Union contributes to and ensures the coordination of the policies of Member States. This is the way I would recommend clarifying and improving the current drafting, without diverging from the original spirit of the Praesidium.

I welcome other amendments, such as those that emphasise the protection and improvement of the environment; those on establishing a balance between a market economy open to free competition and access to services of general interest; and those making a specific reference not only to a common external and security policy but also to a common defence policy, along the lines suggested by Mr Barnier.

The first articles could be improved but I hope that the Convention will recognise that the Praesidium is moving in the right direction. With your support and your improvements we can succeed. <BRK>

4-017

FR

Kalniete (Gouv.-LV). – Merci Monsieur le Président. Tout d'abord, je voudrais faire une observation de caractère général. La création de l'Union européenne s'appuie sur plusieurs Traités fondateurs. La décision de modification de ces Traités s'effectue par le biais de nouveaux Traités avec l'accord de tous les pays membres. Pour cette raison, je préfère le terme "Traité constitutionnel" qui m'apparaît plus approprié que celui de "Constitution" car il désigne une union d'Etats souverains. La notion de Traité constitutionnel doit également être incorporée dans le corps du texte même de façon à insister sur l'accord volontaire des pays membres.

Ensuite, je considère que l'appellation actuelle d'Union européenne doit être préservée. Elle reflète la forme de coopération des Etats dans la perspective d'objectifs communs. Les citoyens d'Europe s'y sont accoutumés et s'y reconnaissent.

Enfin, je voudrais insister sur toute l'importance aux yeux de la Lettonie, d'une Union européenne signifiant une union d'Etats souverains. Et, en conséquence, permettez-moi de souligner la confusion que pourrait créer auprès des citoyens la référence dans le Traité constitutionnel au mot "fédéral". En réalité, le message à faire passer auprès de nos populations est celui de la réalisation d'une Union sans cesse plus étroite entre les Etats membres.

En conclusion, je voudrais vous dire toute l'importance que nous attachons à la préparation du Traité constitutionnel. Gardons-nous de toute précipitation car ce document fera l'identité des citoyens européens au regard du monde dans les décennies à venir. Merci Monsieur le Président. <BRK>

4-018

DE

Einem (Parl.-AT). - Herr Präsident! Im Sinne dessen, was auch schon Ben Fayot gesagt hat, treten wir erstens dafür ein, dass man die Charta voll inhaltlich samt den horizontalen Artikeln als Teil I verwendet, weil uns das die Formulierung der Artikel 2 und 3 deutlich erleichtern soll. Zweitens, wir sind der Überzeugung, dass die Bürger mit in den Artikel 1 aufgenommen werden sollen. Drittens, wir glauben, dass die Gleichheit von Frau und Mann als Grundsatz aufgenommen werden sollte, und wir treten dafür ein, lieber von Grundsätzen - *principles* - statt von Werten - *valeurs* - zu sprechen. Viertens, die soziale Dimension der Europäischen Union muss in den Artikeln 2 und 3 Ausdruck finden. Dazu zählen beispielsweise auch die Dienste von allgemeinem Interesse und ihre Zugänglichkeit oder das Prinzip der Vollbeschäftigung, das wir anstreben.

Fünftens, wir denken, dass Nachhaltigkeit und Umweltschutz zu den Zielen zählen, Nachhaltigkeit allerdings auch zu den Grundsätzen, die wir verfolgen und beachten wollen. Sechstens, um es kurz zu machen, von einem Gottesbezug in der Verfassung oder von der Religion in der Präambel halte ich nichts. Ich denke allerdings, dass es sinnvoll ist, das Minimum an liberalen Rechten für die Kirchen und Religionsgemeinschaften zu sichern. <BRK>

4-019

FR

Lamassoure (PE). – Merci Monsieur le Président, je vais essayer. Je traiterai de deux points avec le souci de vous faciliter la tâche pour trouver un compromis.

Premièrement, vous l'avez dit Monsieur le Président, l'Union est une construction politique originale mêlant caractère confédéral et fédéral. Il est utile, dès l'article premier, de décrire ce modèle, et je crois que nous avons besoin selon moi à l'article premier, de préciser les droits et devoirs respectifs de l'Union et des Etats membres. D'un côté, nous disons, l'Union respecte l'identité des Etats membres. Précisons, y compris la nature et le fondement de leur régime politique. Pourquoi? Il y a parmi nous des monarchies et des républiques, des Etats unitaires et des Etats fédéraux. Certains sont laïques, d'autres se réfèrent à un fondement religieux, vous en avez parlé. La formule permet de prendre en compte ces différences, Dieu est juste en filigrane. Ajoutons qu'un Etat doit avoir le droit de quitter l'Union. C'est la manière la plus forte de garantir le respect de la souveraineté nationale. Naturellement, cela devra être

exceptionnel. Il faudra des procédures exceptionnelles mais c'est un point important. Vous avez dit, à juste titre, que la formule historique d'une Union sans cesse plus étroite gêne certains collègues. En même temps, personne ne conteste l'intérêt d'un rapprochement entre les peuples eux-mêmes. Je propose d'écrire: "Les Etats membres s'engagent entre eux à une solidarité sans cesse plus étroite, au sein de l'Union comme en dehors d'elle".

Deuxièmement, les citoyens sont évidemment attentifs aux symboles extérieurs de l'Union. Un des tout premiers articles pourrait rappeler, comme le propose notre collègue, le drapeau, l'hymne, la fête du 9 mai. N'oublions pas les villes capitales, le triangle historique Bruxelles-Luxembourg-Strasbourg. N'oublions pas la monnaie qui est une des caractéristiques communes de l'Union. Il faudrait, enfin, ajouter une devise. Sur ce point, pourquoi ne pas lancer une consultation beaucoup plus large qu'au sein de notre seule Convention car il faut trouver une formule qui parle au cœur de toutes et de tous. Je vous remercie. <BRK>

4-020

FR

Le Président. – Je dirai un seul mot simplement sur un des points que vous avez traité. Vous m'avez écrit, d'ailleurs. J'ai reçu vos amendements et j'en ai pris connaissance.

Sur la question du droit de sortie éventuel, je crois qu'il s'agit d'une question très importante et qui a des conséquences politiques et de perception du système. Nous avons plutôt envisagé de le mettre dans les dispositions finales. En effet, il est un peu difficile de dire dès le départ "si vous voulez partir", plutôt que dans les dispositions finales. Dans ce cas-là, on pourrait dire que ce n'est pas la peine d'entrer. Mais l'idée sera traitée à un moment ou à un autre.

Ce que vous dites au sujet des symboles est repris par d'autres amendements sur l'article 3. Nous les retrouverons probablement tout à l'heure.

La parole est à Monsieur Farnleitner. Ensuite, nous prendrons quelques cartons bleus. <BRK>

4-021

DE

Farnleitner (Ch.E/G.-AT). - Herr Präsident! Sie haben der geringen Anzahl der Änderungsanträge, die ich eingereicht habe, entnommen, wie hoch meine Achtung vor der klaren Sprache dieser ersten Artikel ist, und ich habe mich daher möglichst wenig an den Wettbewerben beteiligt. Es kann doch nicht wahr sein, dass man so einfach Dinge sagen kann, wo so viele Juristen darauf warten, damit Geld zu verdienen!

Zweite Bemerkung, ich persönlich habe mit dem Wort "föederal" nach mehrmaligem Lesen gerade in den unterschiedlichen Sprachen Probleme. Ich bitte sie daher, darüber nachzudenken, ob man nicht formulieren sollte, dass die EU gemeinschaftlich bestimmte Kompetenzen wahrnimmt, weil die Gemeinschaftsmethode den Transfer von Kompetenzen sicher stellt. Meine zweite Anregung betrifft die Zielsetzungen. Ich möchte sehr dafür plädieren, dass wir die soziale Marktwirtschaft, den sozialen Frieden und die Achtung und Entwicklung der regionalen, sprachlichen und kulturellen Vielfalt als Zielsetzung verankern. Drittens sollte man der Charta wirklich einen hervorragenden Rang in den ersten Artikeln einräumen, dann erspart man sich spätere Artikel. <BRK>

4-022

FR

Le Président. – Je vous remercie. Je reviens, si vous me le permettez, puisqu'il faut animer un peu ce débat, sur la question du mot "fédéral". Il y a beaucoup d'amendements de suppression. Mais il y a aussi une culture fédérale ou fédéraliste qui existe en Europe ou qui existe dans la jeunesse, ou qui existe dans certains cercles. Donc, il faut voir si nous avons intérêt ou non à faire de notre texte un texte qui exprime une synthèse européenne. Si vous retirez le mot "fédéral", ce qui est possible vu que ce terme n'est pas vital, et le remplacez par "communautaire", vous écarterez cette synthèse. Vous aurez une série de gens qui diront qu'on ne veut pas aller dans la direction d'un modèle classique, connu depuis Montesquieu et qui a alimenté beaucoup de systèmes de pensée. C'est pourquoi ce sujet est important. A cet effet, j'aimerais que les uns et les autres s'expriment car nous tiendrons compte de ces que vous allez nous dire.

Nous allons prendre quatre cartons bleus : Monsieur Spini, Monsieur MacCormick, Madame Dybkjær et Monsieur Wuermeling. La parole est à Monsieur Spini. <BRK>

4-023

IT

Spini (Parl.-IT). - Signor Presidente, il caso vuole che le possa venire immediatamente in aiuto, nel senso che lo scopo principale del mio *carton bleu* è di precisare che, per quanto riguarda l'emendamento che ho presentato insieme all'onorevole Paciotti, rappresentante supplente del Parlamento europeo - emendamento che mira a inserire nella parte prima dell'articolo 1 il ruolo dei cittadini - per un errore tecnico, nella prima stesura non era stata inserita l'espressione "sul modello federale", mentre, nella prima pagina dell'*addendum* che è stato distribuito, il modello federale figura. Questo, proprio perché condiviso con tutto il cuore le sue

parole, cioè che cancellare questa parola avrebbe oggi un significato estremamente negativo, che in particolare le giovani generazioni europee non ci perdonerebbero. <BRK>

4-024

EN

MacCormick (PE). – In introducing Article 3 you said that those of us who had suggested a reference to linguistic diversity were mistaken because that is not, in itself, an objective of the Union. I should like to I remind you that the phrase we are looking at says: "the richness of its cultural diversity is respected". The suggestion is to say: "the richness of its cultural and linguistic diversity is respected". The point, therefore, is not to promote diversity of languages but to promote respect for the diversity that we already have. That is important, as it is, in Article 1(2), to insert respect for regional and local autonomy within the states, as this looks forward to the issue of the democratic life of the Union later on. After all, the text by the Praesidium was drafted before the debate on 7 February 2003, in which many people spoke about the importance of this dimension of Europe. There needs to be some response by the Praesidium to that debate, which was held after its draft was published. <BRK>

4-025

EN

Dybkjær (PE). – Can you guarantee that when we finish with the first paragraphs, we will not be in a situation where we have taken a step backwards? Will he consider the wording in relation to that? Can we guarantee that we will have the words "equality", "disability" and "sustainability" in the first paragraphs? If we do not, we will have taken a step backwards.

In relation to the further work, it is important that we discuss not only the present Treaties but how we could improve on them. That would make our work easier and we would not have so many amendments. <BRK>

4-026

FR

Le Président. – Nous ne ferons pas un pas en arrière sur ce sujet. Vous étiez intervenue d'ailleurs la fois dernière. Vous aviez posé cette question et je vous avais répondu. Le seul point est de savoir où on le met dans les articles. C'est un point pratique. Il faut que les notions soient groupées. Ce n'est pas dans l'article 1, qui est un article de droit public. Alors, est-ce dans les objectifs, est-ce dans les valeurs? Se limite-t-on à l'égalité entre les hommes et les femmes ou dit-on l'égalité de tous les êtres dans l'Union européenne parce qu'il y a un système plus global d'égalité? En tout cas, il n'y aura pas de recul et cette mention figurera dans les premiers articles. <BRK>

4-027

DE

Wuermeling (PE). - Herr Präsident! Um mich zu finden, brauchen Sie nur in die Mitte zu schauen; dort findet man mich, und hier fühle ich mich auch wohl! Es kann wohl nicht darum gehen, den Begriff "föederal" ersatzlos zu streichen, aber er hat zwei Schwächen. Die erste Schwäche dieses Begriffes ist, dass er zwei völlig unterschiedliche Bedeutungen hat, die gegensätzlich sind. Es könnte auch ein Vorteil sein. Ich sehe es aber als eine Schwäche an. Das zweite ist, dass er nicht offen ist. Es ist ein Begriff, der auf bestehende Modelle von Zusammenschlüssen verweist. Wir aber müssen die Europäische Union in einer völligen Offenheit im Hinblick auf das Modell konstruieren. Es wäre, glaube ich, für die Entwicklung eines so einzigartigen Zusammenschlusses, der am Ende 500 Millionen Einwohner umfasst, fatal, wenn wir uns an bestehenden, hergebrachten traditionellen Begriffen orientieren würden. Deswegen haben wir auch nicht vorgeschlagen, den Begriff zu streichen, sondern wir haben - ähnlich wie Herr Farnleitner - vorgeschlagen, einfach auf die Gemeinschaftsmethode, auf das gemeinschaftliche Handeln zu verweisen, damit wir uns so organisieren können, wie wir das in unserer Union tun müssen. <BRK>

4-028

FR

Le Président. – Il y a encore d'autres cartons bleus mais nous les prendrons après une nouvelle série d'orateurs pour respecter l'équilibre. Nous les inscrivons au fur et à mesure. La parole est à Monsieur Costa. <BRK>

4-029

PT

Costa (Parl.-PT). - Senhor Presidente, a única razão realmente séria que temos para agora deixar de falar de Tratado e passar a falar de Tratado Constitucional ou de Constituição reside no novo lugar que damos aos direitos dos europeus. É aí que está a diferença adquirida neste momento. Se assim é, um princípio de transparência mandaria que se rejeitasse totalmente a ideia de retirar o teor da Carta para os fundos da Constituição e militar a favor de que o teor da Carta abrisse a nossa Constituição. Essa é de momento a nossa matéria constitucional.

Confesso, Senhor Presidente, que não estou satisfeito com o recurso à ideia da gestão em moldes federais de certas competências para elaborar o conceito constitucional da nossa União. Aliás, os que gostam de transparência perguntariam de seguida onde está a delimitação entre as competências a gerir em moldes federais, as competências a não gerir em moldes federais, os mecanismos de federalização e eventuais cláusulas de flexibilidade. Ninguém pensa nisto e, portanto, não se está a pensar com clareza.

Julgo que o caminho para definir o conceito seria estabelecer os grandes fins, que são conhecidos, fixar o modo de exercício dos poderes necessários provenientes dos Estados soberanos e fixar as regras de relação com a realidade democrática circundante. Estou a pensar no princípio da igualdade dos Estados, estou a pensar no princípio da proximidade e estou a pensar no respeito pela diversidade, a famosa eurodiversidade que tem que integrar o núcleo conceptual da nossa União.

Seria muito desagradável que incorporássemos uma espécie de federalismo mínimo ou de federalismo sectorial e, em contrapartida, não tivéssemos sequer o princípio da igualdade dos Estados, que costuma acompanhar em tão alto lugar a consagração do princípio federal. Eis por que razão, Senhor Presidente, proponho uma rescrita deste conceito. Para terminar, apoio a ideia da coesão territorial; no caso de se consagrar um alto nível de segurança como objectivo para a União deve consagrar-se igualmente uma alta qualidade na prestação da justiça, sob pena de distorção do modelo europeu do Estado de direito. E, por último, no âmbito da acção externa, julgo que se justificava consagrar a promoção de soluções multilaterais para expressar uma opção metodológica diferente da opção do império, o que me parece ressaltar da história europeia, de um continente que já conheceu democracias e impérios. <BRK>

4-030

DE

Meyer (Parl.-DE). - Herr Präsident! Drei Anmerkungen in zwei Minuten, die erste betrifft das Verfahren. Ich begrüße Ihre Zusage sehr, die Sie eingangs der Sitzung gemacht haben, dass die Frist für die Einreichung von Änderungsvorschlägen zu den Formulierungen des Präsidiums künftig in etwa zwei Wochen betragen soll. Ich möchte dem einen Wunsch der Europapolitiker des Deutschen Bundestages hinzufügen, der heute Vormittag von den Delegierten vieler nationaler Parlamente geteilt wurde. Ich möchte um die Zusage bitten, dass auch Änderungsanträge, die aufgrund der Debatten in den nationalen Parlamenten etwas später - also sagen wir nach drei Wochen - kommen, dokumentiert und allen Delegierten zugänglich gemacht werden. Wir brauchen die Hilfe der Parlamente, und am Ende auch ihre Zustimmung. Das sollten wir nie vergessen.

Zweite Anmerkung: Zur Grundrechtecharta ist einiges gesagt worden, und ich finde, die Struktur der Verfassung kann nicht mehr so offen sein, wie es vorhin in Ihrer Anmerkung noch ein bisschen den Anschein hatte, denn es ist eine Frage der Bedeutung der Grundrechte, eine Frage des Respekts vor der Arbeit des ersten Konvents, aber auch eine Frage der Methodik, die Charta an den Anfang zu stellen. Nur so können wir Wiederholungen vermeiden, und ich will das mit ein paar Hinweisen belegen. Die geistig-religiöse Debatte über das europäische Erbe müssen wir nicht neu aufrollen. Wir haben dazu eine Formulierung in der Präambel der Grundrechtecharta gefunden. Das Zusammenwachsen Europas in Artikel 1 aufzunehmen ist dann unnötig, wenn wir die Präambel der Grundrechtecharta entsprechend den Vorschlägen der Arbeitsgruppe Vitorino übernehmen. In Artikel 2 müssen wir Solidarität und Gleichheit nicht im Einzelnen ausdifferenzieren, das ist in den Kapiteln 3 und 4 der Grundrechtecharta schon geschehen. Wir müssen nicht die Arbeit des ersten Konvents wiederholen.

Dritte Anmerkung: die Arbeitsgruppe "Soziales Europa" hat wichtige Vorschläge gemacht und viele Delegierte haben den Vorschlag übernommen, sozialen Zusammenhalt und Wettbewerbswirtschaft im Ziel "soziale Marktwirtschaft" zusammenzuführen. Ich bitte herzlich, mit diesem Beispiel die Arbeit der Arbeitsgruppen und ihre Schlussberichte vor allem dann, wenn sie hier im Plenum große Zustimmung gefunden haben, zu respektieren. Das sollte eine Richtschnur für die Arbeit des Präsidiums sein. <BRK>

4-031

FR

Le Président. – Monsieur Meyer, nous verrons avec le secrétariat et le praesidium comment traiter cette affaire de place dans le texte. Probablement, pour le rendre plus concret il faudrait qu'on imprime les deux formules. Il est vrai que du point de vue de la démarche, c'est plus commode que la Charte soit avant. Vous avez raison. Du point de vue de la lecture par les citoyens, c'est le contraire. Il y a un choix à faire et, par conséquent, nous proposerons sans doute les deux formules pour voir quels sont leurs avantages et leurs inconvénients respectifs, ce qui ne change rien au fond, bien entendu.

La parole est à Monsieur De Villepin. <BRK>

4-032

FR

De Villepin (Ch.E/G.-FR). – Monsieur le Président, chers collègues, avant même d'aborder les articles que nous examinons aujourd'hui, je voudrais dire que nous devons faire face avec exigence aux difficultés qui résultent de la situation internationale comme vous l'avez dit en introduction, Monsieur le Président. Elles doivent nous inciter à engager une réflexion approfondie sur la place qui doit être celle de l'Union européenne dans le monde. Et je sais que nous y reviendrons plus tard, comme vous l'avez proposé d'ailleurs Monsieur le Président.

Je remercie le praesidium pour ces premiers articles. Nous avons conscience de la difficulté et de la lourdeur de la tâche qui vous incombe. Pour nos travaux, nous devons convenir d'une méthode qui garantisse le caractère collectif et rigoureux de notre travail. Les

membres de la Convention doivent notamment disposer d'un délai suffisant pour procéder à l'examen des articles et déposer des amendements. Je sais que le praesidium s'y emploie.

Sur le fond, je souhaite insister sur quelques points concernant les articles 1 à 3. L'article 1 doit conserver la référence emblématique à une Union sans cesse plus étroite entre les peuples de l'Europe. C'est un acquis essentiel et une garantie de la poursuite de l'intégration européenne. Par ailleurs, je propose d'introduire dans cet article la notion de fédération d'Etat-nation, qui témoigne bien de la synthèse que constitue le projet européen entre une Union des peuples et une Union d'Etats souverains.

L'article 2 sur les valeurs me convient et je salue la sagesse du praesidium. Ne rouvrons pas les débats difficiles qui ont déjà été tranchés par la précédente Convention sur la Charte des Droits fondamentaux.

L'article 3 sur les objectifs appelle plusieurs observations. Il doit être complété par la mention d'objectifs sociaux tels que définis par le groupe de travail sur l'Europe sociale, y compris ceux relatifs au service d'intérêt général. C'est à cette condition que nous pourrions concrétiser la volonté que nous partageons tous d'un renforcement du modèle social européen fondé sur l'équilibre entre progrès économique et justice sociale.

Ensuite, je propose de renforcer la mention du développement durable en le citant parmi les buts de l'Union, énoncé dès le premier paragraphe de l'article 3. Je propose, en outre, d'ajouter dans cet article que l'Union vise à promouvoir un niveau élevé de protection et d'amélioration de l'environnement. Je crois également que l'intégration des exigences environnementales dans les autres politiques devrait figurer parmi les principes sur lesquels l'Union est fondée. Il me paraît enfin important de mentionner qu'un des buts de l'Union est de préserver l'acquis de la construction européenne. Je pense notamment au domaine du marché intérieur et de la concurrence.

En conclusion, Monsieur le Président, nous constatons aujourd'hui, à travers la crise irakienne, les divisions de l'Europe. Plus que jamais, nous devons réaffirmer notre ambition commune. Je vous remercie.

(Applaudissements) <BRK>

4-033

EN

McAvan (PE). – Article 1 of the new constitution should try to capture in a nutshell the essence of the European Union. The draft from the Praesidium starts off well - but then loses it after the first phrase. Why? Because it talks about a Union within which "the policies of the Member States shall be coordinated". Does that mean all of them or some of them? We need to be clear about defining what we mean by "the European Union". We should say "the Union of Member States which have freely chosen to work together in certain areas". It would add something to the *lisibilité* of the constitution if we said a word or two about the why. The answer is quite simple: because they feel they can achieve more by working together than by working alone. That might be covered in the preamble, but it is important that when people read it they understand why we want the European Union.

You also spoke of the need to mention that powers derive from the Member States. It should be said more explicitly under Article 1(2). This is a democratic guarantee for our citizens and can stop this mistaken notion that somehow the Union exists and has powers that come from nowhere. It is very important that people understand how it was founded, where its powers come from. They come from the will of the peoples of Europe.

Mr Fayot very kindly said all that needs to be said on Articles 2 and 3 on behalf of the Socialist family, except that I feel there is a case for including equality between men and women among the values under Article 2.

You invited us to say something about the place of religion. It would be very divisive if we started talking about Christian traditions etc. at this time. It would offend the many millions of people from different faiths and indeed those of no faith at all. We should leave those things alone. We should talk about an inclusive Europe. If we follow along the lines suggested by Mr Fayot we will have that. <BRK>

4-034

EN

Lenmarker (Parl.-SE). – I should like to focus on Article 3(4). Outside Europe the general idea is that Europe is inward-looking. We even speak about a fortress Europe. Certainly it is true that the European Union is too protectionist in some respects. This weakens our ability to act in the outside world. Therefore it is important to include in Article 3(4) the principle and objective of openness to the outside world, so that we can see that Europe really is open, and that Europe is not only concerned with itself or defending its own interests, but also takes on a wider responsibility.

The good values of Europe are not only European, but universal. That should also be reflected in Article 3(4).

The name of the Union should be "the European Union". I also underline – and this comes into a joint Swedish amendment – that we need a definition of who the contracting partners – the Member States – in this constitution are. It must be clear.

I support the PPE-DE amendments on Articles 1 and 3. <BRK>

4-035

FR

Le Président. – Merci, Monsieur Lennmarker. Sur ce dernier point, qui est un point à la fois juridique et de courtoisie, il y a les deux. Les hautes parties contractantes, elles, figureront dans la présentation du texte, comme d'ailleurs dans les Traités où les hautes parties contractantes ne sont pas dans les articles. Elles sont en général dans une déclaration initiale. On reprendra cette formule qui est, je crois, la formule adaptée. Je voudrais dire à Monsieur Meyer qui m'écoute avec attention je vois, je le comprends, un mot à propos des amendements tardifs. Nous essayons d'avoir une discussion commune des amendements. Donc, il vaut mieux qu'ils puissent être déposés en même temps afin de permettre aux uns et aux autres de les défendre et de les comparer. Mais vous gardez en permanence le droit de déposer des textes. Donc, si un parlementaire national, à la suite des travaux de son parlement, veut déposer une nouvelle proposition d'article ou autre, il peut naturellement le faire. Cela facilite notre tâche si on joint ces amendements à la discussion des articles. Mais si ce n'est pas possible, il garde le droit, bien sûr, de déposer son projet.

La parole est à Monsieur Fischer. <BRK>

4-036

DE

Fischer (Ch.E/G.-DE). - Herr Präsident! Der Entwurf des Präsidiums ist unseres Erachtens eine sehr gute Grundlage für eine transparente Kompetenzordnung, die der Union gleichzeitig die notwendigen Spielräume für eine flexible Fortentwicklung belässt. Natürlich sind zahlreiche Einzelfragen noch zu klären, siehe die schriftlichen Beiträge. Aber darauf will ich jetzt nicht im Einzelnen eingehen. Was mich beschäftigt, ist die Sorge um die Zukunft des Konvents, die angesichts der aktuellen Situation an Bedeutungskraft für die Zukunft der Union noch erheblich gewonnen hat. Wir befinden uns jetzt an der entscheidenden Wegkreuzung. Die Art und Weise, wie wir in den kommenden Wochen mit der vor uns stehenden Herausforderung fertig werden, wird über Erfolg oder Misserfolg unseres Projekts entscheiden. Dabei meine ich nicht in erster Linie die über tausend Änderungsanträge - hier setzen wir voll auf die Weisheit und auf die Erfahrung des Präsidiums -, Sorge machen mir vielmehr die Stimmen, die einer Verlängerung des Konvents das Wort reden. Richtig ist, entscheidend ist der politische Wille, zu einem ehrgeizigen Ergebnis zu kommen. Meines Erachtens ist das wichtiger denn je.

Die aktuellen Ereignisse sollten uns nicht entmutigen, sondern im Gegenteil, sie sollten uns beflügeln und anspornen. Sie führen uns überdeutlich vor Augen, dass jeder einzelne europäische Staat - auch der größte - für sich allein genommen oder in wechselnden Allianzen seine Interessen in der Welt des 21. Jahrhunderts nicht mehr wirksam verteidigen können. Nur gemeinsam, als Europäische Union, haben wir Europäer eine Chance, uns im 21. Jahrhundert zu behaupten. Die aktuelle Krise zeigt, dass das bittere machtpolitische Wirklichkeit ist. Für den Konvent muss das heißen: Wir sollten unseren Ehrgeiz auch - aber nicht nur - in der gemeinsamen Außen- und Sicherheitspolitik nicht dämpfen, sondern steigern. Es ist meines Erachtens falsch zu sagen, weil die letzten Tage gezeigt haben, dass der Wille zu gemeinsamem politischen Handeln noch nicht vorhanden ist, brauchen wir auch keine europäischen Institutionen. Ich glaube, das Gegenteil ist vielmehr der Fall. Wir brauchen wesentlich stärkere europäische Institutionen als bisher, um in diesem Rahmen unseren gemeinsamen politischen Willen bilden zu können.

Natürlich geht so etwas nicht von heute auf morgen. Ein solcher politischer Prozess braucht Zeit, vielleicht sogar lange Zeit. Umso dringender ist es, diesen institutionellen Rahmen so rasch wie möglich zu schaffen. Wichtig ist hier vor allem die Stärkung der supranationalen Elemente, wie etwa der Kommission. Deshalb müssen wir jetzt alle unsere politische Energie daran setzen, den Zeitplan einzuhalten. Eine Verzögerung hätte meines Erachtens eine völlig negative Signalwirkung. Der Konvent darf sich nicht in technischen Einzelheiten verlieren, sondern muss sich auf die politische Substanz und auf die große historische Herausforderung, vor der wir stehen, konzentrieren. Wir müssen unser Ziel erreichen, die europäische Verfassung im Entwurf bis zum Sommer vorzulegen, damit sie bis zum Ende dieses Jahres von der Regierungskonferenz gebilligt werden kann. Dies, Herr Präsident, ist wichtiger denn je!

(Beifall) <BRK>

4-037

IT

Dini (Parl.-IT). - Signor Presidente, esprimo un giudizio complessivamente positivo sull'articolato che il *Praesidium* ci ha presentato, e ciò per la sua chiarezza e linearità. Esso contiene l'affermazione di principi essenziali per l'avanzamento dell'Unione: per esempio, l'affermazione che le competenze comuni vanno gestite, come lei ci ha ricordato, sul modello federale, secondo la formula, che tutti abbiamo condiviso, di federazione di Stati nazione, ciò che dovrebbe essere all'articolo 1; l'attribuzione all'Unione della personalità giuridica, all'articolo 4; la codificazione del primato del diritto comunitario su quello degli Stati membri, che viene poi, all'articolo 9.

Gli obiettivi e le competenze dell'Unione vanno rafforzati, mai indeboliti: questa è, secondo me, la stella polare con cui il *Praesidium* dovrebbe procedere nella scrittura della Costituzione per l'Europa. Questo non mi sembra essere stato sempre il caso nel testo dei primi sedici articoli, che oggi discutiamo, dove ci sono alcune omissioni che potrebbero apparire un indebolimento dei Trattati esistenti. Manca, tra gli obiettivi dell'Unione, all'articolo 3, quello della difesa dell'indipendenza e dell'integrità dell'Unione stessa, prevista all'articolo 11 del Trattato sull'Unione europea, che è intesa a rafforzare in prospettiva il carattere politico dell'Unione; manca anche il richiamo alle Nazioni Unite come istituzione universale, fulcro della legalità internazionale. Un riferimento alle Nazioni Unite è, invece, presente nell'articolo 11 del Trattato sull'Unione europea che, oggi più che mai, credo debba essere riaffermato. Arretrata, rispetto ai Trattati vigenti, è anche la formulazione del comma 4 dell'articolo 10, che parla di progressiva realizzazione di

una politica di difesa comune; ora, l'articolo 17 del Trattato sull'Unione già parla di una difesa comune, raggiungibile senza una revisione dei Trattati, con una semplice decisione del Consiglio europeo; il concetto deve essere elaborato da qualche parte. Sulla politica estera, di sicurezza e difesa bisogna essere più ambiziosi di quanto proposto, superando radicalmente la struttura a pilastri, e affermare che queste materie, pur con la loro peculiarità e procedure particolari, debbono essere incluse fra le competenze dell'Unione.

Occorre andare avanti partendo dalle acquisizioni fissate nei Trattati, che vanno codificate nella nuova Costituzione, come, ad esempio, l'obiettivo della libera concorrenza - che è stato sottolineato anche da Monsieur de Villepin - che va con chiarezza incluso nell'articolo sulle competenze esclusive dell'Unione.

Ripeto, signor Presidente: è importante che il *Praesidium*, nel linguaggio che usa nella bozza degli articoli, non dia l'impressione di fare passi indietro rispetto ai Trattati esistenti. Questa è una raccomandazione forte che intendo fare. <BRK>

4-038

FR

Di Rupo (Parl.-BE). – Monsieur le Président, je partage le point de vue exprimé par bon nombre de collègues notamment sur notre responsabilité historique. Il nous faut de l'ambition non seulement pour nous-mêmes mais pour les générations futures.

Par rapport aux trois premiers articles, dans l'article 2, je pense que, comme vous l'indiquiez tout à l'heure, c'est davantage l'égalité de tous les êtres qu'il faut indiquer et non pas uniquement l'égalité entre les femmes et les hommes. On ne doit pas se laisser distraire par une absence de définition juridique claire à cet égard. Il s'agit bien de valeurs et on peut d'ailleurs se référer à l'actuel article 7 du Traité de l'Union en la matière.

En ce qui concerne les objectifs sociaux, il me semble que nous manquerions à nos responsabilités si nous n'indiquions pas quelques objectifs tels que l'accès de tous à l'éducation, l'accès de tous à la formation, à des services d'intérêt général de qualité ou encore le fait que nous voulons lutter contre toutes les formes de discrimination ou d'inégalité.

En ce qui concerne, comme l'a indiqué Monsieur Lamassoure, la souveraineté des Etats, vous avez dit que ce serait peut-être dans les dispositions finales plutôt que dans les premières dispositions, ce que je peux comprendre. Mais il faut une disposition qui permette à un Etat de quitter l'Union. Je pense que c'est une manière assez élégante non pas de freiner l'ensemble des Etats membres de l'Union mais plutôt de marquer son désaccord profond et puis de faire son destin seul.

En ce qui concerne le caractère fédéral, je pense que supprimer le mot "fédéral" serait interprété par une très large partie de l'opinion, et singulièrement par les jeunes, comme un recul. Et permettez-moi de dire ceci, si c'est pour avoir un Traité qui institue la Constitution ou la Constitution avec des conditions et des clauses qui seraient inférieures à ce que l'on trouve dans les Traités actuels, Monsieur le Président, ce serait triste. Et je voudrais quitter cette Convention en ayant eu le sentiment d'avoir contribué à quelque chose d'utile.

En ce qui concerne d'éventuelles références aux valeurs religieuses à l'article 2, je dis non. Vous avez vous-même d'ailleurs, clairement indiqué que les références présentes dans le préambule de la Charte et le respect des Eglises qu'on pourrait indiquer dans l'annexe de la future Constitution, paraissent suffisants. Nous devons garder ce principe fondamental sans brouiller les images, en restant clairs par rapport à nos opinions. L'Etat est une chose, les Eglises en sont une autre. L'Etat se doit d'être impartial et de garantir la diversité et l'exercice de toutes les religions bien entendu. <BRK>

4-039

EN

Rovna (Gouv.-CZ). – Unlike the draft presented by the Commission in early December 2002, the present draft lacks the distinctive dimension of a multi-level constitutionality on which the future Union is to be founded. It reflects the multi-level identity of its citizens – local, state and Union – and unites the individual constitution levels in a single consistent entity.

This concept of constitutional complementarity corresponds to the established practice of the European Court of Justice. This makes Community law an integral part of the legal orders of Member States, both by means of direct effect and by virtue of the supremacy of Community law. Also, in terms of clarity of wording and legal economy, the present draft has not fully exploited its potential.

As to Article 1(1), the opening sentence starts with a correct reference to two sources of the democratic legitimacy of the constitution: the peoples and the states of Europe. However, the phrase "reflecting the will" would be more appropriate in a preamble.

As to the functions, we propose to begin with common policies, as the supranational function defining the Union; secondly, common competences as a policy tool; thirdly, coordination as an expression of inter-state function. We propose replacing the term "federal" with "on the basis of ever closer union" and retaining the name "European Union". <BRK>

4-040

FR

Duhamel (PE). – Monsieur le Président, une Constitution doit être courte et obscure, disait Napoléon. Cela a été dit par Sieyès mais aussi par Napoléon. Ils se sont accordés sur ce point d'ailleurs. Et nous, nous nous accordons contre. Pourquoi contre? Notre Constitution ne peut qu'être longue. Elle le sera forcément du fait des contraintes que nous subissons. Essayons qu'elle soit claire et qu'elle s'adresse aussi au citoyen. Or, dans nombre de nos articles, ce qui est l'objectif sera hors d'atteinte. Quand on attribue des pouvoirs, fixe des relations, précise des compétences, règle des procédures, on ne peut pas s'adresser au citoyen en tous ces points. Et, précisément parce qu'on ne peut pas échapper à ces tâches ingrates d'écriture complexe, nous devons aussi incorporer les dispositions constitutionnelles qui ont quelque chance d'intéresser les citoyens européens. Voilà pourquoi je voudrais insister sur trois points.

Premièrement, définir l'Union. L'article 1, qui le fait, contient l'essentiel. Mais on peut le dire plus fortement et mieux. C'est-à-dire qu'on peut partir de la volonté des peuples sur laquelle repose et nos Etats et l'Union, puis affirmer clairement la double légitimité de l'Union, celle des citoyens européens et des Etats membres. Quant à la fin de la phrase, n'ayons pas peur des mots lorsqu'ils confirment la réalité des choses. 15 % des conventionnels ont déposé des amendements pour supprimer le terme "fédéral". Mais le mot "fédéral" existe et la très grande majorité des conventionnels a donc raison de l'accepter.

Deuxièmement, symboliser l'Europe. Le projet de rédaction a oublié les symboles de l'Europe, ceux qui existent - le drapeau étoilé, l'hymne - et ceux qui méritent de s'y ajouter - une devise, un jour férié, fête de l'Europe -. Je ne comprends pas pourquoi le praesidium y a renoncé et comprendrai encore moins qu'il s'y oppose.

Enfin, consacrer la Charte. J'avais peur que vous ne persistiez dans l'idée de quelques uns de la reléguer dans je ne sais quel protocole. A vous entendre, vous avez compris son importance pour les citoyens. Vous l'avez sûrement relue et vous en avez apprécié la qualité.

Bien définir l'Union, la doter de symboles consacrés, incorporer la Charte. Voilà qui nous évitera d'avoir peur de notre ombre et donnera un peu de lumière à notre Constitution. <BRK>

4-041

FR

Le Président. – Je voudrais vous répondre sur les symboles. Il faudra mettre quelque chose sur les symboles. Effectivement, notre texte est un peu aride et manque de chaleur à cet égard. Il faudra donc mettre le drapeau, bien sûr. Il faudra mettre l'hymne mais pour cela il faut que l'hymne existe. Parce qu'actuellement, on joue comme hymne européen un extrait pas très défini de la Neuvième symphonie de Beethoven. Mais il faudrait savoir quand on le commence et quand on le finit. En outre, un hymne a des paroles. Et donc, nous avons, dans le milieu culturel européen, à faire travailler sur deux sujets, non pas la réécriture, mais la question du début et de la fin. En effet, quand on écoute l'hymne européen, on attend la fin mais on ne sait pas si ça va être maintenant ou quatre ou dix mesures plus tard. Il faudra également, d'ailleurs, réfléchir à un texte que l'on pourrait chanter lorsqu'on exécute l'hymne européen. Et si les crédits de la Convention ne sont pas épuisés, à la fin, on pourrait faire un concours modeste à cet égard.

Nous allons prendre quelques cartons bleus. Madame Maij-Weggen, vous êtes inscrites aussi comme orateur. On vous écouterait donc dans deux minutes. Nous entendrons Monsieur Kiljunen, Monsieur Roche, Monsieur MacLennan et Monsieur Borrell. La parole est à Monsieur Kiljunen. <BRK>

4-042

EN

Kiljunen (Parl.-FI). – Mr President, you underlined in your statement that the European Union is unique, representing a new type of decision-making. I agree. In essence it is supranational and goes beyond the states, although legitimated by the sovereign states. That is exactly why I hesitate using the words "federal" or "confederal". Both references tend in the wrong direction; both are related to forms of states. The European Union is not and will not be a state with full sovereignty. It represents a new type of power format reflecting shared sovereignty. In using the word "federal" we are making a reference to the Philadelphia Convention, which created a model for the federal state. We, however, are not creating a constitution for the United States of Europe.

Nevertheless, the Brussels Convention has the same historic potential as the Philadelphia Convention had to create something new – a model for a new type of power structure that is supranational, democratic, efficient and transparent. That is why we should not, in face of our historical challenge, use obsolete terms such as "federal" or "confederal". <BRK>

4-043

FR

Le Président. – Je vous remercie. Il y avait une remarque de Monsieur Duhamel qui était très juste. Elle concernait un point qui rend d'ailleurs un peu difficile la gestion de nos travaux. C'est que, par exemple, il y a beaucoup d'amendements qui proposent la suppression du mot "fédéral". Mais il y a tout ceux qui n'ont pas déposé d'amendement. Il faut rechercher où est l'équilibre. La parole est à Monsieur Roche. <BRK>

4-044

EN

Roche (Ch.E./G.-IE). – Those in favour may not have just been silent. The reality of it has been expressed by the last speaker. The word "federal" has a specific connotation. The European Union is a fundamentally different type of device. It has a fundamentally different way of doing business. It is a supranational organisation brought together by equal states pooling sovereignty, but it is not a super-state and decidedly is not a federal super-state.

Article 1 is of fundamental importance. At one stage you spoke of a certain lyrical introduction to the Union. I believe that Article 1 should be very precise. I have suggested that in Article 1(1) we remove the second half of the second clause. This is where you use the word "federal".

You made the point that the use of the word "federal" in this particular context is a description of process, not necessarily a description of the Union itself. It is a fundamental mistake to introduce the word "federal", which has a specific historical connotation which is not an accurate reflection of what this Union is about.

The nature of this Union is not going to be described by a word. It will be prescribed by the treaty. We should be happy to leave it to be prescribed by the treaty rather than using words that are appropriate for a different type of arrangement. <BRK>

4-045

EN

MacLennan of Rogart (Parl.-GB). – Mr President, you have specifically invited us to comment upon the inclusion of the word "federal". I wish to say that it is an appropriate description of how the Union reaches many of its decisions. It is about process, as you have said. I adopt the reasoning advanced by Mr De Villepin in his speech. However, where I part company with him is in what he had to say about the use of the words "ever closer union". They have a historical resonance within the Union because they describe how we have got to where we are, from quite small beginnings. However, we must ask ourselves, at this stage, whether they are appropriate when we are seeking an establishment, an embracing constitution, that we wish to be long-lasting. We do not want to create uncertainties about its purposes or its processes. That historically resonant phrase of "ever closer union" is neither precise nor lacking in anxiety-creation. Therefore, if it is to be included at all – and there is some support for it – it would be appropriate for the preamble of the constitution, but not for the body.

On the issue of the individual characteristic of the Union, its diversity, I hope that its cultural diversity will be reflected both in the statement of values and in the statement of objectives in Articles 2 and 3. <BRK>

4-046

ES

Borrell Fontelles (Parl.-ES). – Señor Presidente, creo que entre los valores de la Unión es imprescindible colocar el de la igualdad. La igualdad es una característica fundamental de la historia de Europa, no sólo la igualdad entre hombre y mujer, que es una de las dimensiones de la igualdad, pero que no agota su múltiple sentido. No me parece posible que los europeos hagamos una Constitución y que entre sus valores no proclamemos el de la igualdad, que al mismo título que la libertad, está profundamente anclada en nuestra historia colectiva. Igualdad, en particular, entre hombre y mujer, pero igualdad. Que no nos falte esta palabra en el artículo 2.

La dimensión social de Europa debe quedar reforzada, muchos lo han dicho, entre sus objetivos. Los objetivos de la Unión no son sólo crear una economía competitiva y próspera, sino también crear una sociedad cohesionada. Hay que dar a esta palabra todo su significado en el artículo 3.

En el artículo 1, la palabra federal. Nos guste o no -ya hemos chocado con la magia de las palabras- tanto si figura como si no figura, esta palabra será un elemento mediático, característico de nuestro trabajo. Federar quiere decir unir en la libertad y eso es lo que es Europa, una unión en la libertad. De cuando en cuando conviene enterrar los fantasmas, los fantasmas que anidan en el subconsciente colectivo de los pueblos, y proclamar que Europa, para muchas de las cosas que queremos hacer juntos, tiene que trabajar de un modo federal. Il faut appeler un chat un chat. No hay que tener miedo a que las palabras reflejen la realidad, y una parte de la realidad europea es federal. Si esa palabra se cae y no figura en nuestra Constitución, para mucha gente habrá significado un importante paso atrás. <BRK>

4-047

FR

Berès (PE). – Merci, Monsieur le Président. Je veux revenir aussi sur ce mot "fédéral". Je crois que nous en avons besoin dans la Constitution. Il correspond à la réalité de l'exercice de certains pouvoirs au sein de l'Union européenne et une grande majorité de nos concitoyens attendent de nous la capacité de mettre en œuvre une vraie fédération. Alors, à tout le moins, ne supprimons pas cette référence au terme "fédéral".

A l'article 2, je crains que nous ouvrons à nouveau deux débats qui ont été tranchés par la Charte. Le premier lorsque vous faites référence à la notion de droits de l'homme. Nous avons eu ce débat dans la Charte et le terme "droits de l'homme" ne figure pas dans la Charte à juste titre. Nous avons simplement utilisé l'expression "dignité humaine" et "droits fondamentaux". Je vous en prie, au nom de beaucoup de femmes, mais aussi d'hommes, d'en rester à cet équilibre atteint dans la Charte.

A propos de Dieu, vous nous interrogez, et là aussi, Monsieur le Président, je veux vous dire que ce débat, nous l'avons eu de façon très approfondie à l'occasion de la rédaction de la Charte. Il me semble que l'équilibre auquel nous sommes parvenus est le bon équilibre. Nous devons garantir la liberté des Eglises, la liberté de conscience, la non-discrimination. Mais ce n'est pas l'objet de cet article 2. L'article 2 est celui qui définit nos valeurs. Il a vocation à installer l'organisation de la démocratie européenne, de l'organisation du pouvoir temporel et non pas la place du pouvoir spirituel.

Dernier mot, à propos de l'article 3, Monsieur le Président, vous n'avez pas fait référence à certains amendements qui, à l'article 3.5, proposent que le respect des objectifs de l'Union soit une obligation pour l'ensemble des institutions de l'Union. Je crois que ce serait une contribution très importante et j'espère que le praesidium pourra réexaminer ce point. Merci Monsieur le Président. <BRK>

4-048

FR

Le Président. – Nous avons hésité à mettre, en effet, l'expression "respect des droits de l'homme". Et nous connaissons les arguments que vous venez de développer et ce n'est pas, en effet, le texte qui figure dans la Charte des Droits fondamentaux. Mais c'est une expression du langage courant mondial. Par exemple, lorsque vous avez dans tel ou tel grand pays asiatique des situations de ce type, on invoque le respect des Droits de l'homme. On retombe sur le problème que soulevait Monsieur Borrell, à savoir l'expression verbale des choses. On peut ne pas le mettre mais c'est une expression qui dans la conscience internationale a une signification par elle-même. Et naturellement, ce n'est pas incompatible avec les autres valeurs dont vous parlez. Nous nous interrogerons à nouveau et nous notons cette remarque ainsi d'ailleurs que la dernière.

Nous reprenons la liste des orateurs. La parole est à Monsieur Demiralp et à Madame Maij-Weggen ensuite. <BRK>

4-049

FR

Demiralp (Gouv.-TR). – Merci Monsieur le Président. Nous avons proposé des amendements concernant les projets d'article 1,2,3, et 5. Je me permets de faire quelques remarques supplémentaires.

Depuis longtemps, on s'interroge sur la pertinence des notions de fédération et de confédération pour qualifier l'Union européenne. En réalité, elle est plus qu'une confédération mais pas tout à fait une entité fédérale. Tout au plus, comme vous le dites, elle gère sur le modèle fédéral certaines compétences communes. Mais elle gère d'autres compétences sur le modèle intergouvernemental. Je pense qu'au stade actuel de nos travaux, il faut dépasser cette opposition conceptuelle. Il serait judicieux de réajuster ces mêmes catégories afin de leur faire acquérir la plasticité nécessaire. C'est ainsi que l'on pourrait procéder à une solution d'amalgame entre ces deux notions. L'Union européenne, à l'avenir, serait appelée une fédération des Etats-nations, ce qui équivaldrait à admettre la coexistence de deux niveaux de souveraineté, européenne et nationale, ce qui correspond mieux à la réalité de l'Union européenne.

Par ailleurs, Monsieur le Président, la lecture parallèle de l'article 1 alinéa 3 et de l'article 2 est de nature à prêter confusion quant à la signification de la notion de valeur. Je pense qu'il est essentiel qu'il ressorte de la lecture de ces articles qu'il s'agit bien des mêmes valeurs. Afin de mieux souligner cet aspect, j'ai proposé qu'on fasse une référence explicite à l'article 2, dans l'article 1 alinéa 3.

Monsieur le Président, la liberté de conscience et le principe de non-discrimination sont parmi les piliers de l'Europe moderne, créés comme modèle universel. Réintroduire la religion dans le texte de la Constitution, qui sera d'ailleurs un texte justiciable, comme un aspect de l'identité européenne, serait en contradiction non seulement avec la liberté de conscience et le principe de non-discrimination, mais aussi avec le progrès enregistré par l'Europe depuis le siècle des Lumières. C'est la laïcité qui fut la force motrice de ce progrès. Merci Monsieur le Président. <BRK>

4-050

NL

Maij-Weggen (PE). - Voorzitter, in de eerste plaats wil ik u steunen daar waar u gepleit hebt voor een intensivering van onze werkzaamheden en niet voor een verlenging van de werkzaamheden. Ik denk dat een intensivering ons helpt om op tijd ons werk af te leveren.

Dan, Voorzitter, een opmerking over het begrip federaal. Er zijn veel mensen die hier zeggen dat je dat begrip niet zou moeten opnemen. Ik hoor dat u daarover een stuk of tien, vijftien amendementen hebt gekregen. Maar dat betekent altijd nog dat er zo'n 80 mensen hier vinden dat het wèl opgenomen zou moeten worden. In de twee voorvergaderingen die ik heb bijgewoond, heb ik vastgesteld dat een meerderheid eigenlijk vond dat het moest blijven. Wij steunen dus die benadering om het federaal aspect in artikel 1 onder te brengen.

Dan, Voorzitter, artikel 2. Daar hebben ook wij een amendement ingediend om die gelijke behandeling op te nemen. Ik denk dat het erg belangrijk is omdat die gelijke behandeling dan ook verwijst naar de gelijke behandeling van mannen en vrouwen, en dat wordt door meer dan de helft van onze burgers als een heel belangrijke waarde gezien van de Europese Unie. Dus, Voorzitter, ik zou graag willen dat dat zou blijven.

Voorzitter, het aspect religie. Ik behoor tot de indieners van dat amendement maar ik vind het niet onverstandig om dit onder te brengen in de *preamble*. Als we daarover een consensus kunnen vinden, dan is dat wat mij betreft een goede oplossing.

Dan artikel 3. Ik behoor ook tot degenen die het aspect sociale markteconomie hebben ingebracht. Dat is toch wel een heel centrale Europese waarde die door de twee grootste politieke partijen ook warm wordt ondersteund. De Verenigde Staten staan altijd voor een vrije markteconomie. De oude Sovjetunie was een geleide markteconomie maar Europa heeft vanouds een sociale markteconomie, en laten we dat ook maar opnemen. Verder steunen we ook diegenen die hebben gezegd dat het aspect milieubescherming en duurzaamheid moet worden ingebracht. Misschien kun je het allemaal wel samenvatten onder de term sociaal-ecologische markteconomie. Dan heb je in een hele korte bewoording precies gezegd waar het hier om gaat.

Ten slotte, Voorzitter, behoor ik tot diegenen die absoluut vinden dat het Handvest ondergebracht moet worden in het constitutionele gedeelte van het Verdrag. Ik denk dat dat heel belangrijk is. Ik heb begrepen dat u er misschien een hoofdstuk 2 van wilt maken. Voorzitter, dat heeft mijn warme ondersteuning. Ik zie dat ik maar 1 minuut heb gesproken maar dat klopt niet want de klok ging niet aan aan het begin van mijn spreektijd. Dus ik heb echt mijn twee minuten wel vol gemaakt. <BRK>

4-051

PT

Lobo Antunes (Ch.E/G.-PT). - Senhor Presidente, quanto aos artigos referentes ao estabelecimento e objectivos da União, as nossas propostas de alteração baseiam-se nos seguintes princípios que consideramos fundamentais:

- manutenção da referência a uma União cada vez mais estreita entre os Estados e os povos da Europa, que consideramos traduzir o objectivo principal da União;
- preservação integral do actual acervo comunitário que constitui a base jurídica da União e que não poderá ser desmembrado sob pena de incorrerem num sério risco de retrocesso do processo de integração;
- respeito pela igualdade entre Estados e pelas suas identidades nacionais, que deverão ser preservadas inclusive no tocante à diversidade linguística da União;
- defesa da solidariedade entre Estados e entre povos enquanto princípio orientador da acção da União, que deverá permanecer no centro da construção europeia;
- defesa do princípio da suficiência de meios pelos quais a União se deverá dotar dos meios necessários para atingir os objectivos e desempenhar as tarefas previstas na Constituição;
- integração da Carta dos Direitos Fundamentais no corpo do futuro Tratado com valor jurídico vinculativo;
- finalmente, concordamos com a consolidação da jurisprudência do Tribunal de Justiça, nomeadamente no tocante ao primado do Direito da União. <BRK>

4-052

IT

Follini (Parl.-IT). - Signor Presidente, era inevitabile che i primi articoli portassero con sé anche le prime critiche, e ad alcune di queste mi associo anch'io, convinto che qualche dissenso leale aiuti di più che non un'adesione svogliata e poco convinta. Vorrei però, prima di tutto, segnalare un punto di consenso. Credo sia giusto il richiamo al carattere federale dell'Unione europea: la costruzione europea è la conseguenza di diverse architetture, ha aspetti federali e aspetti confederali, combina i diritti dei popoli e degli Stati, la sovranità comune dell'Unione e quella propria dei singoli paesi, ma la preminenza della caratteristica federale è il pilastro principale di questa costruzione.

Vengo ora al punto più difficile: molti di noi hanno richiamato l'esigenza che l'Europa non dimentichi le sue radici, il suo retaggio. Io sono tra questi. Questa esigenza può essere sottolineata nell'articolo 2 - quello relativo ai valori - o, forse in modo più appropriato, nel preambolo, e potrà essere ancora più concretamente ribadita quando si dovrà affrontare la questione, finora irrisolta, del rapporto istituzionale, del dialogo strutturale con le confessioni religiose. Non possiamo dimenticare il valore anche civile di questa spiritualità e, nello stesso tempo, non possiamo opporre questo valore al principio della laicità delle istituzioni. Io milito, nel mio paese, in un partito che nasce da un'ispirazione religiosa e che, nello stesso tempo, riconosce il confine che divide sfera politica e sfera spirituale. Da cattolico so bene che la laicità dello Stato è un'idea tipicamente cristiana, nasce dalla distinzione tra quanto è dovuto a Dio e quanto è dovuto a Cesare. Quello che appartiene alla mia coscienza non sempre coincide con quello che appartiene allo Stato o, in questo caso, alla federazione degli Stati. E' ovvio anche che questo confine non può nascondere il grande debito che tutto il nostro continente ha verso la tradizione religiosa e, tanto più, nell'aver propiziato le condizioni che hanno portato alla riunificazione.

Da parte mia confido che i molti emendamenti presentati su questo punto e la saggezza con cui se ne terrà conto ci aiuteranno a trovare il giusto equilibrio tra questi valori spirituali e la doverosa autonomia delle istituzioni pubbliche. <BRK>

4-053

EN

Carey (Parl.-IE). – Mr President, you said that the document that will be produced at the end of this process should be understandable even to school-going students. While it might be legible, it will be interpreted by lawyers. Therefore it is important that we spend a good deal of time getting the early part of it right.

I agree with what Commissioner Vitorino said earlier: that in simplifying these treaties we should not in any way be tempted to roll back on values and rights that were strongly established in previous Treaties.

I see no compelling reason for not agreeing at an early stage that the title of the Union will be "the European Union". It is a brand name that has been broadly accepted. It is a consumer-friendly name. We should stick with it.

You invited us to have a debate on the heritage of the Union. It is important that we find a formulation that reflects the different cultural traditions that have underpinned the states of Europe over the years. I would like to contribute to finding that formulation.

I support the amendments offered in writing by my colleague Mr Roche. I want to raise a number of points. In relation to Article 1, I suggest that the Union should not only respect the national identities but also the sovereignty of Member States. I support the deletion of the word "federal" because of its connotations and its lack of agreed meaning.

In relation to values, they need to be very precise in Article 2. I suggest the values should include fundamental freedoms, which is the language used in the current Treaty. In relation to Article 3(4), we should spell out the Union's objectives in the wider world, using the language agreed in the External Action Working Group.

We should be guided by the working groups' reports on what is agreed or not agreed, particularly by the Economic Governance Working Group, for example, where there was not agreement on issues such as taxation, or the document on Social Europe, on which there was significant consensus. <BRK>

4-054

FR

Lequiller (Parl.-FR). – Monsieur le Président, sur la crise internationale, je voudrais souligner mon total accord avec votre déclaration liminaire. Devant la division de l'Europe, les conventionnels doivent et peuvent tirer d'un mal un bien. Nous devons non pas baisser les bras, mais au contraire redoubler d'efforts pour donner une voix unique, un bras armé commun, une volonté commune à l'Europe.

L'opinion européenne jamais aussi sensibilisée qu'aujourd'hui sur le contexte international, ne comprendrait pas que l'on ne fasse pas ici le choix de l'ambition et ce, avant juin prochain. Prenons garde sinon de la sévérité avec laquelle l'opinion jugerait notre travail, qui s'ajouterait à la sévérité avec laquelle elle juge aujourd'hui la désunion européenne.

Sur notre sujet d'aujourd'hui, je voudrais vous dire, Monsieur le Président, mon soutien d'une part, aux éléments clés proposés par le praesidium que constituent les dispositions de l'article 1, relatives à la double souveraineté des Etats et des peuples d'Europe et à la gestion, sur le mode fédéral, de certaines compétences communes et d'autre part, sur la personnalité juridique unique.

Je proposerai quelques amendements. Il me paraît indispensable, comme l'a dit Dominique De Villepin, de maintenir dans le texte de la Constitution à l'article 1, les termes d'Union sans cesse plus étroite. Il me semble que revenir sur cette disposition, qui figurait dans le Traité de Rome, constituerait un signal négatif. Dans le même esprit, il me semble nécessaire d'inscrire à l'article 1, le principe de solidarité entre les Etats membres, qui constitue le fondement des politiques communes.

En second lieu, plusieurs de mes amendements visent à renforcer dans le texte les bases du projet de société. Je propose ainsi d'insérer le texte de la Charte au début de la Constitution pour plus de portée politique et symbolique. Je propose de renforcer les objectifs de l'Union en matière culturelle, en indiquant que l'Union favorise la diversité culturelle et linguistique.

Enfin, il convient de compléter les dispositions relatives aux objectifs de l'Union dans le monde en faisant expressément référence aux Droits de l'homme, à la diversité culturelle, à la préservation de l'environnement et des ressources naturelles. Je vous remercie Monsieur le Président. <BRK>

4-055

EN

Baroness Scotland of Asthal (Ch.E/G.-GB). – I agree with Mr Roche that the first articles of this constitution will tell the reader about the kind of European Union we are creating. I applaud the efforts of the Secretariat to communicate this in plain language that we can all understand. But as a lawyer and government minister, I need to go a step further and say that we need not only clarity; we also need to know that our constitution is written in a way that gives us legal certainty. This might mean that we need to do further work on these provisions in a different forum. I welcome the suggestion that we have two further meetings. I look forward to the further proposals from the Praesidium and others as to how we might do this.

The tone of the opening articles should tell the citizens about the genesis of the Union, that its powers come from the Member States, and why they have decided to pool sovereignty. For some, the word "federal" will do that, but it is a politically charged word. I hope we might find a better formula. I suggest we simply explain what we mean. We should coordinate certain policies at a European level to achieve goals that Member States cannot achieve alone.

On values and objectives, these articles will be used by the courts to interpret the treaty and must, therefore, reflect the competences of the Union. Higher-level aspirations might find their place in a political preamble. Personally, I would very much welcome that. Values and objectives should be easily distinguishable from each other. Values should be those on which our Union is founded: human dignity, liberty, democracy, the rule of law and respect for human rights. Objectives should be grouped in a way that reflects the substance of the current pillars. This will give coherence and help the general reader. These objectives will then need to be re-examined in the light of specific policy divisions in part 2. The objectives must reflect competences rather than aspirations.

The objectives should also note the Union's respect for the diversity of Member States – I was very pleased to hear a number of people say that – and the richness this brings to the Union.

This will give a flavour of the unique nature of the Union, the result of freely given cooperation and integration in pursuit of clearly-defined aims against a background of shared values. <BRK>

4-056

FR

Athanasiou (Parl.-RO). – Monsieur le Président, chers collègues, je voudrais premièrement faire deux remarques générales. La première, que cette masse significative des amendements me rend optimiste. Parce que je suis convaincu que nous finirons nos travaux dans le délai prévu.

En second lieu, je voudrais dire que je soutiens pleinement toutes les observations du groupe social-démocrate et socialiste qui ont déjà été faites.

En troisième lieu, je voudrais m'arrêter sur des questions très concrètes. Premièrement, je souhaiterais parler du fédéralisme, de la méthode fédérale. Je vais expédier le problème parce qu'il s'agit d'un sujet extrêmement délicat comme on dit dans les milieux français, mais qui doit être abordé avec sagesse et froidement. Et je crois, comme disait Paul Valéry, que nous parlons de supprimer l'expression "fédéral" au moment où l'Europe communautaire, l'Union européenne agit sur le mode fédéral dans beaucoup de domaines. C'est pour cela que je crois qu'on peut emprunter l'expression de Paul Valéry qui disait que le loup est fait de mouton assimilé. Donc, je crois qu'à cet égard, nous devons être extrêmement rigoureux en nous prononçant sur les institutions, sur les compétences parce que ça c'est le problème de la méthode fédérale. Je crois qu'on ne peut pas, en supprimant un mot ici, ne pas voir une réalité quotidienne de l'action européenne de l'Union en ce moment.

En ce qui concerne l'article 1.2, je crois qu'on ne peut modifier le mot respect que par le mot garantie. Je crois que c'est plus juridique. L'Union garantit l'identité nationale des Etats membres parce que le respect est toujours un mot familier.

En ce qui concerne l'article 2, je soutiens la formule d'introduire le principe d'égalité entre les femmes et les hommes et je crois que nous pouvons dire aussi que l'Union vise non seulement à pratiquer la tolérance, la justice, la solidarité sociale, mais aussi le progrès qui a caractérisé toute l'histoire de l'Europe - progrès à travers l'éducation permanente et la recherche scientifique.

Enfin, je voudrais que l'Europe ne joue jamais en défensive. C'est pour cela que je veux vous suggérer à l'article 3.4 de remplacer "défendre son indépendance et ses intérêts" qui me paraît très défensif par "faire valoir son indépendance et ses intérêts". Le texte coule dans le sens où il est rédigé.

Enfin, je conclus en disant que, comme disait Monsieur Fischer, je crois que notre Convention a réussi à faire le parcours que l'Europe a fait afin de donner l'équilibre des pouvoirs à la démocratie, à la tolérance en une voix politique unitaire. C'est là notre démarche et notre avenir. <BRK>

4-057

FR

Le Président. – Il nous reste beaucoup d'orateurs. Il faut voir le sort de ces orateurs. Ils seront dans la session suivante. Donc, chaque fois que vous prolongez un peu, vous renvoyez un de vos collègues à la session suivante. Ce n'est pas moi qui suis en cause et c'est la raison pour laquelle j'essaie de faire respecter votre temps de parole. La parole est à Monsieur Balázs. <BRK>

4-058

FR

Balázs (Gouv.-HU). – Merci Monsieur le Président. La coïncidence heureuse des débuts des travaux de la Convention avec la fin des négociations sur l'élargissement de l'Union offrent une possibilité unique pour relier le renouveau de l'Union avec son extension. A la formulation des principes de base, nous devrions donc prendre en considération certaines normes dont l'application avait fait preuve d'utilité lors du long processus d'élargissement.

Premièrement, les critères d'adhésion définis à Copenhague en 93 devraient trouver leur place au début du Traité constitutionnel en relation étroite avec la possibilité d'adhésion d'autres Etats européens, article 1.3, et aussi avec les valeurs fondamentales.

Deuxièmement, les identités multicolores en Europe sont chères à ses citoyens et le Traité garantit le respect de ces identités. N'oublions pas que, surtout dans la partie est de notre continent, Etats et nations ne sont pas nécessairement et toujours identiques. Des centaines de milliers, voire des millions, de Polonais, Serbes, Russes, Roumains, Hongrois et autres vivent comme minorité nationale en dehors des frontières des Etats qui portent leur nom. Pour cette raison, l'identité nationale appartient aux peuples et personnes, et non seulement aux Etats comme il est formulé sous le point 2 de l'article 1.

Troisièmement, plus l'unité de l'Union est manifestée par l'application de la méthode communautaire, par l'extension du vote à la majorité qualifiée ou par le renforcement de sa personnalité juridique, plus il faut rassurer ceux qui ont des craintes, ouvertes ou cachées, au sujet de la limitation de l'exercice de leur souveraineté nationale. Cette constatation est valable en particulier chez ceux qui ont regagné leur souveraineté nationale au cours des dix dernières années. C'est une raison supplémentaire pour considérer la participation égale des nouveaux Etats membres à la Convention à partir de la signature du Traité d'adhésion le 16 avril prochain. Merci Monsieur le Président. <BRK>

4-059

NL

Van der Linden (Parl.-NL). - Voorzitter, ik zou mij allereerst graag willen aansluiten bij diegenen die gepleit hebben voor een steeds hechtere samenwerking, omdat het een *acquis* is van de Europese Unie en het zou een verkeerd signaal zijn als dat niet het geval zou zijn.

Op de tweede plaats zou ik willen spreken van "burgers" in plaats van "volkeren" omdat de nationale staten eigenlijk de volkeren representeren, en het gaat hier toch meer om de burgers.

Op de derde plaats wil ik me graag aansluiten bij diegenen die ervoor gepleit hebben om het woord "federaal" te handhaven. Mijn hoofdpunt is eigenlijk dat wij het Handvest moeten zien als het hart en de ziel van de nieuwe grondwet. Dat is ook het geval bij de nationale grondwetten. Ik zou tegen die achtergrond er nog een keer aan willen herinneren dat Laken zowel het opnemen van het Charter in het basisverdrag alsook het toetreden tot EVRM als twee aan elkaar gekoppelde zaken heeft neergezet. En ook de werkgroep-Vitorino heeft op dat punt geen misverstand laten bestaan.

Nu deze tekst de kernformule bevat, betekent dat dat er grote risico's bestaan. Immers, er is unanimité noodzakelijk voor enige toekomstige beslissing van de Europese Raad met betrekking tot onderhandelingen over de modaliteiten van de toetreding. Dat betekent dat één enkele lidstaat in de toekomst dat proces zou kunnen blokkeren cq., zou kunnen vertragen en daarmee zou de koppeling van de twee, namelijk aan de ene kant het integraal onderdeel van de constitutie en aan de andere kant de toetreding tot EVRM, geblokkeerd kunnen worden. Daarom sluit ik me graag aan bij al diegenen die een amendement hebben ingediend om daar meer zekerheid over te geven en het woord "*can*" ofwel door "*shall*" ofwel door "*commits itself to*" ofwel "*shall request to accede*" te vervangen omdat er nu naar mijn oordeel zekerheid moet bestaan met betrekking tot de toetreding tot het EVRM-Verdrag. Het kan niet zo zijn dat wij in het Europa dat wij dichter bij de burgers willen brengen, het hart en de ziel, namelijk de plichten en de rechten van de burgers, want daar gaat het in belangrijk mate om, ergens via een *bypass* aan het Verdrag hechten. Daarom pleit ik ervoor om dat een integraal onderdeel te laten zijn van de constitutie en eventueel als compromis hoofdstuk 2 te reserveren voor het integrale Charter.

Tot slot, artikel 3, lid 4. Daar zou ik graag, zeker na de interventie van minister van buitenlandse zaken van Duitsland de heer Fischer, toegevoegd willen zien dat de Europese Unie ook een bijdrage levert aan de internationale rechtsorde. In de huidige actualiteit lijkt het mij geen overbodige luxe dat de Europese Unie ook een bijdrage levert aan het handhaven van de spelregels van de internationale rechtsorde. <BRK>

4-060

FR

Le Président. – Je voudrais faire une remarque concernant le mot "peuple" et le mot "citoyen". Le mot "citoyen" est une expression politique à laquelle s'attachent des droits, généralement civiques ou électoraux. Il faut penser que la population, c'est autre chose. Dans la population, il y a les enfants, il y a des gens qui ne sont pas organisés ou qui n'ont pas de droits reconnus. Par conséquent, ce n'est pas neutre de dire "peuple" ou de dire "citoyen". Si vous prenez "citoyen", vous prenez ceux qui ont une expression politique, des droits politiques. Si vous prenez "peuple", vous prenez tout le monde, la communauté humaine européenne. Dès lors, il faudra voir quelle est l'expression la plus adéquate pour un sujet de ce type. Nous tiendrons compte, bien entendu, de votre avis. Le prochain orateur est Monsieur Michel. Ensuite, nous prendrons des cartons bleus. <BRK>

4-061

FR

Michel (Ch.E/G.-BE). – Monsieur le Président, pour commencer je voudrais, parlant des événements internationaux actuels, y voir, comme vous, un motif très puissant pour nourrir une ambition commune très forte. Ainsi, nos conclusions doivent, de mon point de

vue, refléter cette ambition. Sur le fond, je me bornerai à quelques points, en référence aux amendements que j'ai déposés avec d'autres conventionnels belges.

Premièrement, sur le premier article, il me paraît essentiel que le caractère dynamique de la construction européenne soit consacré. La référence à la perspective d'une Union sans cesse plus étroite doit, dans ces conditions, y figurer. Par ailleurs, en adoptant la Constitution, les Etats membres conféreront des compétences à l'Union. C'est toutefois l'Union qui exercera les compétences qui lui sont ainsi attribuées et c'est donc l'Union qui doit, par l'intermédiaire de ses institutions, coordonner les politiques et non comme l'indique le projet d'article 1, les Etats membres. Il va de soi que la suppression du mot "fédéral" n'a guère de sens. Ce serait, de mon point-de-vue, un pas en arrière.

(L'orateur poursuit en néerlandais)

Ten tweede, met betrekking tot de artikelen 2 en 3: de waarden en de doelstellingen van de Europese Unie moeten duidelijk van elkaar worden onderscheiden. De eerste vormen de grondslag voor het optreden van de Unie, de tweede betreffen de doelstellingen ervan. Gelijkheid, gerechtigheid, verdraagzaamheid en solidariteit moeten tot deze waarden behoren. Daarentegen moeten de veiligheid van de Unie, de bescherming van het leefmilieu, de strijd tegen maatschappelijke uitsluiting en tegen discriminatie, het bevorderen van gelijkheid tussen man en vrouw en de toegang voor allen tot kwalitatieve diensten van algemeen belang tot de doelstellingen behoren.

(L'orateur poursuit en français)

Je suis heureux que le praesidium n'ait pas inscrit de référence à un héritage religieux au titre des valeurs. Nous devons, bien entendu, assurer les libertés religieuses mais l'Europe n'est ni monoreligieuse ni monoculturelle et son modèle est fondé sur l'impartialité de l'Etat. Il ne serait ni sage ni juste d'introduire un élément qui donnerait à penser que l'on a une lecture partielle de l'histoire européenne.

Troisièmement, la Charte ne peut être reléguée dans un document annexe. J'opte donc résolument pour son intégration dans une seconde partie de la Constitution. Il conviendra, dès lors, d'éviter que la première partie de la Constitution, s'agissant de la citoyenneté ou de la non-discrimination, ne répète des droits qui figurent déjà dans la Charte. C'est précisément l'objet de nos amendements.

Quatrièmement, je suis évidemment favorable à ce que l'Union adhère à la Convention européenne des droits de l'homme. J'ajoute qu'il faudra aussi prévoir dans la Constitution une base juridique permettant d'adhérer à d'autres instruments de protection des droits fondamentaux. Je vous remercie. <BRK>

4-062

FR

Abitbol (PE). – Monsieur le Président, de temps en temps, en écoutant les débats d'aujourd'hui, notamment les interventions du ministre allemand, du ministre français et encore du ministre belge des Affaires étrangères, je me dis qu'il faudra peut-être remplacer méthode communautaire par méthode Coué. Je ne sais pas comment cela se traduit dans les autres langues, mais en français, il me semble que la méthode Coué a fait aujourd'hui de grands progrès. A l'évidence, nos débats ont quelque chose d'assez surréaliste dans le climat actuel. Je vous rappelle quand même que le 17 de ce mois, une décision a été prise au Conseil européen. Une semaine plus tard, lundi dernier, au Conseil des ministres, on a eu une décision contraire ou une absence de décision et la division a été manifeste.

Pour en revenir à la Constitution, il y a un mot qui me choque beaucoup dans le projet. Il se trouvait déjà d'ailleurs dans les Traités précédents et j'ai entendu avec plaisir de nombreux orateurs, venant d'ailleurs d'horizons différents, proposer de le supprimer et de le remplacer par "souveraineté". Il s'agit du mot "identité nationale". Vous disiez vous-même, Monsieur le Président, que nous faisons un texte de droit public. Mais l'identité nationale n'est pas un terme de droit public. Elle n'existe, à ma connaissance, dans aucune Constitution, pas dans la française. Qu'est ce que l'identité nationale des Etats membres? Est-ce la baguette pour les uns, le chapeau tyrolien pour les autres? Il me semble qu'il y a un concept juridique qui est la souveraineté. Cette souveraineté restera en toute hypothèse pour l'ensemble des domaines politiques propres aux Etats membres. Il me semble que remplacer "identité", qui en outre, est un mot, en tout cas dans le vocabulaire politique français, assez connoté ethnique, par le mot "souveraineté" ne devrait choquer aucun des conventionnels. <BRK>

4-063

EN

Duff (PE). – I was anxious to respond to those who say that they wish to insist that we make it clear that Member States confer the power that the Union enjoys. That is quite correct and we should say that, but it is not the end of the story. The fact is that the Union is greater than the sum of its parts and that the genius that we have created for ourselves over the last fifty years has established a federal authority that finds and articulates the common interest of all the Member States. That is why, feeling more self-assured about the exercise of power at a federal level, we are changing from a treaty system to a proper constitution. We should not be shy of what we have achieved. I can see no reason for being defensive, and absolutely every reason for speaking the truth in the clearest possible way. That includes the use of the word "federal". <BRK>

4-064

FR

Barnier (CE). – Merci Monsieur le Président. A propos de l'ambiance dans laquelle nous travaillons et les bruits de guerre qui nous entourent, je trouve comme vous, tout comme beaucoup de ceux qui se sont exprimés, qu'il est très important que le signal qui sort aujourd'hui de cette Convention soit un signal de volontarisme et non pas de résignation ou de fatalisme. Et c'est bien l'ambiance que j'entends et que j'écoute avec beaucoup de satisfaction. Le volontarisme vaut pour les délais dans lesquels nous travaillons et qu'il nous faut respecter. Il vaut aussi sur le fond du projet auquel nous travaillons, y compris dans les aspects qui sont aujourd'hui, dans les Traités, les plus incertains ou les plus imparfaits. Je pense à la politique étrangère de sécurité commune qui est interpellée par la crise irakienne et l'aspect de la défense qui a justifié l'amendement que je me suis permis de présenter.

Il faut aller plus loin, tirer les leçons de cette crise, mais tout d'abord, ne pas revenir en arrière. Et voilà pourquoi j'accueille avec beaucoup de faveur de nombreux amendements qui préservent l'acquis et le modèle communautaires dans les valeurs, les principes et les politiques. Cette réflexion rejoint celle que plusieurs ont faite de réécrire peut-être cette belle phrase qui figure dans le Traité et selon laquelle nous sommes dans une Union sans cesse plus étroite. En effet, quand on est dans une Union sans cesse plus étroite, c'est qu'on n'accepte pas de revenir en arrière.

Je terminerai en parlant du mot "fédéral" qui suscite beaucoup de débats, Monsieur Anthanasiou en a parlé avec beaucoup de sagesse tout à l'heure. Je veux simplement dire qu'il ne faut pas confondre ce mot avec un autre mot qui est celui de "centralisation". Nous avons des pratiques fédérales. Nous avons certaines compétences exercées de manière fédérale et c'est naturellement pour moi le principe de subsidiarité, dont le contrôle fait partie intégralement du modèle fédéral, qui sera au cœur de notre Constitution. <BRK>

4-065

FR

Van Lancker (PE). – Merci Monsieur le Président. J'ai levé mon carton bleu à l'occasion de l'intervention de Dominique de Villepin parce qu'il a plaidé pour l'intégration du respect des objectifs environnementaux dans toutes les politiques de l'Union. Je voudrais ajouter qu'il existe un article comparable, horizontal aussi, en matière d'égalité entre hommes et femmes dans l'article 3 paragraphe 2 de l'actuel Traité et dans le groupe de travail social, un grand nombre de Conventionnels a plaidé pour un caractère transversal de certains objectifs sociaux. C'est pour cela que je rejoins les propos qu'a déjà tenus Pervenche Berès et qui consistent à dire qu'il nous faut ajouter, dans l'article 3, un article transversal horizontal.

J'attire aussi votre attention sur les amendements introduits par les conventionnels belges où l'on lit par exemple que l'Union veille dans la définition et la mise en œuvre de ses politiques et actions à ce qu'elles soit compatibles entre elles et prennent en considération l'ensemble des objectifs de l'Union. Je crois qu'en défendant cette formulation, nous avons assuré la transversalité de certains objectifs de l'Union. Je vous remercie. <BRK>

4-066

EN

Heathcoat-Amory (Parl.-GB). – On this federal business I disagree with Mr De Villepin and others who have asked for the phrase "federation of nation states" to be included, simply because it is a contradiction in terms. If one transfers powers to the centre, one is left with states in the American sense but not nation states as understood by the public. If we are trying to write something that is understandable by the public, let us use words in a way it will understand. It is a complete confusion. That phrase should certainly not find its way into the final product.

You, Mr President, used the phrase "high contracting parties". Again, this is not a phrase we should ever use in public. Nevertheless it is in Article 1 of both the existing Treaties - not in the preamble, but in Article 1 - to express an important truth that what we have created so far is a Union of Member States. It derives its powers from the Member States.

By contrast, Article 1 of the new treaty derives its powers not from Member States but from a constitution. That is a very big change, not described properly in the explanatory notes. It is a regrettable change. We therefore need to re-establish the existing relationship even if we avoid that rather awful phrase "high contracting parties". <BRK>

4-067

FR

Le Président. – Nous allons suspendre nos travaux et les reprendre à 18h15. Nous avons un problème: nous pouvons encore avancer un peu sur les articles 1,2 et 3 mais cela signifie que nous aurons du mal à aborder les articles suivants. Il y a encore vingt orateurs, il y en a encore pour une heure de débat. On s'arrêtera à 19h pour que Jean-Luc Dehaene aie quand même le temps d'ouvrir son débat sur les articles suivants. Je m'en excuse auprès des orateurs. Ils seront inscrits en tête de la session supplémentaire suivante. Nous reprenons à 18h15.

(La séance, suspendue à 17h50, est reprise à 18h25) <BRK>

4-068

FR

PRÉSIDENCE DE M. J.-L. DEHAENE

Vice-président

Le Président. - Nous allons reprendre notre séance. Je donne la parole à M. Brok. <BRK>

4-069

DE

Brok (PE). - Herr Präsident! Herzlichen Dank für die Gelegenheit, hier einige Anmerkungen zu machen. Ich glaube, dass die Uneinigkeit, die Europa in den letzten Tagen und Wochen in der großen Frage von Krieg und Frieden gezeigt hat, kein Anlass für uns sein sollte, jetzt größere Schwierigkeiten zu sehen, sondern wir sollten sie als eine Chance begreifen. Ich habe den Eindruck, dass unsere Bürger schon sehr viel mehr über die Notwendigkeit europäischer Einigung verstanden haben, nämlich, dass Europa nur dann einen wirklichen Einfluss hat, wenn wir zusammenstehen, und dass das auch von den Regierungen langsam akzeptiert werden muss.

Aus diesem Grund möchte ich gleich auf einen Punkt in Artikel 1 zu sprechen kommen. Bisher ist die Union auf der Grundlage der Mitgliedstaaten aufgebaut. Jetzt wird gesagt, "der Mitgliedstaaten und der Völker". Ich würde sehr viel eher sagen, dass die Union auch auf der Grundlage der Bürger gegründet ist, der Staaten und der einzelnen Bürger. Ich glaube, dass das dem entsprechenden Anspruch näher kommt, zumal wir die Charta der Grundrechte in die Verfassung einarbeiten möchten, wo ja gerade der einzelne Bürger - das Individuum - eine Rolle spielt. Übrigens ist das aus unserer Sicht, der EVP, ein wichtiger Punkt. Wir hätten gerne, wenn diese Rechte des Bürgers und die Charta der Grundrechte am Anfang der Verfassung stünden. Ich glaube, darüber werden wir im Laufe der nächsten Wochen noch intensiv zu diskutieren haben.

In diesem Zusammenhang sind natürlich auch Fragen, die hier erörtert werden müssen, wie das Gleichheitsprinzip insgesamt und die Frage der Gleichheit der Geschlechter von großer Bedeutung, denn sie müssen in dieser Verfassung vorgesehen werden, aber es stellt sich aufgrund dieser Zuordnung natürlich die Frage, an welcher Stelle.

Herr Präsident, wir haben heute eine intensive Diskussion gehabt über den Begriff "föderal". Ich weiss, dass dieser Begriff in unseren Ländern eine unterschiedliche Bedeutung hat. Wir sollten darauf achten, dass wir uns nicht an Begriffen festbeißen und auf diese Art und Weise in der Sache womöglich nicht vorankommen. Aus meinem Verständnis - einem konföderal-europäischen Verständnis - von föderal heraus, das ja dezentral bedeutet, möchte ich deutlich machen, dass wir die Europäische Union auf einer föderalen Ordnung begründen möchten, in der es eine wirkliche Balance zwischen dem Gemeinschaftseuropa und den Gliedern gibt, um auf dieser Grundlage entsprechend voranzukommen, aber eben im Sinne dessen, was heute im Vertrag steht, nämlich einer immer engeren Union. Wir können feststellen, das ist ja auch ein Indiz dafür, dass die Europäische Union überall dort erfolgreich ist, wo sie als Gemeinschaftseuropa auftritt und überall da nicht erfolgreich ist, wo sie als intergouvernementales Europa auftritt. Das zeigt sich jetzt gerade auch im Bereich der Außen- und Sicherheitspolitik.

Wichtig für uns als Europäische Volkspartei ist es zweifellos, dass das religiöse und humanistische Erbe der Europäischen Union und der Gottesbezug einbezogen werden, und dass wir die Frage des Staat-Kirche-Verhältnisses wie auch die Beteiligung der Kirchen wie anderer Organisationen am strukturellen Dialog festgemacht wissen möchten.

Herr Präsident, in Artikel 3 sind eine Reihe von wichtigen Begriffen festgeschrieben. Wir möchten gern, dass die soziale Marktwirtschaft als eine tragende Formel in diese Verfassung aufgenommen wird. Die soziale Marktwirtschaft bringt die Balance zwischen den Notwendigkeiten sozialer Gerechtigkeit und den Entwicklungsfähigkeiten des Marktes mit sich. Der Markt muss die Leistungen erbringen, aus denen das Soziale finanziert wird. Auf der anderen Seite muss es auch Rahmenbedingungen geben, in denen der Markt stattfinden kann. Ich meine, dass der Begriff der sozialen Marktwirtschaft - verbunden natürlich mit Preisstabilität, inflationsfreiem Wachstum und Anderem - eine wesentliche Rolle spielt.

Lassen Sie mich noch zur Außen- und Sicherheitspolitik eine Bemerkung machen, zu den entsprechenden Artikeln 4 und 10. Ich meine, dass die Solidaritätsklausel in den Vertrag eingefügt werden sollte, aber als eine Option für die Glieder. Warum machen wir es nicht so, dass wir den Artikel 5 des WEU-Vertrages beispielsweise hinzufügen, es aber jedem einzelnen Mitgliedsland freigestellt wird, ihn zu unterzeichnen? Ich glaube, damit kommen wir in der Solidaritätsklausel einen entscheidenden Schritt weiter, aber wir überlassen es immer noch den Staaten, die sich bisher als nicht bündnisgebunden und neutral verstehen, diesem schrittweise zu folgen. Ich glaube, dass das für den Ratifikationsprozess auch den entsprechenden Ansatz darstellt. Dass wir allerdings eine solche Solidaritätsklausel anstreben müssen, dass wir im Bereich der Außen-, Sicherheits- und Verteidigungspolitik vorankommen müssen, zeigt nicht nur die gegenwärtige Krise, sondern auch eine langfristige Sicht.

Wir haben eine Europäische Union, die eine gemeinsame Währung hat, einen gemeinsamen Binnenmarkt, eine gemeinsame Rechtsordnung, die im Bereich der Rechts- und Innenpolitik zu gemeinsamen Positionen kommt und gemeinsam zu offenen Grenzen kommt.

Das heißt, wir haben eine Europäische Union, in der Angriffe auf einen Teil gegen die Interessen des Gesamten gerichtet sind, so wie wir dies früher von der Definition nur von einem Staat her kannten. Ich glaube, dass es von daher nicht akzeptabel ist, dass wir in Zukunft Regionen mit unterschiedlicher Qualität von Sicherheit in der Europäischen Union haben. Dass dies komplementär und in Zusammenarbeit mit der NATO zu geschehen hat - all das werden wir später noch intensiver zu erörtern haben -, versteht sich von selbst, das darf kein Widerspruch sein, denn es ist nicht finanzierbar und auch von der Sache her nicht sinnvoll. Es sollte gerade in diesen Tagen deutlich sein, dass wir durch eigene Fähigkeiten, schnelle Entscheidungsprozesse, die Einführung von

Mehrheitsentscheidungen im Bereich der Außenpolitik - damit ein Vakuum gefüllt werden kann - vorankommen können, weil dies die einzige Chance ist, Stärke zu beweisen, und diese allein macht uns fähig, wirklicher Partner der Vereinigten Staaten von Amerika zu sein. Wenn das transatlantische Bündnis eine Chance hat, dann nur, wenn es auf einer partnerschaftlichen Basis fußt, aber dies liegt allein hier an uns in diesem Konvent! <BRK>

4-070

FR

Le Président. – Nous revenons maintenant aux interventions d'une durée de deux minutes. La parole est à Monsieur Kirkhope. <BRK>

4-071

EN

Kirkhope (PE). – The Laeken Declaration rightly stated that the EU should not intervene in matters by their nature best left to Member States. The reason for that is clear. If the Union intervenes in such areas people feel that their national identities are under threat. Therefore respect for national identity should be at the forefront of our minds when we consider the various drafts of the texts over the coming weeks.

I am extremely pleased at the Praesidium's draft of Article 1(2), which states that "the Union shall respect the national identities of its Member States". I have asked that this Article be amended to make it crystal clear that the Union will also respect their national sovereignties, however defined. If the Union does not respect the sovereignties, it cannot respect national identities and the future of the Union could be threatened.

The embodiment of national sovereignty is, in my view, the will of the people. That is why, through the convention process, I have gone to great lengths to stress the importance of elected institutions in the Union. The supremacy of national parliaments should be protected, both from unelected European institutions and also from over-zealous governments with too much executive power, as is the case in the UK at present. The European Parliament should play a bigger role in the European decision-making process.

For the same reason, I would urge fellow convention members to support my proposal for an additional Article 1(4), specifying that the people of each Member State shall be consulted by referenda, where permitted by national constitutions, before ratification of the final text of the convention by Member States' governments.

If the people, consulted in separate national referenda, unanimously support the final text of the convention, they will have no reason to feel that their national identities have been threatened.

Winston Churchill said: "Trust the people." That is terribly important in the work we are carrying out and the conclusions we reach. If we do not trust the people we risk losing their trust in us. <BRK>

4-072

FI

Vanhanen (Parl.-FI). - Arvoisa puheenjohtaja, onnittelut puheenjohtajistolle siitä, että se on saanut ensimmäiset artikkelit hyvin tiiviiseen muotoon. Ensimmäiseen ja tärkeimpään artiklaan teen useita periaatteellisesti tärkeitä muutosehdotuksia. Ensimmäiseksi en halua käyttää uudesta sopimuksesta nimeä perustuslaki vaan perustuslain sopimus, jossa sana sopimus kuvaa asiakirjan luonnetta jäsenvaltioiden välisenä sopimuksena. Toiseksi on haettava muotoilu, jossa ei sanota, että unioni perustetaan nyt uudelleen, ja kolmanneksi en hyväksy mainintaa liittovaltion tapaan käytettävästä toimivallasta. Nykyisissä sopimuksissa ei ole tätä liittovaltioluonnehdintaa. Miksi se esitettäisiin nyt? Jos se otetaan mukaan, kertoisi se pyrkimyksestä muutokseen, joka herättäisi suuria ristiriitoja. Lisäksi haluan, että unionin arvoissa mainitaan tasa-arvo, vähemmistöjen oikeudet ja avoimuus. Unionin tavoiteartikla on määriteltävä siten, että se ei luettele sellaisia liian yleisiä tavoitteita, joihin unionin toimivalta ei ulotu. Tavoitteiden on oltava supusoinnussa toimivallan kanssa. <BRK>

4-073

ES

Palacio Vallelersundi (Ch.E/G.-ES). -Señor Presidente, hoy la Convención entra en una nueva etapa, la etapa de redacción. Es una etapa importante y es un momento difícil. La imagen de Europa es sombría, pero como decía el Sr. Barnier hace un momento, nosotros no somos fotógrafos, somos visionarios, somos diseñadores, somos convencionales. Recordando las palabras del Presidente Giscard al comienzo de esta sesión, es verdad que se ciernen dudas y angustias sobre nuestra tarea, pero también decía el Presidente Giscard, que las situaciones complejas han servido de espoleta para fortalecer la construcción europea y daba el ejemplo de cómo nace el Consejo Europeo.

Hoy más que nunca la Convención es necesaria, hoy más que nunca la Convención es la respuesta, hoy más que nunca tenemos que estar a la altura y trabajar sin desmayo, con tenacidad, con esperanza; la tenacidad y la esperanza son el resultado del optimismo,

atemperado por el conocimiento. La Convención tiene que servir de catalizador de las energías de nuestra Europa de 27 más 1, de esa Europa que queremos diseñar para los próximos decenios, una Europa ambiciosa y realista.

Y permítanme hablar de los fundamentos, de los valores; nuestra Europa tiene muy claras y muy fuertes señas de identidad: la democracia, la separación de la Iglesia y del Estado, el respeto de los derechos humanos, el imperio de la ley, la economía social de mercado. Eso es lo que se refleja de forma principal en estos primeros artículos y en la Carta que vamos a incorporar.

Estos principios y valores, los tenemos que combinar en una doble dirección: por una parte, la Convención tiene que dar un mensaje político, claro y fuerte, a la ciudadanía, y por lo tanto, tener una redacción asequible y una redacción clara, límpida; por otra parte, el resultado último de la Convención es un texto jurídico, justiciable ante los tribunales y por lo tanto habremos de incorporar el rigor jurídico.

Señor Presidente, hoy más que nunca son válidas las palabras del Presidente Giscard d'Estaing en una entrevista: la tarea de la Convención es conjugar lo imposible y lo necesario. <BRK>

4-074

FR

Le Président. – Merci beaucoup. Le débat sur le projet des articles 1 à 3 est terminé. Nous passons au point suivant de l'ordre du jour. <BRK>

4-075

DA

Debat om udkastet til artikel 5, 6 og 7

DE

Aussprache über den Entwurf der Artikel 5, 6 und 7

EL

Συζήτηση επί του σχεδίου άρθρων 5, 6 και 7

EN

Debate on draft articles 5, 6 and 7

ES

Debate sobre los proyectos de artículos 5, 6 y 7

FR

Débat sur le projet d'articles 5, 6 et 7

IT

Discussione sul progetto degli articoli 5, 6 e 7

NL

Debat over het ontwerp van artikelen 5, 6 en 7

PT

Debate sobre os projectos de artigos 5º, 6º e 7º

FI

Keskustelu luonnoksesta artikloiksi 5, 6 ja 7

SV

Debatt om utkastet till artikel 5, 6 och 7

4-076

FR

Le Président. – Comme le président l'avait annoncé avant l'interruption et comme il n'y a pas de liste séparée d'orateurs sur les articles 5, 6 et 7, je vais, avant de donner la parole à l'orateur suivant, vous donner quelques indications sur la façon dont le praesidium a rédigé ces articles et voit les amendements tels qu'ils ont été déposés.

L'article 5 est l'article qui intègre la Charte dans la Constitution. Je pense que le praesidium a ici essayé de suivre très clairement le consensus qui s'était dégagé dans le groupe présidé par Antonio Vitorino en intégrant la Charte et l'adhésion de l'Union à la Charte des droits de l'homme de Strasbourg. En fait, quand nous voyons la plupart des amendements sur cet article 5, le point principal est de savoir à quel endroit nous mettrons la Charte dans le Traité. A la lumière des interventions entendues en séance publique, nous devons faire une proposition. Le praesidium a ouvert deux options mais il est clair que dans les interventions, il y en a aussi une troisième qui est celle de mettre la Charte au début du Traité constitutionnel. C'est donc un des points qu'il faudra trancher.

Dans les articles 6 et 7, je pense qu'il y a un point important à trancher. Il s'agit du fait que certains trouvent que ces articles font double emploi avec la Charte. Et donc, il y aura un choix à faire. Le praesidium les a maintenus du fait de leur très grande importance. Mais je pense effectivement qu'il faut prendre en considération la question de savoir si l'intégration de la Charte fait qu'on ne répète pas un certain nombre de choses dans d'autres parties du Traité constitutionnel. C'est donc un point sur lequel il sera important que vous vous exprimiez, ce que vous avez d'ailleurs déjà fait partiellement par voie d'amendements.

A l'article 6, nous nous sommes limités strictement au texte du Traité actuel. Dans les amendements se pose la question de savoir si cet article 6 est limité aux citoyens de l'Union ou bien s'il faut lui donner une portée plus large. Dans le Traité actuel, c'est clairement limité aux citoyens de l'Union. La question est également de savoir s'il faut étendre l'article à d'autres discriminations. C'est la voie qu'indiquent certains des amendements.

Le point sur le double emploi avec la Charte ou non se pose clairement, encore plus, dans l'article 7 sur la citoyenneté où il faut bien reconnaître que les points que nous avons cités sont effectivement redondants avec ceux de la Charte. Par conséquent, après avoir entendu l'assemblée plénière, il faudra que nous tranchions. C'est là un principe général qu'il faudra fixer. Il faudra voir si nous nous limitons à ce qu'il y a dans la Charte en ne répétant pas ailleurs ce qu'on y trouve déjà ou bien si nous croyons qu'au vu de leur importance, il faut répéter certains articles.

Voilà les éléments que je voulais vous présenter suite aux réflexions du praesidium. Je donne la parole à Monsieur Duff. <BRK>

4-077

EN

Duff (PE). – I agree with all those who say that whatever we do, we should not retreat from the present state of integration. Article 2 of the Maastricht Treaty refers to the necessity of sustaining the *acquis communautaire* in full. This is dropped from the Praesidium's draft. I wonder if that is prudent.

We need to filter into Articles 3(2) and 3(3) the non-discrimination clause presently found in Article 13, and to insert in Article 3(5) the principle of transparency and good governance, which will appear with more precision further on. I should like us to refer also to culture in both Articles 2 and 3.

As far as the Charter is concerned, a second chapter, part 1, would be a visible and appropriate way of inserting it. Then, as Mr Dehaene has intimated, Article 7 could be radically shortened, simply referring to the existence of this concept of citizenship.

Concerning religion and Almighty God, he is responsible for bringing Christendom, Judaism and Islam graces, faith and duties, but he is not responsible for the flowering of liberal democracy and fundamental rights and therefore he should not appear in our constitution.

Amen.

(Laughter and applause) <BRK>

4-078

SV

Hjelm-Wallén (Ch.E/G.-SE). - Herr ordförande! Jag anser att det är nödvändigt att inledningsvis slå fast att det är medlemsstaterna som är fördragets herrar. Detta måste tydliggöras genom att vi talar om höga fördragslutande parter och om ett konstitutionellt fördrag. Fördraget kan naturligtvis kallas för konstitution i dagligt tal, men inledningsvis måste vi använda korrekta benämningar, som jag tycker bör återfinnas i artikel 1.

I denna diskussion har många använt beteckningen "federal". Det verkar dock som om det begreppet förvirrar mer än det klagör. Jag hoppas också att det nu är tydligt att vi står fast vid benämningen på vår union, nämligen att den skall heta Europeiska unionen och ingenting annat.

I artikel 1 vill jag också ha in skrivningar om öppenheten. Detta finns idag med i unionsfördraget i artikel 1 och med tanke på vad som sades i Laekendeklarationen om behovet av öppenhet, vore det illa om vi tog ett steg tillbaka i det avseendet. Jag utgår ifrån, som även Duff nämnde, att öppenheten kommer med och då redan i den första artikeln.

När det gäller artikel 2 tillhör jag dem som vill ha en skrivning om jämställdhet mellan kvinnor och män. Däremot vill jag inte ha in något om religion och Gud i fördraget - inte i denna artikel och ingen annanstans heller.

I artikel 3 tycker jag att miljön har fått en väl undanskymd plats. Det måste uttryckas tydligare vad vi vill när det gäller miljön, och vi har lämnat in skrivningar om det. Jag saknar vidare en del goda förslag som den sociala arbetsgruppen lämnade in, t.ex. rätten till gott arbete, lika möjligheter för minoriteter och barnens rättigheter. Jag tycker att det vore viktigt att få in detta i artikel 3. Genom artikel 3 hoppas jag också att vi skall kunna vara litet bredare ut mot världen och slå fast unionens öppenhet mot omvärlden, att vi skall vara aktiva i arbetet att bygga en bättre värld. <BRK>

4-079

FR

Barnier (CE). – Monsieur le Président, comme vous nous y avez invité sur les articles suivants, je voudrais faire deux observations sur l'article 5 et l'article 6 et la question de la Charte. Nous avons sur cette question un problème politique et un problème juridique qu'il nous faut régler. Il nous faut les régler tous ensemble et en même temps.

Le problème politique est de, à partir du travail considérable qui a été fait pour la Charte, donner dans la Constitution à laquelle nous travaillons de la force et de la lisibilité à cette Charte vis-à-vis des citoyens. Ce serait un signe tangible pour démontrer, par un premier grand signal, que nous confirmons la Communauté de valeurs à laquelle nous appartenons ensemble. Voilà pourquoi, comme d'autres, comme le groupe de travail qu'a présidé Antonio Vitorino, je souhaite que cette Charte figure intégralement dans la Constitution et qu'elle ait une force contraignante. La meilleure place serait probablement, comme certains le souhaitent et comme je le souhaite moi-même, de la placer en partie 2 de la Constitution. Il faudrait que cette partie 2 soit spécifiquement toute la Charte.

Si on règle ainsi le problème politique vis-à-vis des citoyens, on ne règle pas pour autant le problème juridique qui est celui de la lutte contre la discrimination. Nous visons cette affaire à l'article 6. Je pense qu'il faut quand même, dans la première partie de la Constitution, avoir une base juridique que ne donne pas la Charte. En effet, précisément, cette Charte, telle qu'elle est rédigée, ne crée pas de compétences. Elle ne permet pas d'adopter des actes juridiques ou législatifs pour, si le cas se présente, et il se présentera, empêcher ou lutter contre les discriminations sur la base du sexe, de la race, de l'origine ethnique, de la religion, des convictions, du handicap ou de l'orientation sexuelle.

Par conséquent, ma recommandation serait d'intégrer la Charte dans la partie 2 de la Constitution, et régler de ce fait le problème politique, et de préserver la base juridique dont nous avons besoin, par l'article 6. Si nous ne le faisons pas, nous retombons sur un autre problème politique qui serait un recul par rapport à l'acquis communautaire qui, lui, permet, à l'article 12 et 13 du Traité de la Communauté, d'avoir des actes juridiques pour lutter contre la discrimination. <BRK>

4-080

IT

Paciotti (PE). - Signor Presidente, forse abbiamo fatto un errore a intitolare l'articolo 2 ai valori dell'Unione. Come ci ha detto il *Praesidium*, in realtà si tratta di principi fondamentali la cui violazione può comportare le sanzioni previste dall'articolo 45. E' dunque del tutto fuori luogo inserire in questa sede la menzione di tradizioni religiose, di radici greco-romane, di Dio come fonte di verità, bontà o bellezza, perché i valori e i principi che vengono indicati in una Costituzione devono poi ispirare obbligatoriamente l'azione delle istituzioni pubbliche; e dunque, se vi fossero richiami alle tradizioni religiose, le istituzioni non sarebbero più laiche. Né si può dire che in queste tradizioni c'è la storia dell'Europa: se si dovesse fissare l'identità europea sul passato, l'Europa assomiglierebbe a un fiume di sangue. Piuttosto, fra i principi fondamentali dell'articolo 2 dovrebbero essere ripresi i classici principi di *liberté, égalité, fraternité*, cioè vanno aggiunti alla libertà anche l'uguaglianza e la solidarietà, perché l'Unione europea non ammetterebbe fra i suoi membri uno Stato che violasse il principio di uguaglianza o che lasciasse morire di fame i suoi membri più deboli, i suoi cittadini più deboli.

Concordo con quanto hanno detto, per esempio, Ben Fayot e Jürgen Meyer, e quindi aggiungo poche cose. I diritti fondamentali dei cittadini, secondo me, devono figurare come prima parte della Costituzione e non essere ripetuti in altri singoli articoli; le basi giuridiche per le singole politiche possono trovare posto nella seconda parte della Costituzione. Io credo che sia incomprensibile, come ha detto il Presidente Giscard, che si possa proporre di cancellare il primo comma dell'articolo 3; credo, anzi, che nell'articolo 3, al punto 4, dobbiamo rispecchiare la volontà comune dei nostri popoli i quali ci chiedono, e con molta evidenza in questi giorni, che l'azione esterna dell'Unione si ispiri piuttosto al rifiuto della guerra come mezzo di risoluzione delle controversie internazionali. <BRK>

4-081

IT

Musccardini (PE). - Presidente, anche recenti avvenimenti internazionali dimostrano la necessità di un Trattato che rispecchi al massimo le istanze delle diverse realtà nazionali. Dobbiamo procedere tenendo conto delle realtà che ci circondano, delle culture che rappresentiamo e degli obiettivi che possiamo raggiungere. La politica è l'arte di saper coniugare le aspirazioni a lungo termine con le contingenze e le condizioni obiettive. Il dibattito in corso ha dimostrato la volontà di molti di riconoscere gli Stati e le identità nazionali, e per questo la proposta di un'Europa federale contrasta con la realtà, che è più vicina ad un'unione di Stati europei capaci di

lavorare insieme per obiettivi comuni: unione di Stati nei quali il rispetto dei diritti umani significhi la difesa della dignità della vita e il diritto ad una vita dignitosa, e perciò la tutela dell'infanzia, degli anziani e delle categorie più deboli.

L'Europa che prenderà vita col Trattato deve avere il coraggio della propria indipendenza e l'orgoglio della propria appartenenza. Per questo riteniamo che far riferimento alla tradizione greco-romana, giudaico-cristiana e laico-liberale non sia fuorviante o un riconoscimento formale, bensì un'affermazione di ciò che è la realtà. Nel bene e nel male, noi non saremmo qui, oggi, se Sparta ed Atene non avessero avuto la capacità di sedare i loro conflitti alle Termopili, se i greci e i romani non avessero tracciato la storia della filosofia e del diritto, se non ci fossero state Poitiers o la *Magna Charta*, che ha aperto il cammino per la definizione dei diritti dell'uomo. Oggi l'Europa non è vecchia, come qualcuno ci definisce, ma è radice delle grandi espressioni culturali che dai nostri popoli si sono profuse nel mondo. Sono sorte cattedrali e ardite concezioni architettoniche; ci sono stati roghi, libri bruciati, guerre fratricide, sangue e disperazione, ma anche continua crescita, ricerca di comprensione e di un nuovo modello di Stato sociale, nel rispetto di una tradizione cristiana che invita alla pace e al rispetto degli uomini e degli Stati, perché sia dato a Cesare quel che è di Cesare e a Dio quel che è di Dio. E quest'Europa, che noi lo scriviamo o meno, esiste e chiede di essere ascoltata e riconosciuta. <BRK>

4-082

DA

Skaarup (Parl.-DK). - Hr. formand, jeg er et af de mange medlemmer, der har indsendt ændringsforslag til forfatningsudkastet fra formanden. Jeg synes imidlertid, at det er stærkt utilfredsstillende, at der går så lang tid, før sådanne ændringsforslag - det gælder ikke kun mine, men også mere generelt - kommer på Internettet. Det er også irriterende, at fristerne for at lave den slags ændringsforslag er så korte. Det har betydet, at det har været svært at koordinere udarbejdelsen af ændringsforslagene, som således ofte kun har én underskriver. Det havde nok været en fordel, hvis man havde bredt tingene lidt mere ud, således at vi kunne være gået sammen om nogle forslag. Så jeg synes bestemt, at Præsidiets skal genoverveje fastsættelsen af så korte frister fremover. Det duer ikke.

Nogle af de ændringsforslag, som jeg selv har været medvirkende til, er forslag vedrørende natur og miljø, men også vedrørende kristendom. Jeg mener grundlæggende, at det er vigtigt, at vi i forfatningen - hvis der skal være en forfatning - har noget med om kristendommen. Det er noget flere medlemmer af Konventet har talt for også i dag, og det hænger sammen med medlemsstater. Jeg mener ikke, at vi skal optage f.eks. Tyrkiet i EU. Tyrkiet er ikke en del af Europa, men et islamisk land, som har helt andre forudsætninger for det europæiske, end vi har her blandt de nuværende medlemsstater. Jeg vil også gerne vende mig kraftigt imod, at der indføres en ikke-diskriminationsklausul i forfatningen. Jeg mener, at det er fuldstændig uacceptabelt, at nogle grupper skal behandles anderledes end andre. I det danske folketing har vi netop behandlet direktivet vedrørende omvendt bevisbyrde i sager om diskrimination på baggrund af bl.a. etnisk oprindelse. Og det er efter min mening fuldstændig absurd, at man skal nyde en særlig beskyttelse, fordi man er af anden etnisk oprindelse. Skal vi også til at lave særlig beskyttelse for buttede mennesker, eller mennesker med blå øjne? Det duer ikke. Efter vores opfattelse skal det ikke med i en forfatning.

Til slut vil jeg sige, at hele forfatningsudkastet grundlæggende bygger på føderalisme, og det anser jeg for at være et meget, meget stort problem. Jeg opfatter den sunde skepsis, der er i mange befolkninger i Europa, som netop en modstand mod føderalisme men en tilgang og en positiv holdning til nationalstaterne. Altså at vi selv kan bestemme i vort eget hus. <BRK>

4-083

EN

Kutskova (Gouv.-BG). – Let me start by making a general remark on the idea behind the amendments to draft Articles 1 to 16 of the constitutional treaty, submitted by the Bulgarian Government. The amendments are based on the following.

Firstly, we should keep in mind the text of the existing Treaties as well as the text agreed by consensus within the Convention. Secondly, we should make the formulations more concise, clear and understandable. We are of the opinion that it is essential to preserve the formula of ever closer union, here or in the preamble. This formula has, for the last fifty years, proven its vitality and inspired many Europeans in their efforts to create a more coherent and efficient Union. There is no reason to change the core objective of ever closer union as defined by the founding fathers. Our view is that this formula reflects the present reality as well as the vision for the future development of the Union.

As for Article 1(2), concerning respect for national identities, we should make the text more precise and clear by including the provision of Article 9(6) and, in addition, evoke the coexistence of different regimes as well as their fundamentals, religious or civic.

Concerning Article 2, we consider it preferable to keep the notion of principles typical of the *acquis*. In addition we suggest the inclusion of a reference to fundamental freedoms as presently found in Article 6(1) of the Treaty of the EU.

Our amendments to Article 3 are based on the list of objectives provided in both the present Treaties and the conclusions of the Convention's Working Groups on Social Europe and on Defence. The objective of promoting a high degree of social protection should be underlined by introducing the fight against poverty, social exclusion and any form of discrimination. Solidarity, as well as Member States' mutual assistance in the face of common threats to security, deserve a special place among the objectives of the European Union.

Concerning the Charter of Human Rights, I should like to reconfirm our position that the Charter should be set out in a protocol annexed to the constitution. <BRK>

4-084

SV

Lekberg (Parl.-SE). - Herr ordförande! Först och främst vill jag säga att jag stöder grunderna i presidiets förslag när det gäller de första artiklarna. Låt mig sedan gå in och kommentera några av de ändringsförslag som jag önskar. Flera av dessa ändringsförslag har också stöd från samtliga svenska konventsledamöter och representerar således en samlad svensk uppfattning i dessa frågor.

Vi är eniga om att det klart bör framgå av konstitutionen att det är ett konstitutionellt fördrag och att medlemsländerna på frivillig basis överläter kompetens till unionen. Medborgarna skall veta att unionen i sig inte har kompetens att påföra sig ytterligare kompetens, utan att detta alltid måste godkännas av de nationella parlamenten.

Vidare vore det allvarligt om öppenhetsfrågorna fick en mindre framträdande plats i den nya konstitutionen i förhållande till nuvarande fördrag. Därför bör nuvarande unionsfördrags inledande skrivningar om öppenhet också finnas med i artikel 1 i det nya konstitutionella fördraget.

Jag satt med i den sociala arbetsgruppen. Där hade vi en mycket konstruktiv diskussion om unionens värden och mål och kunde enas kring ett antal bra förslag. Tyvärr har inte presidiet utgått från arbetsgruppens resultat när man har formulerat sina förslag, vilket jag beklagar.

Låt mig kortfattat peka på några viktiga förbättringar som skulle kunna göras: Jämställdhet mellan män och kvinnor, som är ett grundläggande värde i våra samhällen, borde också vara det för unionen och finnas med i artikel 2. I artikel 3 skulle jag vilja skriva in att också god arbetsmiljö, en förbättrad folkhälsa, skydd för barnens rättigheter samt lika möjligheter för alla oberoende av etnisk härkomst, religion, handikapp, ålder eller sexuell läggning, skall vara mål för unionen. Dessutom borde miljöfrågorna, såsom många har påpekat här, ges en betydligt starkare ställning i artikel 3. Här får vi inte ta steg tillbaka. <BRK>

4-085

EN

Szajer (Parl.-HU). – I should like to speak on the spiritual reference. I have submitted amendments, together with 16 other EPP-DE Members and others, to include some reference to spiritual heritage.

Pope John Paul II indicated in a message to our President, Giscard d'Estaing, how important it is to include a reference to the spiritual roots of our common Europe. We Europeans know very well that the Judaeo-Christian culture is at the very foundation of our idea of a common Europe. Without this, presently we would not be able to speak about European integration and an ever closer union of the peoples of our continent.

The text we propose has been borrowed from the preamble to the Polish constitution: "The Union's values include the values of those who believe in God as a source of truth, justice, good and beauty, as well as those who do not share such a belief but respect these universal values arising from other sources."

It is conscious that it does not speak about any specific religion. This is not a protest about Catholic, Muslim or Jewish faiths. It speaks about God – which could be the God of various beliefs. In opposition to those who criticise it in this Convention, it is a tolerant, non-discriminative and inclusive concept, giving equal respect to those who do not believe in God and those of different beliefs. At the same time this formulation invokes an evident spiritual source for the present common Europe. For many of the candidate countries this is a very important message.

God may not be responsible for inventing or creating liberal democracy but, for many people under communist rule, religion has been one of the few remaining links to the common European heritage behind the Iron Curtain. These people now expect Europe to openly stand up for its principles. <BRK>

4-086

EN

Rupel (Gouv.-SI). – I should like to draw your attention to some emphasis in the amendments I tabled on the first draft articles of the treaty.

I proposed an amendment to Article 3(3), which defines the Union's objectives. The purpose was to extend respect for cultural diversity in the Union to respect for linguistic diversity. The Slovene language is of the utmost importance for the Slovenes. It is a means of expression and the key to the very existence of the Slovene nation. A language can be interpreted as a field and means of expression, in which case the language is linked with human rights, democracy and freedom. Language is a symbol and value in itself. Many European nations have founded their right to independence, autonomy and sovereignty on the right to their freedom to use their mother or national tongue. One of the definitions of freedom involves freedom of expression. People are free when they can express themselves freely and thus realise themselves. Many states are based on nations, while the state of Slovenia is based on its special culture and unique language.

The Slovene language is the official and working language of Slovenia. Once we become a full member of the EU the Slovene language will become an official language of the Union; but we are aware that in all probability it will not become a working language of the Union. It is precisely because of this extraordinary importance of our language and the identification of the Slovenes with their language that I propose that linguistic diversity be included in the objectives. I am glad that many other fellow Convention members share the same view.

The existence of diversity in Europe will be further promoted if the treaty contains clear definitions, among the objectives, of non-discrimination on the basis of racial or ethnic origin, religion, sexual and other orientation. <BRK>

4-087

DE

Voggenhuber (PE). - Herr Präsident! Erlauben Sie mir eine Vorbemerkung. Sie haben heute zwei Rednern als Sprecher ihrer Fraktionen eine verlängerte Redezeit zugestanden. Ich darf Sie darauf hinweisen, dass es im Konvent keine Fraktionen gibt und daher auch keine Sprecher! Wenn Sie diese Übung allerdings einführen, bitte ich Sie, alle Fraktionen und nicht nur zwei zu berücksichtigen, um so mehr, als die Zusammensetzung dieses Konvents die großen Fraktionen ohnehin außerordentlich bevorzugt, allein schon durch die Tatsache, dass zwei Delegierte pro nationales Parlament im Wesentlichen nur die großen Fraktionen vertreten können. Ich bitte um Fairness und auch um Einhaltung der Geschäftsordnung!

Nun zu Ihrem Vorschlag. Seit 1957 gibt es ein zentrales Ziel der europäischen Integration, ich betone, seit 1957, nämlich den immer engeren Zusammenschluss, der nach Maastricht zur immer engeren Union wurde. Es ist das Gründungsziel dieser Europäischen Union. Niemand im Konvent hat verlangt, es fallen zu lassen. Es fehlt in Ihrem Vorschlag. Eine einzige Legitimation könnte ich mir dafür vorstellen, dass wir die Finalität der europäischen Integration verwirklichen, dass wir die engstmögliche politische Einheit Europas herstellen. Tut das diese Verfassung? Nein, das tut sie mit Sicherheit nicht. Wir bleiben im Prozess der Annäherung an die politische Einheit Europas. Daher ist es meines Erachtens nach eine völlig unzulässige Aufgabe des Gründungsgedankens der Union, den immer engeren Zusammenschluss Europas fallen zu lassen. Die Regierungszusammenarbeit, die hier von vielen beschworen wird - ich darf Sie an die Geschichte erinnern -, ist eine Erfindung von Maastricht, 35 Jahre nach der föderalen Ordnung als Ziel der europäischen Integration. Europa war als Gemeinschaft gedacht, als föderale Ordnung von Anfang an, und erst 35 Jahre später als Regierungszusammenarbeit in einigen Bereichen, und ich darf Sie daran erinnern, dass es nur als Zwischenstufe der Integration gedacht war, niemals aber als zentrales Architekturelement Europas. Es ist Zeit, sich daran zu erinnern.

Ich wünsche mir, wenn Sie mir noch ein paar Stichworte erlauben, eine hohe Sprache der Verfassung und nicht eine technokratische Sprache der Rechtstexte. Ich wünsche mir, dass die Bürgerinnen und Bürger deshalb als Gründer dieser Union anerkannt werden, weil sie - Kinder gründen ja keine Union - der höchste Souverän sowohl des Nationalstaates als auch der Europäischen Union sind. Ich wünsche mir, dass in den Werten kein Rückfall hinter die Verträge stattfindet. Das betrifft vor allem die Umweltdimension, das betrifft die Nachhaltigkeit, das betrifft die Gleichstellung der Frauen. Die soziale Marktwirtschaft war ...

(Der Präsident unterbricht den Redner.)

Ja, wenn Sie nur anderen Fraktionssprechern die verlängerte Redezeit zugestehen! <BRK>

4-088

EN

President. – We have to take into account that we still have 30 speakers. <BRK>

4-089

EN

Serracino-Ingloft (Gouv.-MT). – The aim of this intervention is to stress the importance – which is more than is immediately apparent – of the explicit mention of spatial considerations, in the second part of Article 3 dealing with the Union's objectives. In the most general sense it is important that at this historic moment, when we are witnessing the birth of global virtual space, we declare that we, in Europe, are constituting a space that while intensely transactional is also a common heritage.

The affirmation that territorial, as well as economic and social, cohesion is a primary objective of the Union is necessary, not only because geographical disadvantage, unlike social and economic inequalities, is not remedied by merely transitory measures. It requires structural provisions. This would also help to highlight the perspective of European territory as a common heritage.

For a similar reason we are in favour of the proposed explicit allusion to the exploration – not discovery – of outer space among European objectives. I suggest that outer space should be coupled with ocean space. Surely the constitution needs to show a greater awareness of European maritime space. Our coastal zones and islands are not a mere economic periphery; they are our crucial interface with the rest of the world. <BRK>

4-090

EN

Figel, Jan (Parl.-SK). – I should like to express my consensus with the President who mentioned, at the beginning of his remarks, the situation concerning the Iraqi and European lack of unity.

The quality of results is more important than time limits, so we should not exclude the possibility that we will need more time in order to achieve good results for the future IGC.

I should like to briefly mention three articles. I believe that a constitutional treaty is a more appropriate name than a constitution. The Union is a unique body, but not so in a classical understanding. "The European Union" is a better name than any alternative ones. There were disputes as to whether to use the federal basis or a confederal reference, as one speaker said. "The Union shall administer certain competences on a communitarian basis" could be a solution for this understanding.

Concerning the values in Article 2, I support the inclusion of a new clause, Article 2(2), with invoking of God. It was explained by Mr Szájer. We believe that a tolerant, acceptable and inclusive reference is possible and positive for the understanding in future, not only in present Member States but also in future Member States. A uniting reference for different cultures could be helpful, especially for Christian, Jewish and Islamic cultures in Europe. A transcendent authority in regard to political structures can help us understand the limits of power, giving human dignity its highest meaning. Yesterday, an absolute majority of the Slovak Parliament voted in favour of a reference to God in the European constitutional treaty.

Concerning Article 3, because of the current experience of Europe, which does not play a decisive role in seeking a solution to the Iraq crisis, we should be more explicit about the role of Europe in the world and more outward- than inward-looking in domestic or European matters. Therefore Article 3(4) could be broadened in this way. "The Union shall seek to advance its values in the wider world through a common external relations policy, in particular a common foreign and security policy based on solidarity and mutual loyalty." <BRK>

4-091

EN

Roche (Ch.E./G.-IE). – I have already made reference to the use of the word "federal". I will not repeat the same points. However, Mr Brok touched on a very sensible proposition. There is no point in getting ourselves hung up on words if, in fact, we know that the treaty itself would prescribe the nature of the Union.

To take up a point made by the last speaker, the title "the European Union" is familiar to our citizens. I see no basis whatsoever for changing that.

With regard to Articles 2 and 3, language that is clear, crisp and legible is an absolute requirement. We need to do further work on the text. I appreciate the pressure that the Secretariat is under. I draw specific reference, however, to Article 3(4)(1). The concept of "defending the Union's independence" is inappropriate in the context in which we are discussing the Union. It is an inappropriate set of words, which could be struck down.

With regard to legal personality, I very firmly believe that the Union should have a legal personality but we should be clear that in imparting a legal personality we do not eradicate the need for a distinctive approach in policy areas.

With regard to Article 5, which has excited a degree of specific reference here today, on the question of the Charter, it is very important that we incorporate the amendments proposed by the working group. Other Members have said that it makes good sense to incorporate the Charter by way of protocol. It does not give any less legal status but it would make the whole treaty a more legible document.

I have already submitted a series of comments on Articles 8 and 9. There is a reference to the primacy of Union law. It overstates the position and needs clarification.

I make a similar point with regard to economic policy. I proposed an amendment which would make it clear that the primary role rests with the Member States in coordinating their economic policies.

In the area of CFSP there is a need to stick more closely to Article 17 of the TEU. <BRK>

4-092

EN

Severin (Parl.-RO). – On Article 1(1), the Union's legitimacy should be based on the will of the citizens, peoples and states. Citizenship is a legal concept. Peoples is a vague concept and recognised in law mainly when it is about the right to self-determination.

Point 2, the Union should administer common competences and also coordinate national policies. The two formulations must be kept as such.

Point 3, when it is a question of common competences the Union acts on a federal basis. This is very clear. Either we have to say it is a federation of nation states or we have to say something else. However, a mere deletion of these words would be misleading and give

the wrong signals.

Point 4, the dynamic character of the Union should be also reflected in Article 1.

On Article 2, the Union respects national identities – this is excellent, but we need to add something about European cultural diversity. The non-discrimination clause should also be put in this part of the constitution.

On Article 3, I would like to see included there the fight against exclusion, environmental protection, the social market economy and territorial cohesion, along with social and economic cohesion. A horizontal clause to link all our values, objectives and policies should also be included. There are various amendments to that effect. We should adopt one of them.

On Article 5, the Charter should be clearly included in the constitution. We should not use the formula of a separate protocol. <BRK>

4-093

EN

President. – I will now take four or five *cartons bleus* for one minute. <BRK>

4-094

EN

Baroness Scotland of Asthal (Ch.E/G.-GB). – I too would urge the Praesidium to reconsider the drafting of Article 5 so that it reflects the spirit and substance of the compromise and the recommendations for further work reached by Working Group II.

The United Kingdom's position has always been – and we are clearly not alone in this – that the Charter we welcome as a political declaration was not drafted in a form suitable for incorporation in the treaties. That remains the case. However, we have not been afraid of looking at ideas on how to give the Charter legal status. The challenge is to find ways to give our citizens legal security and certainty in relation to the Charter's ambiguous and conflicting text.

The working group came forward with some amendments to the so-called horizontal articles in the Charter, plus the prospect of satisfactory, official, legal explanations to accompany it. This was endorsed in plenary. I proposed that we give Commissioner Vitorino the time he needs to complete his valuable work on these explanations. It would seem sensible to pause briefly, to wait for this work to be finished, before we hold further substantive discussions on Article 5.

I hope and believe that a completed package from Working Group II may help us to find an answer to the Charter status on which we can all soon agree. <BRK>

4-095

EN

President. – It is the understanding that we will integrate the elements of the group of Commissioner Vitorino. That is also the spirit in which we write Article 5. <BRK>

4-096

EN

Tiilikainen (Ch.E/G.-FI). – I very much appreciate the draft treaty in the sense that it both integrates the Charter of Fundamental Rights and creates an obligation for the European Union to accede to the European Convention on Human Rights. Both instruments are needed in order to enhance citizens' rights.

Citizens' rights and freedoms form the starting point for a constitution. This Charter will consequently have a corresponding position in this constitutional treaty. It must be included in the second title of the first part of this treaty, otherwise we undermine the role it should have.

As far as accession to the European Convention on Human Rights is concerned, the treaty should include a stronger obligation to reach that goal than it currently does. <BRK>

4-097

FR

Van Lancker (PE). – Merci Monsieur le Président. Je voudrais faire une remarque sur l'intervention du Commissaire Barnier concernant la relation entre l'article 5 et l'article 6 - article 5 sur l'insertion de la Charte et article 6 sur la non-discrimination, éventuellement étendue à d'autres formes de discrimination -. Je suis complètement d'accord avec ce qu'a dit le Commissaire Barnier sur le fait que la Charte en elle-même ne constitue pas une base juridique d'action pour l'Union et que, pour cela, il faut établir

clairement la compétence. Vous allez voir, dans le débat de demain, que plusieurs conventionnels ont introduit un amendement dans l'article 12 pour inscrire la compétence de l'Union, pour prendre des mesures.

Il a raison aussi sur le fait que nous avons besoin d'une base légale, l'actuel article 13 éventuellement élargi. Mais là, nous avons cru que les bases légales pour les mesures concrètes seraient plutôt établies dans la partie 3 de la Constitution, où on décrit les politiques et établit les bases légales concrètes. Je comprends que, ne connaissant pas encore le contenu de la partie 3, il est peut-être utile de prendre des précautions. Mais je crois que le message essentiel à adresser au praesidium est qu'il faut conserver la capacité d'agir de l'Union européenne en matière de discrimination et qu'il faut trouver une bonne solution que ce soit dans la partie 1 ou dans la partie 3. <BRK>

4-098

FR

Nagy (Parl.-BE). – Merci Monsieur le Président. Je m'associe tout à fait à l'intervention de ma collègue Van Lancker. Je pense aussi que la question de l'incorporation de la Charte a un lien avec la visibilité qu'on pourra lui donner vis-à-vis des citoyens et que c'est là que réside un petit peu la difficulté par rapport aux différentes propositions.

Je pense que l'idée d'une clause horizontale est essentielle pour assurer la cohérence des différentes politiques.

Je voulais réagir vis-à-vis des collègues qui insistent sur le fait de faire référence à Dieu dans la Constitution. Je pense que c'est vraiment une erreur et qu'il ne faut pas le faire. En effet, l'histoire de l'Europe, c'est aussi l'histoire de la philosophie grecque, ce sont aussi des choses qui n'ont justement rien à voir avec cette référence à Dieu et c'est surtout une conception de l'Etat qui fait que celui-ci est neutre par rapport aux conceptions philosophiques et religieuses. Par conséquent, rouvrir ce débat équivaut, vis-à-vis de la Convention, à commettre une très très grande erreur. <BRK>

4-099

EN

Kiljunen (Parl.-FI). – I have already expressed my doubts about using the term "federal" or "confederal". It leads us to the wrong associations about our aspirations.

Mr Severin said that there will be a vacuum if we leave out altogether the words "federal basis". He said that something should be put in. Perhaps then we could add the words "and which shall administer certain common competences on a supranational basis", or alternatively, "administer certain common competences on a Community basis" at the end of Article 1(1). That would fill the vacuum that Mr Severin was afraid would exist.

On values, I stress equality. It is one of the key values of the Union and most definitely should be in Article 2. By equality I mean gender equality. I also mean social equality. That is why it is so important to add that word.

We should also add minority rights to the values. This concerns a significant part of the Union's population and so should be specifically mentioned in our new constitutional treaty, alongside human rights. Minority rights are a key issue for European states today.

To my mind, the key concept is solidarity. I am very satisfied that it has been included in the Praesidium's draft as a key value. <BRK>

4-100

EN

Bonde (PE). – The first 16 articles mention the word "constitution" 32 times. Thank you for this clarity. The Democracy Forum proposes to change that word to "treaty established according to international law".

Article 1 refers to respect for the national identities of Member States. We should add, more importantly, their national constitutions, their legislative assemblies and national sovereignty. Drop Article 2 or add, in particular, transparent democracy. Do we need values in an international treaty? Insert "not" in Article 4; the EU shall not only negotiate treaties; the EU shall only negotiate treaties after a mandate from the Member States.

Article 5 moves the primacy of fundamental rights from the Member States' high courts and the European Court of Human Rights in Strasbourg, to the EU court in Luxembourg. Instead, let the EU institutions be bound by the European Convention on Human Rights and the basic rights in the national constitutions.

Article 6 prohibits national discrimination. We should drop this general clause and be more precise. This article could dissolve the nations if it is not limited to a part of economic activity in the common market. Will the article, for instance, overrule the Danish protocol on second homes?

Article 7 looks like more EU citizens' rights. If there is a conflict between national and EU citizenship, the EU rules will prevail, as in Germany with the citizenship of Bavaria. Free movement has to respect the legislation of the Member States.

Articles 8 and 9 insist on primacy. For all EU law we propose the primacy of national constitutions and the Convention on Human Rights.

The first 16 articles claim to organise Europe on a federal basis, but there is no clear division of powers between the federal level and the nations. It looks more like a unitary state than the American federation. The federal authorities decide what is left to the nations. We propose to turn the power pyramid and leave it to the voters and the national parliaments to decide what must be decided at EU level. Let the national parliaments elect the Commissioners, decide the annual law catalogue and administer the principle of solidarity. Give the national parliaments the right of veto on very vital issues, so that parliamentary democracy will always prevail. Democracy was born in 508 BC. We are not here to bury it. <BRK>

4-101

EL

Γιαννάκου-Κουτσίκου (Parl.-GR). – Κύριε Πρόεδρε, οφείλω να σημειώσω ευθύς αμέσως ότι τα πρώτα δεκαέξι άρθρα του Συντάγματος κινούνται στη σωστή κατεύθυνση. Επιτρέψτε μου, βέβαια, να κάνω ορισμένες παρατηρήσεις σε σχέση με τροπολογίες που έχουν κατατεθεί.

Η Συνταγματική Συνθήκη χρειάζεται ασφαλώς σαφείς και συγκεκριμένες αναφορές σε ζητήματα αρχών, αξιών, πνευματικής παράδοσης, πολιτιστικής κληρονομιάς, αιεφόρου ανάπτυξης και πλήρους απασχόλησης. Γιατί εδώ δεν έχουμε να κάνουμε με σύνταγμα κράτους μέλους. Οι αναφορές αυτές περιλαμβάνονται στο προοίμιο που έχει καταθέσει το Ευρωπαϊκό Λαϊκό Κόμμα, αλλά και στο άρθρο 2 της προτεινόμενης Συνθήκης.

Στο άρθρο 3 πρέπει να γίνει οπωσδήποτε αναφορά στην παρουσία της Ένωσης στη διεθνή σκηνή, αλλά και σε μια εξωτερική πολιτική και πολιτική ασφάλειας που διακρίνεται από αλληλεγγύη και αμοιβαία πίστη. Εδώ νομίζω ότι πρέπει να σημειωθεί ότι η ισχύς της Ένωσης προέρχεται και από την κοινωνική συνοχή. Αυτό σημαίνει ότι η καταπολέμηση της μεγάλης φτώχειας και η κοινωνική ενσωμάτωση είναι αρχές που πρέπει να υποστηριχθούν στο ίδιο άρθρο.

Στο άρθρο 4, κύριε Πρόεδρε, πρέπει να υπάρξουν ειδικές αναφορές για τις σχέσεις της Ένωσης και των κρατών μελών στη βάση των ιδίων αρχών. Και εδώ προτείνουμε να προστεθεί μια ρήτρα αλληλεγγύης σε δύο θέματα. Πρώτον, σε τρομοκρατική επίθεση εναντίον κράτους μέλους και, δεύτερον, σε περίπτωση ένοπλης κλασικής επίθεσης εναντίον κράτους μέλους, απ' οπουδήποτε και αν προέρχεται αυτή, η Ένωση πρέπει να εκφράζει αμέσως την αλληλεγγύη της, όπως και στην πρώτη περίπτωση, διαθέτοντας στρατιωτικές δυνάμεις και λαμβάνοντας αστυνομικά και δικαστικά μέτρα, αλλά και διαθέτοντας κάθε αναγκαίο μέσο για την προστασία των πολιτών.

Κύριε Πρόεδρε, με την ευκαιρία της αναφοράς αυτής, είμαι υποχρεωμένη να σημειώσω ότι είναι μοναδική ευκαιρία να επανέλθουμε όσοι πιστεύουμε σε μια ενιαία εξωτερική δράση της Ένωσης. Το κενό που υπάρχει στην εξωτερική πολιτική και την πολιτική άμυνας φάνηκε το τελευταίο διάστημα. Πρέπει να κάνουμε το μεγάλο βήμα προς μια ενιαία εξωτερική έκφραση, αλλά και πιο ειλικρινείς διατλαντικές σχέσεις. Αν συνεχιστεί η προσπάθεια ορισμένων, αντί να διαλέγονται και να συγκλίνουν μεταξύ τους, με την παραμικρή ευκαιρία να παραμερίζουν το καλώς νοούμενο ευρωπαϊκό συμφέρον, θα υπάρξει κρίση ταυτότητας στην Ένωση.

Στόχος αυτής της Συνταγματικής Συνθήκης πρέπει να είναι μια Ένωση επιθυμητή για τους λαούς και τους πολίτες και έτσι η Χάρτα Θεμελιωδών Δικαιωμάτων πρέπει να ενσωματωθεί στη Συνθήκη. <BRK>

4-102

FR

Giscard d'Estaing (Président). – Je voudrais dire un mot à Madame Giannakou. Dans le préambule, puisqu'on en a beaucoup parlé, je pense qu'on parlera de l'apport de la civilisation hellénique à la civilisation européenne. <BRK>

4-103

EN

Kacin (Parl.-SI). – By definition, Europe is an association of individuals. This is in the preamble of the charter. It says that "the Union places the individual at the heart of its activities". I therefore propose that a future description of the European Union be "a union of citizens, peoples and states". I believe that the European Union as a union of prosperity, economic opportunities and the rule of law is primarily designed for the individual.

It was already explained what "people" means in various languages. There are many languages in Europe. Every language has its own definition, so I believe that definitions are crucial to our mutual understanding. I come from a country that has both positive and a lot of negative experiences with living in a multicultural state. In my opinion, the formulation "on a federal basis" could also generate an unfavourable attitude towards membership among citizens of those candidate countries that have had, or still have, practical experience with the federal model of state integration.

To speak about different federal concepts is difficult since there is no single definition of the term. On the contrary, federal ideas are numerous and each of them is different, at least in nuance and specific historic practice. Federations are complex formations and the rules of the game are very complicated. Anyone can create their own model of a federal state, which does not necessarily reflect reality. Because of that, the use of this term is best avoided and the wording chosen should be that "the competences shall be exercised in accordance with this constitution".

Regarding Article 3, we should emphasise that the Union is primarily designed for the individual. Integration in the European Union also means the integration of regions. That is why I propose that the constitutional treaty should also promote solidarity between regions. <BRK>

4-104

IT

Tajani (PE). - Signor Presidente, ho apprezzato il lavoro del *Praesidium* e ho altresì ascoltato con grande attenzione, direi con non poca soddisfazione, anche le parole del Presidente Giscard a proposito dello stato giuridico delle chiese, delle radici religiose dell'Europa. Io credo che la Costituzione che fonderà la nuova Unione dovrà prevedere un riferimento alla dimensione religiosa; se non riconosciamo questo prezioso retaggio, dimenticheremo la tragica lezione dei totalitarismi del Novecento che, negando Dio e la religione, negavano la dignità dell'uomo e gettavano le basi per il suo annientamento, e dimenticheremo che furono proprio i valori dell'umanesimo cristiano ad ispirare i grandi statisti che nel dopoguerra fecero l'Europa politica. In questo quadro, in molti abbiamo proposto che sia fatto riferimento all'eredità religiosa nel preambolo del nuovo Trattato e che si affermi, nell'articolo 2, che i valori dell'Unione includono i valori di coloro che credono in Dio quale fonte di verità, giustizia, bene e bellezza, come pure di coloro che, pur non condividendo questa fede, osservano questi universali valori sulla base di altre ispirazioni. Queste proposte non hanno nulla di confessionale né vogliono mettere in discussione la separazione tra Stato e chiesa, cosa che peraltro non accade nei paesi dove pure c'è un qualche riferimento costituzionale alla dimensione religiosa, come in Germania, Irlanda, Svizzera, Polonia e Stati Uniti.

In questo quadro io credo che si debba anche dare, fra gli attori sociali, un ruolo di primaria ed originale importanza alle chiese delle altre comunità religiose, che sono soggetti che giocano una parte fondamentale nella coesione delle società europee. Le chiese svolgono infatti, per non dir altro, un insostituibile lavoro di aggregazione, formazione ed assistenza, ad ogni livello e in ogni ambiente, spesso supplendo alla lacunosa presenza delle istituzioni. In riferimento allo *status* giuridico delle chiese, noi abbiamo presentato un emendamento, ma ho ascoltato con grande attenzione quanto ha detto il Presidente Giscard riguardo alla dichiarazione 11, allegata al Trattato di Amsterdam.

Concludo, signor Presidente, con un riferimento: ho presentato un emendamento all'articolo 6 perché vengano tutelati dal Trattato costituzionale i più deboli, e soprattutto i trentasette milioni di cittadini europei che sono disabili. Credo che un riferimento esplicito, nel Trattato costituzionale, debba essere inserito. <BRK>

4-105

EN

Wittbrodt (Parl.-PL). – The first draft articles of the treaty are crucial for the European construction as they describe the basis and fundamental values of our continent.

First of all, the Union should manage rather than administer common competences. Besides, at this early stage of the constitution-building process it is difficult to assume that competences are governed on a federal basis.

Secondly, the European Union was always based on the principle of solidarity. This was understood as elimination of disparities among the countries in terms of economic and social cohesion. In the draft articles the solidarity principle does not touch on cohesion but rather, solidarity is understood as loyalty in international relations. This makes solidarity a tool, not a principle, in order to achieve a peaceful Europe. Therefore I suggest we introduce a new article on solidarity, which is needed in order to carry out the Union's mission. It seems essential, especially for the new Member States.

Thirdly, in Article 2, which introduces the Union's values, we should point to our European roots and traditions. As our fundamental values were shaken up by other beliefs, we have to write this in the constitution. In order to find agreement on this issue, I support the proposals of the PPE-DE group. In particular, I suggest a new article, which links up with the Polish constitution, but perhaps this might be moved to the preamble.

In Article 1 it is suggested that the Union should respect not only the national identities of its Member States but also their constitutional and political structures, including government, their choices regarding language, and the legal status of churches and religious societies. The last part of the sentence responds to COMECE postulates. <BRK>

4-106

EN

Brejc (Parl.-SI). – The Praesidium produced a good basis for the first 16 articles of the constitutional treaty. Perhaps the members of the Convention rightly expect their greater inclusion in the creation of this treaty. This must, in my opinion, lay a foundation for a Europe of human rights, solidarity, loyalty and respect for different identities.

That is why I am in favour of including the Charter of Fundamental Rights at the beginning of the treaty, since this charter is of great symbolic importance to all Member States and not only to acceding countries. I also believe that the Union should be based on loyalty among the Member States in all areas, since such loyalty, which should be included in the treaty as a general principle, is a precondition for the efficient functioning of the Union. I therefore fully support Amendment 4(b) tabled by my colleagues from the PPE-DE group.

Loyalty and solidarity are connected. The Union should also be based on solidarity among the Member States. The events of 11 September showed how vulnerable we are and how important it is to hold together at such times. Therefore I support Amendment 4 (c) proposed by my colleagues.

I am in favour of including linguistic diversity in Article 3(3) because I believe that language is an important element of the identity of every nation, and a small nation in particular. In my opinion this is a good amendment since it supplements and more clearly defines Article 1(2), which says that "the Union shall respect the national identities of its Member States". In the Member States, in addition to these identities, there are also various national minorities which need to be protected. <BRK>

4-107

FR

Haenel (Parl.-FR). – Merci Monsieur le Président. Quelle place pour la question religieuse dans la Constitution? Premièrement, l'Union ne doit pas intervenir dans le statut des Eglises et communautés religieuses dans les Etats membres. Il y a, dans nos Etats, des solutions différentes. L'Union doit les respecter, l'Union n'a pas à s'en mêler. Ces différences sont liées à l'histoire de chacun de nos pays. Par conséquent, le respect du statut national des Eglises et communautés religieuses doit figurer explicitement dans le domaine de ce qu'on appelle la clause Christophersen.

Deuxièmement, de même que la Convention européenne des droits de l'homme, la Charte garantit la liberté de conscience et de religion. Nous n'avons pas à revenir sur ce sujet. Je souhaite donc que la Charte et son préambule soient intégrés tels quels à la future Constitution de l'Union.

Troisièmement, à propos des références religieuses. Le vrai problème est celui de l'identité européenne. L'identité européenne, nous ne pouvons pas la trouver seulement dans ses valeurs communes qui ont une vocation universelle. En effet, les droits de l'homme, la solidarité sociale, le respect de l'environnement sont des valeurs pour l'ensemble du monde, par seulement pour l'Europe. L'identité européenne réside donc en grande partie dans les héritages que nous avons en commun et que nous devons assumer. Or, qu'on le veuille ou non, ces héritages ont une dimension religieuse. Cette dimension religieuse est en quelque sorte consubstantielle à l'héritage commun. On ne peut pas comprendre la culture européenne en ignorant ou en niant le christianisme, le judaïsme, l'islam, pas plus qu'on ne peut la comprendre en ignorant l'humanisme laïque. Donc, si nous voulons une Europe qui ait une identité, nous devons accepter et reconnaître l'influence des héritages culturels, humanistes et religieux de l'Europe sur son identité profonde sans que cela entraîne en quoi que ce soit une position privilégiée pour telle ou telle croyance. Cette reconnaissance devrait se faire dans le préambule de la future Constitution car on est là dans le domaine du symbole et non dans celui des règles de droit. Si nous ne voulons pas aborder sereinement et objectivement cette question, elle resurgira à l'occasion des ratifications référendaires ou parlementaires quand nous aurons à nous prononcer. <BRK>

4-108

EN

Hololei (Gouv.-EE). – I will come back to Article 1 later. I wanted to intervene earlier but due to lack of time, that had to be postponed.

The original idea of Laeken was to make Europe more understandable to the citizens. It has been claimed that the wording of Article 1(1) also intends to improve clarity, stating in a matter of fact manner that the Union shall administer certain common competences on a federal basis. This is supposed to acknowledge the existing state of the art. I am not convinced that the wording will explain the functioning of the Union to some of the citizens of the Union, notably those living in a federal state. For them it might ring a bell, but there are other countries where this word will not help to explain the functioning of the Union but rather, complicate things and confirm the fears they have held for a while that Europe is developing into a superstate.

The first part of Article 1(1) reads well, but the second part that Mr Roche proposed could be deleted or perhaps changed as follows: "within which Member States can coordinate certain policies at European level to achieve common goals. In order to achieve that, Member States will delegate certain of their competences to the Union, which shall administer those competences in common."

Some speakers have mentioned that the younger generation would not forgive us if we deleted the word "federal". Please be careful about that. As one of the youngest members of the Convention, I have the right to say that the younger generation would not forgive us if we could not find more appropriate wording, acceptable to all generations across Europe.

I fully support Mr Hjelm-Wallén, who intervened on the use of the word "treaty" as a shorthand for the constitutional treaty throughout the text. We already have a treaty that is going to be signed by the Member States, if I remember correctly. This was a preferred option decided at the beginning of the work of the Convention. Our tabled comments have also underlined that controversy. <BRK>

4-109

PT

Azevedo (Parl.-PT). - Senhor Presidente, quanto à análise dos primeiros artigos, gostaria de sublinhar que, em meu entender, eles devem ser particularmente claros e pedagógicos. O artigo 1º, que tem quase tudo o que é nuclear para enquadrar a essência da União, deve ainda consagrar a igualdade entre os Estados-Membros mostrando que este princípio continua a ser regra de ouro da construção europeia. Quanto à referência federal, identifique-se e debata-se primeiro o modelo federal europeu. Será mais transparente e sobretudo mais compreensível para os cidadãos, evitar-se-iam mal-entendidos e populismos. Quanto ao artigo 2º, será a sede ideal, na minha opinião, para consagrar a igualdade entre homens e mulheres, porque princípio fundamental. Quanto ao artigo 3º, entre os objectivos da União deve ainda contar-se a valência territorial da coesão. E, num mundo consciente da importância da segurança alimentar e ambiental para a saúde colectiva, devemos também contar com a promoção de elevados níveis da protecção de saúde humana.

Por fim, quanto à Carta, regozijo-me vivamente com a sua inclusão em parte nobre da Constituição. Salvaguardado o seu valor jurídico, ficarão assim garantidos o seu peso e força política, e a União afirmar-se-á inequivocamente como uma comunidade de valores.

Senhor Presidente, esta volumosa resma de papel ao lado de cada um de nós mostra estarmos todos inequivocamente empenhados em construir uma constituição que desafie o tempo. <BRK>

4-110

EN

Arabadjiev (Parl.-BG). – It is my understanding that the direct articles should reflect the work of the working groups and the conclusions reached by them. In the case of Article 5, whose ambit corresponds to the work of Working Group II, I find that the suggestion of having the Charter set out in the second part of the constitution or in a protocol annexed to it does not follow and does not respect the order of the basic options recommended by the working group and the significance attributed to each of these options.

It is also my understanding that one of the objectives of having the Charter was to make human rights more visible. Now it is proposed to hide the Charter in a separate protocol.

In Article 5(2), which deals with the issue of accession to the European Convention on Human Rights, I have tabled the amendment that seems to be the most compelling alternative wording with the imperative "shall", instead of the enabling "may" accede. Being strongly in favour of accession, I have proposed the most radical version, which I hope is not the most inadequate. I realise that this strong formula may have problems in terms of its legal correctness. For this reason I am prepared to make a concession and accept a milder version, which will, however, still contain a clear commitment to accession and will create a legal obligation and not only a possibility of accession.

Finally, in strictly legal terms, accession would entail – to use the language of the relevant opinion of the European Court of Justice – due entry into a distinct international institutional system. Such a modification would be of constitutional significance.

I believe that if the Charter became binding upon the entry into force of the constitutional treaty, without any federal decision being taken by the Convention on accession, this would break the link between these two complementary steps and the Convention would miss the existing opportunity to achieve a coherent system for the protection of human rights ...

(The President cut the speaker off) <BRK>

4-111

DE

Kaufmann (PE). - Herr Präsident! Die Vorschläge, einen Gottesbezug in die europäische Verfassung aufzunehmen, sollte der Konvent klar zurückweisen. Wir können doch nicht, wie es die vorgeschlagene Formel tut, die Menschen in der Union in zwei Kategorien teilen, in Gläubige und Ungläubige! Artikel 10 der Grundrechtecharta garantiert Gedanken-, Gewissens- und Religionsfreiheit für alle Menschen in Europa, und das ist gut so. Ich bin aber strikt dagegen, Europa auf religiöse Glaubensformeln zu verpflichten. In dieser Frage, Herr Präsident, unterstütze ich Ihre Position ausdrücklich.

Europa hat in der jüngsten Vergangenheit ein Erbe, auf das es sich zu berufen lohnt. Sie alle kennen dieses Bild enthusiastischer Aktivisten der ersten Stunde, die über die Grenzen fuhren, um zu demonstrieren, wir wollen ein Europa ohne Nationalismus, Krieg und Faschismus. Persönlichkeiten wie Henri Frensy, Chef der französischen Widerstandsbewegung Combat, der deutsche Buchenwald-Überlebende Eugen Kogon oder der Italiener Altiero Spinelli, der Mussolinis Gefängnisse durchlitt, sie gründeten unmittelbar nach dem Zweiten Weltkrieg zusammen die europäische Bewegung. Eben weil sie gemeinsam gelitten hatten, engagierten sie sich im Sinne einer gemeinsamen Verantwortung für die freiheitliche, demokratische und friedliche Entwicklung Europas. Das Europa des 21. Jahrhunderts sollte dieses antifaschistische Erbe seiner Gründer immer im Gedächtnis behalten, es in der Verfassung für die Zukunft bewahren.

Übrigens nicht nur nach Spinelli, sondern auch nach Bertha von Suttner ist hier ein Gebäude benannt. Damit wird zu Recht das Andenken an eine Frau bewahrt, deren Appell "die Waffen nieder" mit zum wichtigsten Erbe Europas gehört. Eingedenk dessen halte ich es für unverzichtbar, eine klare Friedensverpflichtung der Europäischen Union in der Verfassung zu verankern, und ich denke, all dies sind wir den Vorkämpferinnen und Vorkämpfern der europäischen Integration beim Verfassen der Verfassung verpflichtet. <BRK>

4-112

EN

De Rossa (Parl.-IE). – A strong statement of social objectives needs to be incorporated in Article 3: full employment, rather than a high level of employment; social inclusion, which implies tackling poverty both inside and outside the Union; services of general interest, a fundamental part of Europe's unique social market economy. The Charter needs to be incorporated in the body of the constitution, not relegated to a protocol. Arguments about the legality and so on are unimportant. What is important is the perception of how importantly we regard the rights of citizens.

On the question of federalism we have to be ambitious. Dropping the word "federal" will not convince Mr Bonde or any of his followers that what we are about is creating a federation of nation states. We have to be ambitious. People are urging us to give them leadership. They have marched in their millions in the last few weeks demanding that leadership. We should give it to them.

On the question of God, I happen to be a retired Irish catholic. I know a bit about God and the good and the bad he or she can do. I suggest that the Charter already provides adequately for the concerns of believers. I fundamentally object to the proposal that the values of religious believers should be additional to the values already outlined in the constitution. Some sects of religious believers' values are repugnant to equality, freedom and bodily integrity. I will not accept them being incorporated into the European constitution. <BRK>

4-113

EN

Attalidis (Gouv.-CY). – I would like to touch on four points relating to Articles 1 and 3.

First, I believe that, for reasons of historical continuity, the name of the Union should continue to be "the European Union". This is the name that citizens of Member States know and it is the entity which citizens of candidate countries are aware that their governments have applied to join.

Secondly, in Article 1(3) we should refer to the Union being open to European states whose peoples share the same objectives, as well as values. This corresponds to the actual practice of the Union. The Copenhagen criteria can be described more accurately as objectives, rather than values.

Thirdly, I agree with Mr de Villepin and others who have proposed that we maintain the reference to an ever closer union. It is a historic phrase expressing the aspiration of the founders and the nations of Europe to a step-by-step enhancement of the Union. It does not necessarily carry the connotation of a continuous transfer of competences from the Member States to the Union. In Article 3(4) there should be more specification of the objectives of the European Union's external action along the lines elaborated by Working Group VII so that along with the objectives outlined in the text, we should also refer to the aim of advancing in the wider world democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, the principles of human dignity, equality and solidarity, and respect for international law, in accordance with the principles of the Charter of the United Nations. <BRK>

4-114

NL

Pieters (Parl.-BE). - Voorzitter, collega's, er wordt hier veel gesproken over en gestreden voor de grote principes en de grote doelstellingen. Wellicht moet dat ook zo wanneer we het over een constitutioneel verdrag hebben. Maar laten we dan toch ook leven naar die principes die niet betwist zijn en we allemaal voorstaan. Laat er geen al te grote kloof ontstaan tussen woord en daad, tussen beginsel en concreet recht van de Europese burger. Zo belijden we allemaal dat de rijkdom van de Unie onder meer bestaat uit haar culturele en dus ook taalkundige verscheidenheid. Zo belijden wij ook de fundamentele gelijkheid van alle lidstaten, van alle burgers en dus ook van alle talen van de Unie. Nu, hier knelt het schoentje.

Ik verwijs voor de huidige toestand naar mijn eerder verspreide studie over de talen van de Unie, die u allemaal ter hand is gesteld. In mijn amendement 7, bij artikel 7, lid 2, pleit ik er concreet voor het recht van de burger van de Unie te erkennen om in al zijn communicatie met de Unie een officiële taal van de Unie van zijn keuze te gebruiken en ook gelijktijdig de wetten, de besluiten en andere informatie waar hij belang bij heeft, in zijn eigen taal van keuze te kunnen verkrijgen.

Voor vele, zonet al onze volkeren, behoort een taal tot de ruggegraat van onze eigen identiteit. De burger van de Unie het recht te ontzeggen om in al zijn contacten met de Unie de officiële taal van zijn keuze te gebruiken, is kiezen voor een cultureel en taalkundig opgedeeld Europa met eerste klas en tweede klas talen, en eerste klas en tweede klas burgers. Het is ook kiezen voor een sociale opdeling tussen enerzijds Engelstaligen of veeltaligen, en anderzijds de anderstaligen. Deze keuze kan de Conventie niet maken. Het

gaat om een belangrijke keuze. Daarom moet dit artikel, dit recht, toegevoegd worden. Het staat niet in het Charter van de fundamentele rechten van de burger, dus dat kan geen argument zijn om het niet op te nemen in artikel 7, lid 2. <BRK>

4-115

EN

Thorning-Schmidt (PE). – I should like to make a few remarks in appreciation of this document. I am delighted that for the first time, in the objectives of the Union, we have children's rights. If this reference remains all through the Convention, that will mean that 90 million children and young people will no longer be invisible in our treaties. That is a very good thing. I have some constructive criticisms as well.

One of the fundamental things we have to agree on today, and in our future work, is a common understanding of the work we are doing. That understanding should be that it is unacceptable to go back on the *acquis* - not only on the legislation that is part of the *acquis*, but also on the policies that are established by the Union. It is quite surreal that some of our time today has been spent on establishing what are already our policies and making sure that they are part of the new treaty that we write. It should be obvious that we cannot go back on the *acquis*, but I am worried that is not the case.

I should therefore like to ask the President a question. As he has left, I will address it to the Praesidium. How will we make sure that it is still the case, for example, in the new treaty that one of our goals is to ensure a high level of consumer protection? How will we make sure that – as Mrs Van Lancker said earlier – equal rights between men and women are a horizontal objective? How will we make sure that these things are still the case? I cannot see it in this document. You have to tell us at some stage whether we have to keep arguing about this or whether we can go for new ground and start arguing about the more ambitious goals of the Union. It is not right that we keep talking about all the things that are already part of the treaty. <BRK>

4-116

EN

President. – To be clear, that is the reason why we chose to show you, first, all the different texts and only come back with an amended text when we have seen them all and come up with a global text, so that you can then see the whole treaty and see if your concerns are met.

The point where the Praesidium started was to maintain the *acquis* and so we will have to verify, when we have the whole treaty, if you find it there. Some of these points will be in the second part, and so on. <BRK>

4-117

EN

Söderman, Ombudsman. – I have worked seven-and-a-half years with the grievances of European citizens about the Community institutions and bodies. I am happy that I can share some concerns with you and make some very practical proposals.

First, in Article 5, it is a very good idea to make the Charter binding. It could be given a clearer position, but this is enough. This is a very positive step forward because the Union could accede to the European Convention on Human Rights. But as the article is currently drafted, it does not include the possibility to accede to other international human rights conventions, as the Member States can do. The Council of Europe has the Convention for the Prevention of Torture and Inhuman or Degrading Treatment. It has a social charter. The United Nations has two international covenants on human rights. The international aid organisations also have human rights instruments to which it would be very important for the Union to accede. So this should be reverted.

Concerning Article 7, it is very good that you have explicitly written in citizens' rights. I would be glad if good administration could be included here, because citizens feel that the Union is very bureaucratic.

Finally, I support the idea to include in the principles from the Amsterdam Treaty: that the European Union must take its decisions as openly as possible and as close to the citizens as possible. This is very important for the citizens. <BRK>

4-118

DE

Dammeyer, Ausschuss der Regionen. - Herr Präsident! Ein wichtiges Prinzip der Europäischen Union ist, und das ist hier auch wiederholt betont worden, dass die Europäische Union Respekt vor den Strukturen der Mitgliedstaaten hat. Das kann sich auf unterschiedliche Weise äußern; dazu zählt sprachliche Vielfalt, die respektiert werden soll, dazu zählt, dass das Prinzip der lokalen und regionalen Autonomie beachtet werden soll. Es wäre gut, wenn die Charta des Europarates von der Europäischen Union berücksichtigt wird. Sicher ist das möglich, sobald die Europäische Union ihrerseits Rechtspersönlichkeit geworden ist, wenn wir es schon nicht in die Verfassung selber aufnehmen.

Dazu gehört auch, dass die Regionen, wenn sie entsprechende Kompetenzen haben, auch von der Europäischen Union als zuständige und legitimerweise handelnde Partner, als Mithandelnde im Kontext ihrer Mitgliedstaaten respektiert werden sollen. Das hat auch Laeken verlangt, und deshalb sollte auf jeden Fall die Region in Artikel 2 erwähnt werden. Wenn davon die Rede ist, dass die

Kompetenzen der Mitgliedstaaten im Vergleich zur Europäischen Union beachtet werden, dann ist auch anzufügen, dass gegebenenfalls diese Kompetenzen in Übereinstimmung mit verfassungsrechtlichen Bestimmungen der Mitgliedstaaten auch von Regionen wahrgenommen werden. Das ist als erstes und vor allem eine innerstaatliche Angelegenheit, das ist wahr, aber es ist auch nötig, dass die Europäische Union das in ihrer Verfassung respektiert.

Für den Ausschuss der Regionen muss ich bedauern, dass nicht alle unsere Änderungsanträge, die wir vorgelegt haben, allen Mitgliedern vorgelegt und verteilt wurden. Ich glaube schon, dass das nützlich und richtig wäre, damit alle Kolleginnen und Kollegen wissen, welches unsere Änderungsanträge sind. Ich möchte das Sekretariat dringend darum bitten, Artikel 4 Absatz 1 und Absatz 2 der Geschäftsordnung künftig zu beachten, und ich bitte das Präsidium, unsere Änderungsanträge auch zu respektieren. Das ist auch deshalb wichtig, weil zu den Themen unserer Anträge eine Vielzahl von parallelen Änderungsanträgen anderer Mitglieder vorgelegt wurden, die in die gleiche Richtung gehen wie unsere und die wir auch deshalb berücksichtigt wissen möchten. Wir sehen uns damit in Übereinstimmung mit einer Mehrzahl dieser Mitglieder des Konvents, und wir möchten das auch gerne aufrecht erhalten. <BRK>

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EN

President. – Your amendments are included in the revised version of the amendments distributed today.

The debate is closed.

The next sitting will be tomorrow at 9.30 a.m., when we will start with the presentation of the new articles – which the Praesidium will distribute – as well as the two protocols, and Articles 8 to 16.

(The sitting was closed at 8.12 p.m.) <BRK>

THE EUROPEAN CONVENTION

THE SECRETARIAT

Brussels, 8 April 2003 (15.04)**(OR. fr)****CONV 674/03****COVER NOTE**

Subject : Summary report of the additional plenary session
– Brussels, 26 March 2003

**DISCUSSION ON THE AMENDMENTS RELATING TO ARTICLES 1 TO 7 OF THE
DRAFT CONSTITUTION**

Following the plenary session of 27 February dealing with Articles 1 to 7 of the draft Constitution and the amendments tabled by Convention members, the Convention continued its discussions at an additional session chaired by Mr Jean-Luc Dehaene, Vice-Chairman of the Convention.

Article 1

The Vice-Chairman briefly introduced the discussion by referring to the progress of proceedings at the plenary session at which these articles had been discussed and in particular recalling the main topics on which members of the Convention had submitted amendments. He also stated that the Praesidium would in any event seek to produce a revised version more clearly reflecting some of the concerns expressed; in particular, he cited the fact that the Union's competences were conferred by the Member States and not by the Constitution. This suggestion was welcomed by several Convention members.

Article 1(1)

"Peoples" or "citizens"

Many speakers indicated their preference for the term "citizens" rather than "peoples" in this paragraph, arguing that it was the more modern term, having been sanctioned by the Maastricht Treaty. By the same token, some speakers stressed the fact that the term "citizen" had a real legal sense, whereas the same could not be said for "peoples". However, others pointed out that the term "peoples" more accurately reflected the fundamental nature of the Union to which this Article referred. Finally, some speakers proposed rewording this paragraph to reconcile the two concepts of "peoples" and "citizens".

"Constitution" v "Constitutional Treaty"

Some speakers voiced a preference for avoiding the word "Constitution" and replacing it by "Constitutional Treaty", which more accurately reflected the idea of an agreement reached between States.

Establishment of the Union

Some speakers wondered whether legal continuity was guaranteed if the Constitution provided for "establishment" of the Union. In their view, it was not a case of establishing a Union because the Union already exists, but rather of marking a new stage in its development. The Vice-Chairman explained, firstly, that the Union established by the Constitution would in any event succeed the Community and the current Union and, secondly, that provisions guaranteeing legal continuity would be found in the last part of the Constitution, under the Title "Final provisions". One speaker emphasised the importance of reflecting legal continuity from Article 1 onwards, so as to avoid any ambiguity.

"Federal basis"

Some speakers were in favour of deleting the word "federal" in this paragraph.

These speakers expressed the view that the word "federal" had a different legal meaning in different languages and that it was therefore best avoided so as not to open up the possibility of divergent interpretations. One speaker proposed deleting the second part of the sentence (which reads: "*within which the policies of the Member States shall be coordinated, and which shall administer certain common competences on a federal basis*"), on the grounds that it was superfluous and devoid of substance. Others were in favour of maintaining this provision and the term "federal", believing that this term expressed more precisely and concisely than others the very specific way in which the Union operates in terms of some of its competences. Some speakers proposed replacing the word "federal" by "Community" or "supranational".

"Ever closer union"

Some Convention members advocating incorporating into this paragraph the concept of the ever closer Union which appears in the current Article 1 of the Treaty. One speaker suggested that an appropriate place for this concept was the Preamble to the Constitution, since it was intended to look towards the future. One Convention member said she saw a link between this issue and the question of the term "federal basis": she would be able to accept that expression provided the Constitution no longer included the expression "ever closer union".

Drafting points

Some members described the opening formula of Article 1 as "banal" and made alternative suggestions such as "...determined to build their future together". Moreover, the verb "administer" was criticised as being too bureaucratic.

Structure of the paragraph

Some speakers proposed inverting the order of the second part of the sentence so that the competences conferred on the Union came first, before the coordination of Member States' policies.

Article 1(2)

Several Convention members stressed the need to define more clearly the expression "national identity" in paragraph 2 of this Article and expressed doubts as to the advisability of mentioning national identity in two places in the Constitution. These members in particular proposed to make this concept more specific by adding various aspects such as cultural or linguistic diversity, autonomy and regional and other characteristics. Some speakers proposed amplifying the concept by adding the provisions of Article 9(6) or drawing up a new article on the basis of Article 1(2), supplemented by Article 9(6). However, one speaker expressed misgivings about incorporating elements of Article 9(6), fearing that the new paragraph would be overloaded.

Article 1(3)

One speaker pointed out that Article 1(3) relating to the Union's openness to other States was more mandatory in its wording of the conditions for membership than the provisions laid down for existing Member States in Article 2 on the Union's values.

At the end of the discussion on draft Article 1, the Vice-Chairman of the Convention summed up by noting, first of all, that there was a large body of opinion in favour of merging the existing drafts on national identity (Articles 1(2) and 9(6)) in a separate new article which would incorporate the various aspects of national identity set out in current Article 9(6). He said again that the Praesidium intended to draw up a formula which would express, without ambiguity, that the Union's competences came from the States and would make it clear that the Union's coordinating function was restricted to certain policies on the basis of the competences conferred on it. For the rest, he said that the Praesidium would look more closely at certain points which were still controversial, such as:

- use of the term "citizens" or "peoples" in Article 1(1);
- whether or not to use the term "federal basis" in Article 1(1).

Article 2

The Vice-Chairman introduced the discussion by explaining the logic which the Praesidium had followed in drafting this article, which was intended to be limited to a short list of the most essential values, accepted by all, and of sufficient legal clarity that serious breaches by a Member State could be sanctioned. He pointed out that a very large number of amendments set out to add equality and/or equality between men and women to the values. He also explained the Praesidium's approach to mentioning religion, referring back to Chairman Giscard d'Estaing's conclusions at the end of the last plenary session. Lastly, the Vice-Chairman noted that many amendments had raised the question of the relevance of the second sentence of this article, which was worded more as an aim than a value.

Many speakers requested that either the concept of equality in general (or in the case of some, equality before the law), or of equality between men and women, or both be added to the list of values. Several speakers argued that the term "equality" was no more general than "liberty" or "democracy" and should therefore be in line with the Praesidium's approach.

One member proposed speaking of "the inviolability" of human dignity, rather than simply respect, in line with the terminology of the Charter of Fundamental Rights. Some members also preferred the expression "fundamental rights" rather than "human rights".

Some members advocated enshrining cultural and linguistic diversity in Article 2, on the grounds that it was a true value of the Union; they did acknowledge, however, that drafting considerations could militate in favour of its inclusion in Article 3.

Several speakers took the point raised by the Vice-Chairman relating to the current wording of the second sentence and asked that it be either merged with the first sentence or moved to the Preamble or Article 3.

As regards references to religion, some Convention members wanted to go further than the Praesidium's approach as sketched out by the Chairman and Vice-Chairman, by making a reference to God in the Constitution; several other Convention members, on the other hand, expressed their satisfaction with the Praesidium's line.

The Vice-Chairman's argument that any reference to religious and spiritual values or heritage could in any event be included only in the Preamble and not in Article 2 was generally accepted.

In conclusion, the Vice-Chairman noted that a body of opinion had emerged in favour of including equality among the values and for some this also meant a reference to equality between men and women. He also said that the Praesidium would draw up a better formula for linking the two sentences in current draft Article 2.

Article 3

The Vice-Chairman briefly introduced the discussion on this article, reminding members of the state of play on the subject, as expressed both at the plenary session and by means of the amendments submitted by Convention members. He raised certain points on which there already seemed to be a degree of consensus, such as the need to express more fully the aims of environmental protection and improvement and of sustainable development and the need for a more open and less "Euro-centric" wording of paragraph 4 on the Union's role in the world, aligning it on the wording arrived at by Working Group VII. He also pointed out that the wording of the article should allay both the concerns of those who wanted to express the characteristics of the social market economy and of those who advocated an open market and free competition. Moreover, the Vice-Chairman indicated that a "mainstreaming" clause (taking into account in all the Union's policies the requirements of equality between the sexes and environmental protection) would in any event be included in the Constitution, but that there was room for discussion on the appropriate place for

such a clause (Part One or Part Two of the Constitution). Finally, he stressed that, despite all the suggested additions, the article should be kept fairly concise.

Some speakers made the general point that the objectives set out in Article 3 would be used by the Court of Justice, and consequently needed to be worded more clearly. It was commented that there should be a direct link between the Union's competences and its objectives and that objectives should not be mentioned if the Union did not have the competence to achieve them. Several Convention members endorsed the appeal by the Vice-Chairman to keep the wording of the article concise.

Some Convention members felt it was superfluous to include in Article 3(1) concepts such as peace and other values already covered in Article 2.

Others regretted the failure to adopt the principles that the Union's action should be as open as possible and as close as possible to its citizens, and proposed that a separate paragraph be added including those principles.

Finally, several Convention members asked for a "mainstreaming" or consistency clause, as also mentioned by the Vice-Chairman, to be inserted either in this article or in Part Two.

Article 3(2)

Many speakers welcomed the indication given by the Vice-Chairman that environmental protection and improvement and sustainable development in its various aspects might be more forcibly expressed, and submitted concrete drafting proposals to that effect.

- Several speakers called for a reference to both an "open market economy with free competition", as enshrined in current Article 4 TEC and a reference to the "social market economy", and the Convention members pointed out that the two concepts were not mutually exclusive. Moreover, referring to the conclusions of Working Group XI, some Convention members mentioned various aspects of the social market economy such as public health protection, combating social exclusion, promoting the quality of work and/or access to education and training, and high-quality services of general interest.

Several speakers wanted to add the idea of territorial cohesion. In that context, the point was made that such an addition would inevitably have consequences for the definition, in Part Two, of the structural funds policy, currently intended to promote economic and social cohesion only.

Lastly, some speakers suggested including a reference to the promotion of non-discrimination, especially in the fields currently covered by Article 13 TEC.

Article 3(3)

A series of speakers pointed out that since cultural diversity was not specifically linked to the area of freedom, security and justice, it should be mentioned separately. Others, in contrast, suggested enhancing the enshrinement of the area of freedom, security and justice by mentioning some of its constituent elements, notably the fight against racism and xenophobia which they thought should be included either here or in Part Two of the Treaty.

Some Convention members stressed the importance of adding the concept of linguistic diversity to that of cultural diversity; in this context, one speaker also added the idea of respect for the rights of minorities. The proposal to add the concept of a common cultural heritage in order to maintain the balance of Article 151(1) TEC was positively received.

Article 3(4)

Several speakers called for a more open and less defensive wording of this paragraph, based on the drafts suggested by Working Group VII. One Convention member questioned the concept of "the Union's independence". Those Convention members thought that reference should be made to respect for international law, the principles of the United Nations Charter and to fundamental rights in general, which some members thought should cover the reference to children's rights. The Vice-Chairman accepted that this paragraph ought to be redrafted along those lines, as already revised by the Working Group. Some speakers did not want objectives such as the protection of children's rights or the eradication of poverty to be linked to the defence of the Union's independence and interests in the world, so that account could also be taken of them internally.

Some Convention members explicitly wanted Article 3(4) to contain the definition and implementation by the Union of a common foreign and security policy and a common defence policy. Others pressed for a reference to the promotion of free trade.

One speaker proposed that, in this article, the Union reject war as a means of resolving international disputes.

Article 4

The Vice-Chairman opened the debate by saying that a relatively broad consensus had been reached on the draft article at the Convention plenary session. A very brief discussion on this point ensued.

One speaker emphasised the fact that approval of this article did not preclude the existence of special arrangements concerning the common foreign and security policy and certain aspects of Justice and Home Affairs.

Another speaker also insisted that the legal personality of the Union could not, in his view, turn the Union into a federation.

Article 5 to 7

In his introduction, the Vice-Chairman said that although several Convention members had called for the legal basis of Article 5(2) to be extended to include accession to other international conventions in the field of human rights, the Praesidium took the view that the current draft, which mentioned only the ECHR, should not be understood *a contrario* as ruling out accession to other conventions. This clause was necessary for the ECHR, in the light of the opinion of the Court of 1996, which rejected competence to accede to the ECHR on the ground that such accession "would be of constitutional significance"; on the other hand, in the case of other conventions in the field of human rights which did not have such "significance" and with linkage to the Union's competences, the existing legal bases in the Treaty (and included in Part Two) should suffice.

Moreover, as regards the calls to add other forms of discrimination to the current draft Article 6 on non-discrimination on grounds of nationality, the Vice-Chairman called for caution, considering that such an addition could have much wider legal consequences than the prohibition of discrimination contained in Article 21(1) of the Charter, the scope of which is clearly limited by Article 51 of the Charter.

Lastly, the Vice-Chairman raised the matter of potential duplication between Articles 6 and 7(2) (list of citizens' rights), on the one hand, and the text of the Charter, on the other, inviting the members to take a position on the choice of principle that had to be made in that respect.

During the discussion on Articles 5 to 7, the following points were covered:

- A suggestion was made to incorporate, in Title II, a new article devoted to the four fundamental freedoms on the grounds that the vital importance of those freedoms to European integration would justify their inclusion in the initial articles of the Constitution; this importance had more to do with the nature of fundamental rights having direct effect than the nature of the Union's competence. This proposal was welcomed by the Vice-Chairman and other Convention members.

- A number of Convention members favoured including the Charter in the actual text of the Constitution, rather than in a protocol; most of them expressed a preference either for inserting it in Part One or for the Charter to constitute Part Two. One Convention member added that in that case the preamble to the Charter could not be incorporated as such, since the Constitution could not have two preambles.
- One Convention member said that, were the Charter incorporated, the "Explanations" on the Charter should be strengthened and attached to the text of the Charter. However, the other Convention members and the Vice-Chairman, while supporting the conclusions of the Working Group on the publication of the updated Explanations, rejected the idea of attaching the Explanations to the text of the Charter in the Constitution, as that would give them the same legal value as the Charter itself. Instead, the Explanations should retain their current value, i.e. as preparatory work which could serve as a valuable instrument for interpreting the Charter.
- As regards Article 5(2), several Convention members remarked that it would be dangerous to confine it to one optional legal basis, to be used by the Council acting unanimously, which might result in accession to the ECHR being blocked. On the other hand, it was acknowledged that the Constitution could not lay down a firm obligation to accede, given that such accession would still depend on negotiations to be conducted with the Member States of the Council of Europe, and on their agreement. Support emerged and was accepted by the Vice-Chairman for wording to the effect that "the Union shall seek ..." accession to the ECHR.
- Several Convention members pointed out that the current Article 6 could be deleted if the Charter, which contains an identical provision in its Article 21(2), were included in the actual text of the Constitution. The Vice-Chairman returned to this point in his conclusions and stressed the need to examine the possibilities for avoiding duplication between Part One and the Charter.

ANNEX**EUROPEAN CONVENTION****Additional session on Wednesday 26 March 2003****LIST OF SPEAKERS****Further discussion on the draft of Articles 1 to 7 (CONV 528/03)**

Mr Andrew Nicholas DUFF - European Parliament
Mr Esko Olavi SEPPÄNEN - European Parliament
Mr Inigo MENDEZ DE VIGO - European Parliament
Mr Neil Nicholas MACCORMICK - European Parliament
Mr Manfred DAMMEYER - Observer
Ms Riitta KORHONEN - Finland (Parliament)
Ms Teija TIILIKAINEN - Finland (Government)
Mr Paraskevas AVGERINOS - Greece (Parliament)
Mr Tunne KELAM - Estonia (Parliament)
Mr Gerhard TUSEK - Austria (Government)
Mr Jens-Peter BONDE - European Parliament
Mr Bobby McDONAGH - Ireland (Government)
Mr Gijs DE VRIES - Netherlands (Government)
Mr Adrian SEVERIN - Romania (Parliament)
Ms Anne VAN LANCKER - European Parliament
Ms Lone DYBKJAER - European Parliament
Mr Henrik HOLOLEI - Estonia (Government)
Mr Manuel LOBO ANTUNES - Portugal (Government)
Mr Peter HAIN - United Kingdom (Government)
Mr Rytis MARTIKONIS - Lithuania (Government)
Ms Helle THORNING-SCHMIDT - European Parliament
Ms Elena PACIOTTI - European Parliament
Mr Peter SERRACINO-INGLOTT - Malta (Government)
Mr Peter ECKSTEIN KOVACS - Romania (Parliament)
Mr Michel BARNIER - Commission
Lord MACLENNAN of Rogart - United Kingdom (Parliament)

Mr Ben FAYOT - Luxembourg (Parliament)
Ms Maria BERGER - European Parliament
Mr Franc HORVAT - Slovenia (Parliament)
Mr Caspar EINEM - Austria (Parliament)
Mr Johannes VOGGENHUBER - European Parliament
Ms Lenka ROVNA - Czech Republic (Government)
Mr Alojz PETERLE - Slovenia (Parliament)
Mr Filadelfio BASILE - Italy (Parliament)
Mr Tunne KELAM - Estonia (Parliament)
Mr. Paolo PONZANO - Commission
Ms Claude Du GRANRUT - Observer
Mr. Vytenis ANDRIUKAITIS - Lithuania (Parliament)
Ms Sylvia-Yvonne KAUFMANN - European Parliament
Mr Jens-Peter BONDE - European Parliament
Mr Peter ECKSTEIN KOVACS - Romania (Parliament)
Mr Peter HAIN - United Kingdom (Government)
Mr Franc HORVAT - Slovenia (Parliament)
Ms Lone DYBKJAER - European Parliament
Mr Esko Olavi SEPPÄNEN - European Parliament
Mr Gijs DE VRIES - Netherlands (Government)
Mr Proinsias DE ROSSA - Ireland (Parliament)
Mr Elmar BROK - European Parliament
Ms Maria BERGER - European Parliament
Ms Anne VAN LANCKER - European Parliament
Mr Neil Nicholas MACCORMICK - European Parliament
Ms Riitta KORHONEN - Finland (Parliament)
Lord MACLENNAN of Rogart - United Kingdom (Parliament)
Mr Peter SERRACINO-INGLOTT - Malta (Government)
Mr Paraskevas AVGERINOS - Greece (Parliament)
Mr Carlos CARNERO GONZALES - European Parliament
Mr Joachim WUERMELING - European Parliament
Mr Bobby McDONAGH - Ireland (Government)
Mr Andrew Nicholas DUFF - European Parliament
Ms Helle THORNING-SCHMIDT - European Parliament

M. Vytenis ANDRIUKAITIS - Lithuania (Parliament)
Mr Adrian SEVERIN - Romania (Parliament)
Mr Manuel LOBO ANTUNES - Portugal (Government)
Mr Proinsias DE ROSSA - Ireland (Parliament)
Mr Josef ZIELENIC - Czech Republic (Parliament)
Mr Peter HAIN - United Kingdom (Government)
Mr Paolo PONZANO - Commission
Ms Anne VAN LANCKER - European Parliament
Mr Carlos CARNERO GONZALES - European Parliament
Ms Teija TIILIKAINEN - Finland (Government)
Mr Neil Nicholas MACCORMICK - European Parliament
Ms Lone DYBKJAER - European Parliament
Ms Pia-Noora KAUPPI - European Parliament
Mr Peter HAIN - United Kingdom (Government)
Mr Jens-Peter BONDE - European Parliament
Ms Anne VAN LANCKER - European Parliament
M. Vytenis ANDRIUKAITIS - Lithuania (Parliament)
Mr Paraskevas AVGERINOS - Greece (Parliament)
Mr René VAN DER LINDEN - Netherlands (Parliament)
Mr Andrew Nicholas DUFF - European Parliament
Mr Neil Nicholas MACCORMICK - European Parliament
Mr Paolo PONZANO - Commission
Mr Jens-Peter BONDE - European Parliament

THE EUROPEAN CONVENTION**Brussels, 26 May 2003**

THE SECRETARIAT

SUMMARY OF PROCEEDINGS

**Subject: Meeting of the Praesidium
Brussels, 21-23 May 2003**

21 May**1. Economic governance - revised Articles 3, 8 and 21 of text discussed on 14 May**

The Praesidium reached agreement on the texts of revised articles on the Broad Economic Policy Guidelines, the Excessive Deficit Procedure, and on the decision-making procedures for those Member States outside the euro-zone. It was agreed that these would be submitted to the Convention as part of the consolidated Part III articles.

2. Budget

The Praesidium reached agreement on the texts of revised articles on the budget for Part I and Part III of the Constitution, and agreed that these would be circulated to the Convention as part of the consolidated sets of articles.

3. Implementation of Union action (Part I, Articles 24 to 32a, with the exception of Articles 29 and 30 of Title V) - revised

The Praesidium reached agreement on the texts of revised articles on the implementation of Union action (articles 24 to 32a of Part I), and agreed that these would be circulated to the Convention as part of the consolidated Part I articles.

4. Social Europe

The Praesidium reviewed follow-up to the conclusions of the Social Europe Working Group, noting where they had been reflected in new or amended articles.

5. Area of freedom, security and justice (Part III) - revised

The Praesidium reached agreement on the texts of revised articles on freedom, security and justice for Part III of the Constitution, and agreed that these would be circulated to the Convention as part of the consolidated Part III articles.

22 May

1. Definition and objectives of the Union (Part I, Articles 1 to 7)

The Praesidium reached agreement on the texts of revised articles on the definition and objectives of Union action (articles 1 to 7 of Part I), and agreed that these would be circulated to the Convention as part of the consolidated Part I articles.

2. General and Final Provisions (Part IV)

The Praesidium reached agreement on the texts of revised articles on the General and Final Provisions for Part IV of the Constitution, and agreed that these would be circulated to the Convention with the consolidated Part III articles.

3. Institutions (Part I - Articles 14 to 23 and Part III)

The Praesidium agreed to resubmit the existing Part I texts on institutions unamended at this stage as part of the consolidated Part I texts with a covering explanatory note. It also agreed on a set of Part III institutions articles, excluding those directly linked to the Part I provisions, for inclusion in the consolidated Part III articles.

4. External action (Part I articles 29 and 30 and Part II)

The Praesidium reached agreement on the texts of revised articles on external action for Part I and Part III of the Constitution, and agreed that these would be circulated to the Convention as part of the consolidated sets of articles.

23 May

1. Charter

The Praesidium reached agreement, on the basis of a paper from the Secretariat, on how the Charter on Fundamental Rights should be incorporated into the Constitution as its Part II. It agreed in particular that the preamble to the Charter should be included as an introduction to Part II, and that the numbering system for the articles of the Constitution should be separate for each of the four Parts.

2. Preamble

The Praesidium had a brief discussion on the preamble to the Constitution on the basis of several texts. It agreed to return to this issue at its next meeting.

3. The Union and its immediate environment; and Union membership (Titles IX and X of Part I)

The Praesidium reached agreement on the texts of revised articles on the Union and its immediate environment (Title IX) and Union membership (Title X) and agreed that these would be circulated to the Convention as part of the consolidated Part I articles.

4. Part III (including new legal bases).

The Praesidium reached agreement on the texts of draft articles for new legal bases on energy, civil protection, intellectual property, civil administration, space and sport. It agreed that these would be submitted to the Convention together with the consolidated Part III articles for discussion at its meeting on 30-31 May.

The Praesidium also received a first edition of the first two volumes of texts (covering the whole new Constitution) before the end of its meeting. It agreed that the Secretariat would circulate these to the Convention as early as possible the following week. (Volume I was accordingly circulated on 26 May, and Volume II on 27 May, with new commentaries explaining how the Praesidium had reacted to the amendments suggested, and comments made, by Convention members.)

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The next meeting will take place on 28 May 2003 in the Justus Lipsius building. It will begin at 10h.30.

THE EUROPEAN CONVENTION
THE SECRETARIAT

Brussels, 16 June 2003 (18.06)
(OR. en,fr)

CONV 783/03

NOTE

Subject : **Summary report on the plenary session**
– Brussels, 30 and 31 May 2003

I. INTRODUCTION

The Chairman briefly presented the documents which had been submitted to Convention members during the days preceding the plenary session. For the first time, Convention members had an overview of the draft Constitution with its Parts I, II, III and IV and the Preamble.

The Chairman stated that the Praesidium had given a thorough reading to the texts initially submitted and made a number of amendments to them in order to take account of the amendments tabled by Convention members. The Chairman described the main changes made to the texts of the Articles.

As regards the Institutions, the text had not been amended, the Praesidium having considered that, given the number and above all the nature of the comments made by Convention members on the text, further time for reflection on this matter was required.

The Chairman then presented the Convention work programme for the next few weeks. In order to obtain maximum data for the evaluation of institutional issues, the Praesidium agreed that the Chairman and the two Vice-Chairmen would consult each of the component groups of the Convention on Wednesday 4 June. The plenary session on 5 and 6 June would be devoted to the debate on Part I of the Constitution (with the exception of institutional issues) so as to provide the Praesidium with the necessary pointers for any subsequent amendments.

Some speakers wanted provision to be made for specific procedural arrangements with regard to common foreign and security policy.

V. DEBATE ON DRAFT PART II OF THE CONSTITUTION

The incorporation of the Charter of Fundamental Rights and its Preamble into Part II of the Constitution was largely endorsed by Convention members, although some would have preferred the Charter to constitute Part I, and others that it should be incorporated into a protocol annexed to the Treaty.

For several Convention members, the adaptations of the final horizontal clauses of the Charter made by Working Group II and the updating of the Praesidium's explanations are an essential condition for being able to agree on conferring a legal value upon it. Some would also like to confer a legal value on the explanations themselves, or at the very least to refer explicitly to them in the text of the Constitution. Mr Vitorino, the Chairman of the Working Group on the Charter, stated that work on updating the explanations of the Charter was under way.

VI. DEBATE ON THE DRAFT ARTICLES IN PART III OF THE CONSTITUTION

Several Convention members said they would like to be able to examine in greater depth certain questions in Part III, especially from a more technical point of view. The main questions raised at this preliminary debate were as follows:

Extension of qualified majority voting

One of the main themes discussed was the extension of qualified majority voting. A great many Convention members thought that the extension to date was not sufficient, and some said that cases subject to unanimity should be strictly limited to exceptional instances. Others pointed to the need

31. Mme Linda McAVAN - Parlement européen
 32. Mme Hildegard PUWAK - Roumanie (Gouvernement)
 33. M. Jan FIGEL - Rép. Slovaque (Parlement)
 34. Mme Anne VAN LANCKER - Parlement européen
 35. Mme Danuta HÜBNER - Pologne (Gouvernement)
 36. M. Alberto COSTA - Portugal (Parlement)
 37. M. Jari VILÉN - Finlande (Parlement)
 38. M. John BRUTON - Irlande (Parlement)
- Cartons bleus : Duff, Roche, Van Lancker, MacCormick, Barnier)*

SUPLÉANTS

- | | |
|--|-----------------------------|
| 39. M. David O'SULLIVAN - Commission | * suppléant M. Vitorino |
| 40. M. Hans-Martin BURY - Allemagne (Gouvernement) | * suppléant M. Fischer |
| 41. Lord TOMLISON - Royaume Uni (Parlement) | * suppléant Mme Stuart |
| <i>(Cartons bleus : Christophersen, de Vries, Duhamel)</i> | |
| 42. M. Pierre CHEVALIER - Belgique (Gouvernement) | * suppléant M. Michel |
| 43. M. Carlos CARNERO - Parlement européen | * suppléant M. Marinho |
| 44. Mme Lenka ROVNA - Rép. Tchèque (Gouvernement) | * suppléante M. Kohout |
| 45. Mme Pervenche BERÈS - Parlement européen | * suppléante M. Duhamel |
| 46. M. Adrian SEVERIN - Roumanie (Parlement) | * suppléant M. Hasotti |
| 47. Mme Pascale ANDREANI - France (Gouvernement) | * suppléante M. De Villepin |
| 48. M. Valdo SPINI - Italie (Parlement) | * suppléant M. Follini |
| 49. M. Henrik HOLOLEI - Estonie (Gouvernement) | * suppléant M. Meri |
| 50. M. Antonio NAZARÉ PEREIRA - Portugal (Parlement) | * suppléant Mme Azevedo |
- (Cartons bleus : Barnier, Fayot, Kiljunen, Lenmarker, Van Lancker)*

OBSERVATEURS

M. Emilio GABAGLIO - Partenaires sociaux

Samedi 31 mai

3. Débat sur le projet des parties II et III de la Constitution (CONV 725/03, CONV 726/03, CONV 727/03)

1. M. Hannes FARNLEITNER - Autriche (Gouvernement)
 2. M. Jan FIGEL - Rép. Slovaque (Parlement)
 3. Mme Anne VAN LANCKER - Parlement européen
 4. M. Göran LENNMARKER - Suède (Parlement)
 5. M. Ernani LOPES - Portugal (Gouvernement)
 6. M. Kimmo KILJUNEN - Finlande (Parlement)
 7. M. Antonio TAJANI - Parlement européen
 8. M. Antonio VITORINO - Commission
 9. M. Sören LEKBERG - Suède (Parlement)
 10. Mme Teija TIILIKAINEN - Finlande (Gouvernement)
 11. M. Pierre LEQUILLER - France (Parlement)
 12. M. Dick ROCHE - Irlande (Gouvernement)
 13. M. Hubert HAENEL - France (Parlement)
- (Cartons bleus : Voggenhuber, Fayot, Hain, Rack, Paciotti, Vitorino)*
14. M. Andrew DUFF - Parlement européen
 15. M. Pierre CHEVALIER – Belgique (Gouvernement)

16. M. Jürgen MEYER - Allemagne (Parlement)
 17. M. Peter HAIN - Royaume Uni (Gouvernement)
 18. M. Olivier DUHAMEL - Parlement européen
 19. M. Michel BARNIER - Commission
 20. M. Aloiz PETERLE - Slovénie (Parlement)
 21. Mme Hanja MAIJ-WEGGEN - Parlement européen
 22. M. Proinsias DE ROSSA - Irlande (Parlement)
 23. M. Gianfranco FINI - Italie (Gouvernement)
 24. M. Caspar EINEM - Autriche (Parlement)
 25. M. Jelko KACIN - Slovénie (Parlement)
 26. M. Elmar BROK - Parlement européen
 27. Mme Sandra KALNIETE - Lettonie (Gouvernement)
- (Cartons bleus : Berès, Kvist, Carey, Lenmarker, Van der Linden, Barnier, Maij-Weggen, Roche, Van Lancker, Thorning Schmidt, Gormley, Bruton)*
28. M. Vytenis ANDRIUKAITIS - Lituanie (Parlement)
 29. M. Erwin TEUFEL - Allemagne (Parlement)
 30. M. Alain LAMASSOURE - Parlement européen
 31. M. Peter SERRACINO-INGLOTT - Malte (Gouvernement)
 32. M. Panayiotis DEMETRIOU - Chypre (Parlement)
 33. M. Lamberto DINI - Italie (Parlement)
 34. M. Ben FAYOT - Luxembourg (Parlement)
 35. M. Jan ZHRADIL - Rép. Tchèque (Parlement)
 36. M. Gijs DE VRIES - Pays Bas (Gouvernement)
 37. Mme Eduarda AZEVEDO - Portugal (Parlement)
 38. Mme Hildegard PUWAK - Roumanie (Gouvernement)
 39. Mme Sylvia-Yvonne KAUFMANN - Parlement européen

SUPPLEANTS

- | | |
|--|-----------------------------|
| 40. M. Adrian SEVERIN - Roumanie (Parlement) | * suppléant M. Hasotti |
| 41. M. Diego LOPEZ GARRIDO - Espagne (Parlement) | * suppléant M. Borrell |
| 42. Mme Pascale ANDREANI - France (Gouvernement) | * suppléante M. De Villepin |
| 43. M. Hans-Martin BURY - Allemagne (Gouvernement) | * suppléant M. Fischer |
| 44. Mme Elena PACIOTTI - Parlement européen | * suppléante Mme McAvan |
| 45. Mme Maria BERGER - Parlement européen | * suppléante M. Hänsch |
| 46. M. Valdo SPINI - Italie (Parlement) | * suppléant M. Follini |
| 47. M. Joachim WUERMELING - Parlement européen | * suppléant de M. Kirkhope |
| 48. M. Eduard MAINONI - Autriche (Parlement) | * suppléant M. Bösch |
| 49. Mme. Marta FOGLER - Pologne (Parlement) | * suppléante M. Oleksy |
| 50. M. William ABITBOL - Parlement européen | * suppléant M. Bonde |
| 51. M. Istvan SZENT-IVANY - Hongrie (Parlement) | * suppléant M. Vastagh |
| 52. M. Esko HELLE - Finlande (Parlement) | * suppléant M. Vilén |
- (Carton bleu : Lenmarker, De Rossa, Cisneros, Vilen)*

OBSERVATEURS

- M. Emilio GABAGLIO - Partenaires sociaux
M. Josef CHABERT - Comité des régions
(Carton bleu : McLennan, Dybkjaer, Wagener, Bonde)

THE EUROPEAN CONVENTION
THE SECRETARIAT

Brussels, 19 June 2003 (25.06)
(OR. fr,en)

CONV 814/03

NOTE

Subject : Summary report of the Plenary Session
 – Brussels, 11 and 13 June 2003

Reaching consensus

1. On 13 June the Convention reached broad consensus on texts to be presented by the President of the Convention on its behalf to the European Council of Thessaloniki, of the Preamble, Part I on the constitutional provisions, Part II on the Charter of fundamental rights, and the Protocols on the role of national parliaments and the application of the subsidiarity and proportionality principles (CONV 797/1/03). The President recalled the mandate from the Laeken European Council and commended members of the Convention for reaching "un résultat inespéré" (a result unhoped-for).
2. After two days of debates in plenary, as well as intense negotiations within and between the different components of the Convention and political groups, the President of the Convention presented on 13 June the text as revised by the Praesidium in the light of the outcome of these discussions, introducing changes to the Preamble, to the chapter on institutions in Part I, and to Part II on the Charter; and including a new provision for a "citizens initiative" (CONV 811/03). The President highlighted that the text was the result of a collective effort to progressively identify a balance between the different expectations and sensibilities of Convention members.

3. In their interventions, members of the Convention expressed their appreciation for the final outcome and considered that it represented a fair and balanced result. Many spoke of a historic achievement. While maintaining the balance between Member States and between the Institutions, the Convention has succeeded in re-designing the Union to be more transparent and closer to the citizens, with clearer competences, and more effective and democratic decision-making. All welcomed the fact that the Convention method had succeeded in producing a single text, without options, and that improvements had been made in areas where successive IGCs had failed to produce results. Among the achievements of the Convention, speakers praised in particular the abolition of the pillar structure, the attribution of a single legal personality, the integration of the Charter, the simplification of instruments and procedures, the major strengthening of the roles of the European Parliament and national Parliaments, the extension of decision-making by QMV and lawmaking by codecision, and the creation of the post of EU Minister of Foreign Affairs.
4. Members of the Convention called on Member States not to reopen the text in the IGC as this could undermine the delicate balance reached by the Convention.
5. Notwithstanding the positive assessment of the general outcome, some speakers felt that the Convention should have reduced further the use of unanimity, in particular on taxes and CFSP issues, or were disappointed that Part I failed to mention services of general interest. Others considered that on some issues the Convention went too far, for example on structural cooperation in defence or trade in cultural services, while some expressed reservations on the definition of qualified majority.

Issues raised during the discussions

6. In addition to the issues covered above, a number of other issues were raised during the discussions in the plenary.

7. Some members felt that a clear reference to Christianity or Christian values should be included in the preamble. Others opposed this, saying that the current wording on "religious heritage" was sufficient and that they could not accept a reference to a specific religion.
8. Some considered the "passerelle" transition on QMV an infringement of the rights of national parliaments as use of it would not require ratification by Member States. Others feared that in practice it would never be used, and that continuing national vetoes would reduce the Union's capacity to act effectively. In general, members agreed on the usefulness of such a clause, given that the time was not ripe for abolition of the right of veto.
9. With regard to the Charter, a number of members expressed their surprise and reservations as to the sentence on the explanations relating to the Charter which the Praesidium had decided to insert into the Preamble to the Charter (at the beginning of Part II). The Chairman of Working Group II nevertheless defended this as a solution, which he termed a reasonable compromise, and which would not mean that the explanations as such would be accorded full legal status. Other members rallied round this position, pointing out that it was a compromise which was needed by at least five Member States so that inclusion of the Charter in the Constitution as proposed by the Praesidium could be ratified. Other members commented that, although it was a very painful concession, they were prepared to put up with this wording in the Preamble if it enabled inclusion of the Charter, but that they would nonetheless be opposed to the drafting of an article in the Constitution referring to the explanations.
10. A number of speakers argued that the Union needed a lighter treaty revision procedure which moved away from unanimity and national ratification. While highlighting the sensitivity of this issue and the need of maintaining a role for national parliaments, the President indicated that this issue could be further discussed in the context of Part IV.

11. The President finally informed the Convention that his report to the European Council would mention "areas of disagreement" where these had been expressed collectively, as was the case for the "minority report" by five members of the Convention. He would deliver their text to the President of the European Council.

Further examination of Part III and Part IV

12. The President confirmed that he would ask the European Council to extend the mandate of the Convention to allow it to finalise Parts III and IV. Members of the Convention could send amendments on these parts to the Secretariat up to Monday 23 June 13h00. Without prejudging European Council decisions, the President announced provisional plans for Plenary meetings of the Convention on 4 July and on 9-10 July.
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ANNEX

List of speakers following order of intervention.

Plenary meeting 11, 12 and 13 June 2003**LIST OF SPEAKERS****Wednesday 11 June**

1. Mr Andrew DUFF - European Parliament
2. Mr Elmar BROK - European Parliament
3. Mr Jens-Peter BONDE - European Parliament
4. Ms Hildegard PUWAK - Romania (Government)
5. Mr Michel BARNIER - Commission
6. Mr René van der LINDEN - Netherlands (Parliament)
7. Mr Jürgen MEYER - Germany (Parliament)
8. Mr Dick ROCHE - Ireland (Government)
9. Mr Antonio TAJANI - European Parliament
10. Mr Josep BORRELL FONTELLES - Spain (Parliament)
11. Ms Pascale ANDREANI - France (Government)
12. Ms Marietta GIANNAKOU - Greece (Parliament)
13. Mr Gijs de VRIES - Netherlands (Government)
14. Mr Hubert HAENEL - France (Parliament)
15. Mr Erwin TEUFEL - Germany (Parliament)
16. Mr Alain LAMASSOURE - European Parliament
17. Mr Proinsias de ROSSA - Ireland (Parliament)
18. Mr Pierre LEQUILLER - France (Parliament)
19. Mr Joschka FISCHER - Germany (Government)
20. Ms Lena HJELM-WALLÉN - Sweden (Government)
21. Mr Peter HAIN - United Kingdom (Government)
22. Mr Alojz PETERLE - Slovenia (Parliament)
23. Ms Ana PALACIO - Spain (Government)
- *****
24. Mr Iñigo MENDEZ DE VIGO - European Parliament
25. Ms Marietta GIANNAKOU - Greece (Parliament)
26. Mr Johannes VOGGENHUBER - European Parliament
27. Mr Jacques SANTER - Luxembourg (Government)
28. Mr Tunne KELAM - Estonia (Parliament)
29. Mr Georgios KATIFORIS - Greece (Government)
30. Mr Elmar BROK - European Parliament
31. Mr Michel BARNIER - Commission
32. Mr Paraskevas AVGERINOS - Greece (Parliament)
33. Mr Vytenis ANDRIUKAITIS - Lithuania (Parliament)
34. Mr Adrian SEVERIN - Romania (Parliament)
35. Ms Hanja MAIJ-WEGGEN - European Parliament
36. Mr Kimmo KILJUNEN - Finland (Parliament)
37. Mr Andrew DUFF - European Parliament
38. Mr Olivier DUHAMEL - European Parliament
39. Mr Peter HAIN - United Kingdom (Government)
40. Mr Jan ZAHRADIL - Czech Republic (Parliament)
41. Mr Valdo SPINI - Italy (Parliament)

42. Ms Cristiana MUSCARDINI - European Parliament
43. Mr Josep BORRELL FONTELLES - Spain (Parliament)
44. Mr René van der LINDEN - Netherlands (Parliament)
45. Mr Göran LENNMARKER - Sweden (Parliament)
46. Mr Panayotis DEMETRIOU - Cyprus (Parliament)
47. Ms Sylvia-Yvonne KAUFMANN - European Parliament
48. Mr Pierre LEQUILLER - France (Parliament)
49. Mr Ben FAYOT - Luxembourg (Parliament)
50. Mr Gijds de VRIES - Netherlands (Government)
51. Lord TOMLINSON - United Kingdom (Parliament)
52. Mr William ABITBOL - European Parliament
53. Ms Renée WAGENER - Luxembourg (Parliament)
54. Lord MACLENNAN OF ROGART - United Kingdom (Parliament)
55. Ms. Elena PACIOTTI - European Parliament
56. Mr Manfred DAMMEYER - (Committee of the Regions) Observer
57. Ms Claude DU GRANDRUT - (Committee of the Regions) Observer
58. Mr Elmar BROK - European Parliament
59. Mr Iñigo MENDEZ DE VIGO - European Parliament

Thursday 12 June

1. Mr Elmar BROK - European Parliament
2. Mr Andrew DUFF - European Parliament
3. Ms Marietta GIANNAKOU - Greece (Parliament)
4. Mr Johannes VOGGENHUBER - European Parliament
5. Mr Jens-Peter BONDE - European Parliament
6. Mr Antonio VITORINO - Commission
7. Ms Hildegard PUWAK - Romania (Government)
8. Mr Josep BORRELL FONTELLES - Spain (Parliament)
9. Mr Dick ROCHE - Ireland (Government)
10. Mr René van der LINDEN - Netherlands (Parliament)
11. Mr Peter SKAARUP - Denmark (Parliament)
12. Mr Joschka FISCHER - Germany (Government)
13. Mr Jan FIGEL - Slovakia (Parliament)
14. Mr Ben FAYOT - Luxembourg (Parliament)
15. Ms Sylvia-Yvonne KAUFMANN - European Parliament
16. Mr Peter HAIN - United Kingdom (Government)
17. Mr Kimmo KILJUNEN - Finland (Parliament)
18. Mr Jürgen MEYER - Germany (Parliament)
19. Mr Caspar EINEM - Austria (Parliament)
20. Mr Michel BARNIER - Commission
21. Mr Lamberto DINI - Italy (Parliament)
22. Ms Hanja MAIJ-WEGGEN - European Parliament
23. Mr Edmund WITTBRODT - Poland (Parliament)
24. Ms Lena HJELM-WALLÉN - Sweden (Government)
25. Mr Robert BADINTER - France (Parliament)

Friday 13 June

1. Mr Iñigo MENDEZ DE VIGO - European Parliament
 2. Mr René van der LINDEN - Netherlands (Parliament)
 3. Ms Ana PALACIO - Spain (Government)
 4. Mr Michel BARNIER - Commission
 5. Mr Henning CHRISTOPHERSEN - Denmark (Government)
 6. Ms Hildegard PUWAK - Romania (Government)
 7. Mr Elmar BROK - European Parliament
 8. Mr Alojz PETERLE - Slovenia (Parliament)
 9. Mr Andrew DUFF - European Parliament
 10. Mr Johannes VOGGENHUBER - European Parliament
 11. Ms Sylvia-Yvonne KAUFMANN - European Parliament
 12. Mr Gianfranco FINI - Italy (Government)
 13. Mr Josef ZIELENIEC - Czech Republic (Parliament)
 14. Mr Erwin TEUFEL - Germany (Parliament)
 15. Mr Jens-Peter BONDE - European Parliament
 16. Ms Anne VAN LANCKER - European Parliament
 17. Mr Olivier DUHAMEL - European Parliament
 18. Ms Danuta HÜBNER - Poland (Government)
 19. Mr Antonio VITORINO - Commission
 20. Mr Dominique de VILLEPIN - France (Government)
 21. Mr Péter BALAZS - Hungary (Government)
 22. Mr Gijs de VRIES - Netherlands (Government)
 23. Mr Joschka FISCHER - Germany (Government)
 24. Mr Louis MICHEL - Belgium (Government)
 25. Mr Rytis MARTIKONIS - Lithuania (Government)
 26. Ms Hanja MAIJ-WEGGEN - European Parliament
 27. Mr Kimmo KILJUNEN - Finland (Parliament)
 28. Mr Alain LAMASSOURE - European Parliament
 29. Mr Frans TIMMERMANS - Netherlands (Parliament)
 30. Mr Hannes FARNLEITNER - Austria (Government)
 31. Mr Göran LENNMARKER - Sweden (Parliament)
-

IV.1.c. Drafts, and Members' Amendments and Contributions

THE EUROPEAN CONVENTION

THE SECRETARIAT

**Brussels, 18 June 2002 (20.06)
(OR. fr)****CONV 116/02****WG II 1****NOTE**

from :	Secretariat
to :	Working Group on "Incorporation of the Charter/Accession to the ECHR"
Subject :	Modalities and consequences of incorporation into the Treaties of the Charter of Fundamental Rights and accession of the Community/Union to the ECHR

As requested by the Chairman of the Working Group on "Incorporation of the Charter/Accession to the ECHR", the Secretariat is forwarding herewith a discussion paper examining in detail the various issues already raised in CONV 72/02, which the Group will be required to consider.

The paper is divided into three sections:

- The first section gives a brief description of the background and current legal situation with regard to the protection of fundamental rights in the Community legal system, the current status of the Charter and the question of Community accession to the European Convention on Human Rights (ECHR).
- The second section presents an analysis, together with questions to guide the Working Group's discussions, of the various options and modalities for possible incorporation of the Charter into the Treaties and of the consequences thereof. In this context it also addresses the question of actions before the Community courts.
- The third section contains an analysis and questions relating to the modalities and consequences of possible accession of the Community or the Union to the ECHR.

Discussion paper

Subject: Modalities and consequences of incorporation into the Treaties of the Charter of Fundamental Rights and accession of the Community/Union to the ECHR

I. Background and current situation

1. Fundamental rights in the Community legal system

For some 30 years the case-law of the Court of Justice has acknowledged that fundamental rights form part of Community law as general principles of this law ¹. In the absence of a written catalogue specific to the Union, the Court has derived the content of these laws through case-law, taking as a basis various sources, especially the constitutional traditions common to the Member States and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which has been ratified by all the Member States. For several years, the Court of Justice has noted that the ECHR has "special significance" in this respect, and refers explicitly to the case-law of the European Court of Human Rights ². It has also stated that not only the institutions of the Union but also the States, where they act within the scope of Community law, are required to respect fundamental rights under the supervision of the Court ³.

¹ The first references are in Case 29/69, *Stauder*, ECR 1969, 419, and Case 11/70, ECR 1970, 1125.

² See, for example, Judgments C-309/96, *Annibaldi*, ECR 1997, I-7493; C-185/95 *P Baustahlgewebe*, ECR 1998, I-8417; and for references to Strasbourg case-law, Judgments C-74/95 et al, X, ECR 1996, I-6609; C-368/95, *Familiapress*, ECR 1997, I-3689; C-7/98, *Krombach*, ECR 2000, I-1935.

³ Judgments of 13 July 1989, Case 5/88, *Wachauf*, ECR 1989, 2609, and of 18 June 1991, C-260/89, *ERT*, ECR 1991, I-2925; for recent confirmation see Judgment of 13 April 2000, C-292/97, *Karsson*, ECR 2000, I-2737, para. 37. See also, testifying to the Court's effort to restrict the scope of Community fundamental rights to the Member States, the judgments in Case C-299/95, *Kremzow*, ECR 1997, I-2629; C-309/96, *Annibaldi*, ECR 1997, I-7493.

The Treaty of Maastricht included a provision in the Treaty on European Union – current Article 6(2) of that Treaty – which confirmed this case-law *acquis*. The Treaty of Amsterdam adds to it the provision of Article 6(1) enshrining the founding principles of the Union, including respect for human rights and fundamental freedoms; it also stipulates that respect for such principles is a condition for accession to the Union (Article 49 TEU) and establishes the possibility for the Union to impose sanctions on one of its Member States in the event of a serious and persistent breach of those principles (Article 7 TEU).

2. The current status of the Charter of Fundamental Rights of the European Union

Following the conclusions of the Cologne and Tampere Councils in 1999, the Charter of Fundamental Rights of the European Union (hereinafter "Charter") was drawn up during 2000 by a Convention and then approved by the Biarritz European Council. It should also be pointed out that explanations regarding the text of the Charter were drawn up by the Praesidium of that Convention; it was specified that these explanations had no legal value but were intended to clarify the provisions of the Charter ¹. The Charter was signed and solemnly proclaimed by the Council, the European Parliament and the Commission on 7 December 2000 and published in the Official Journal ².

The Nice IGC did not give a ruling on its incorporation into the Treaties. Nice Declaration No 23 states that the debate on the future of the Union and the new IGC to be convened in 2004 will relate inter alia to "the status of the Charter of Fundamental Rights of the European Union, proclaimed in Nice, in accordance with the conclusions of the European Council in Cologne". The Laeken Declaration states that "thought would [also] have to be given to whether the Charter of Fundamental Rights should be included in the basic treaty."

¹ See CHARTE 4473/00 CONVENT 49 of 11 October 2000, accessible via <http://ue.eu.int/df>.

² C 364 of 18 December 2000.

Since the solemn declaration, a series of Advocates-General at the Court of Justice have referred to the Charter, using it – despite its lack of any formally binding force, which they take care to note – as a source for identifying Community fundamental rights¹. More recently, the Court of First Instance invoked on two occasions articles of the Charter as "confirmation" of the constitutional traditions common to the Member States². On the other hand, the Court of Justice has refrained to date from mentioning the Charter.

Furthermore, the Commission decided in March 2001 that any proposal for a legislative act and any regulatory act that it was preparing to adopt would be the subject, at the time of its drafting according to the usual procedures, of a prior compatibility check with the Charter; in addition, a new "model recital", testifying to this compatibility check, is now inserted into its legislative proposals or regulatory acts which have a specific connection with fundamental rights. Such recitals referring to the Charter have in the meantime been included in certain acts adopted by the legislator³.

¹ See conclusions of Advocate-General Alber in C-340/99, *TNT Traco*, Advocate-General Tizzano in C-173/99, *BECTU*, Advocate-General Mischo in C-122 and 125/99 P, *D v. Council*, and in C-20/00 and 64/00, *Booker and Hydro v. the Scottish Ministers*, Advocate-General Stix-Hackl in C-49/00 *Commission v. Italy*, in C-131/00, *Nilsson*, and in C-459/99, *MRAX*; Advocate-General Jacobs in C-377/98, *Netherlands v. Parliament and Council*, in C-270/99 P, *Z v. Parliament* and in C-50/00 P, *Union de Pequeños Agricultores*, Advocate-General Geelhoed in C-413/99, *Baumbast and R*, and in C-313/99, *Mulligan et al*, Advocate-General Léger in C-353/99 P, *Council v. Hautala et al*, and in C-309/99, *Wouters* – all not yet published in the ECR. The wording of Advocate-General Léger in the abovementioned Hautala case should be noted "As the solemnity of its form and the procedure which led to its adoption would give one to assume, the Charter was intended to constitute a privileged instrument for identifying fundamental rights. It is a source of guidance as to the true nature of the Community rules of positive law."

² See Judgments of 30 January 2002, T-54/99, *max-mobil*, and of 3 May 2002, T-177/01, *Jégo-Quéré*, neither of which has yet been published in the ECR.

³ See recital No 2 of Regulation 1049/2002 on access to documents of the institutions, and recital No 18 of Council Decision 2002/187 setting up Eurojust [OJ references].

3. The question of accession of the Community to the ECHR:

The Commission had already proposed in 1979 that the Community should accede to the ECHR; it reiterated this proposal in 1990 and in 1993¹. The European Parliament endorsed this on several occasions². Having received from the Council a request for an Opinion pursuant to Article 300(6) of the EC Treaty, the Court of Justice, in its Opinion 2/94 delivered in 1996³, noted that the Community was not competent to accede to the ECHR, since no Treaty provision conferred upon the institutions, in general, the power to lay down rules or to conclude international conventions on human rights, and that accession to the ECHR, which "would be of constitutional significance", would go beyond the limits of Article 235 (now Article 308) of the EC Treaty. According to this Opinion of the Court – which does not comment on whether accession to the ECHR would be compatible with the Treaty and in particular with the principle of the autonomy of Community law and the powers of the Court – such accession could be effected only by way of Treaty amendment.

The Amsterdam and Nice IGCs, to which initiatives along these lines were referred, did not insert a provision into the Treaty which would allow for the Community's accession to the ECHR.

The Laeken Declaration states that "thought would ... have to be given ... to whether the European Community should accede to the European Convention on Human Rights".

¹ See Supplement 2/79 to the Bulletin of the EC; SEC(90)2087 final, and SEC(1993) 1679 final.

² See for example the Resolution of 18 January 1994, OJ C 44, p. 32 and also that of 16 March 2000 (A5-0064/2000).

³ Opinion of the Court of 28 March 1996, ECR 1996, I-1759.

II. Modalities and consequences of possible incorporation of the Charter into the Treaties

Preliminary remark: The content of the Charter

In line with the Working Group's mandate the present paper, when referring to the "Charter", takes as a basis the Charter as adopted by the earlier Convention and solemnly proclaimed by the three institutions. Consequently, the proposals put forward since then for amending the Charter by deleting certain rights or by adding others are not examined here; this does not, of course, rule out the possibility of such proposals being made later, during the political debate by the Plenary of the Convention. Likewise, the "technical" criticisms or proposals for "drafting improvements" made by certain legal experts, referring for example to the lack of precision of certain articles of the Charter, will not be discussed either.

As regards the content of the Charter, here reflections will instead be limited to examining whether discussions conducted since 2000 on the technique of incorporation and, in particular, the future structure of the Treaties, have revealed any need for a technical amendment of the text of the Charter which does not affect its substance. With this in mind, three points should be noted:

- the question of what is to happen to the preamble to the Charter, if it were decided to incorporate the body of the Charter into the EU Treaty or into a new basic Treaty (see 3 below);
- the question if and to what extent certain purely technical adjustments need to be made in the provisions of the Charter in order to ensure consistency between the Charter and the existing Treaties (see 5 below);

- without looking at it in detail here, the possible need for an adjustment of a purely drafting nature to the references in the Charter to "Treaties" or to "Community Treaties", to the "Treaty on European Union", "Treaty establishing the European Community" or to "Community law", in the event of the current structure and/or title of these Treaties being modified in the course of their simplification ¹.

1. Possible techniques for incorporation of the Charter

If the Convention inclines towards incorporation ² of the Charter into the Treaties, several options arise as regards the technique for such incorporation:

- (a) The Charter could be "attached" to the Treaties in the form of a "Solemn Declaration".
- (b) The EU Treaty or a new basic Treaty could refer to the Charter according to the model of Article 6(2) of the existing EU Treaty. It would therefore be merely an *indirect* ³ reference to the Charter as a source of inspiration for the case-law definition of fundamental rights.
- (c) The EU Treaty or a new basic Treaty could make a *direct* reference to the Charter ⁴.
- (d) A direct or indirect reference to the Charter could be made in the preamble to a new basic Treaty.

¹ These references are to be found in the preamble to the Charter and in Articles 16, 18, 21(2), 27, 28, 30, 34, 36, 45, 51 and 52. Similarly, only where the body of the articles of the Charter were inserted into the EU Treaty itself or in a new basic Treaty (option (f) below), could a drafting adjustment of Article 51(2) of the Charter become necessary in order to make it clear that the Charter does not alter the powers and tasks as defined by *the other provisions* of the Treaties (and Article 52(2) of the Charter could be subject to a similar adjustment to make it clear that this Article relates to the rights of the Charter which are based on other provisions of the Treaties).

² The term "incorporation" is used here in the broad sense covering several forms and degrees of acknowledgement of the legal value of the Charter in the Treaties or in connection with them.

³ The indirect nature is currently expressed in the text of Article 6(2) TEU by the terms "... fundamental rights, *as guaranteed ... as general principles ...*"). As to whether the reference to the Charter should be added to or replace the two current references, see section 2 below.

⁴ Example: "The Union respects the rights, freedoms and principles enshrined in the Charter of Fundamental Rights of the European Union".

- (e) The Charter could become a new Protocol annexed to the Treaties or to a new basic Treaty.
- (f) The full body of the 54 articles of the Charter could be inserted into a title or chapter of the EU Treaty, or into a new basic Treaty, of which it would for example form the first title or chapter.

There are also various possibilities for combining options (a) to (e) (for example, "attaching" the Charter as a solemn declaration *and* reference in current Article 6(2) of the EU Treaty; Protocol annexed to the Treaties or to the new basic Treaty *and* direct reference to this Protocol in an article of the TEU/the new basic Treaty).

Several factors will influence the choice made from the techniques referred to above. Firstly, the general question whether the Convention prefers to retain the current structure of the Treaties or propose a new basic Treaty will obviously play a major role, even if each of the above techniques is in principle conceivable in both scenarios ¹.

Secondly, the precise legal value of the Charter would also vary according to the option chosen: It would be least pronounced under option (a), which would admittedly increase the symbolic and political value of the Charter without, however, clarifying or reinforcing its current legal status. Option (b) would go a little further than the previous option but nevertheless would merely formally acknowledge the Charter's status as a source of inspiration – although undoubtedly a distinguished source – for the case-law definition of fundamental rights as general principles of law. Such status appears already to be accepted in practice (see above). It is only by virtue of options (c), (e) and (f) that the Charter would acquire the status of a fully binding text, following the example of the catalogues of fundamental rights in national constitutions. On the other hand, the legal effect of a reference in a new preamble (option (d)) would seem rather uncertain, particularly in the light of Court of Justice case-law which grants preambles and recitals of Community acts a legal value

¹ Consideration is not given here to whether, if the Convention were to propose a new basic Treaty (into which the Charter would be incorporated), there should or should not be a hierarchical distinction between this Treaty and a "Part Two" of the existing primary law. This question goes beyond the subject of the Charter and should be examined by the Convention in the general context of the future structure of the Treaties.

which is only very limited and subordinate to that of the enacting terms of the act. Furthermore, if the technique of merely referring to the Charter (options (b), (c) or (d)) without incorporating the latter into a Protocol were preferred, this should lead to consideration of how the Charter could be amended in future (whereas under options (e) and (f) it would be the common arrangements for revision of the Treaties which would automatically apply).

Finally, the choice between the abovementioned options could also be informed by the preferences of the Convention members regarding the political presentation and legibility of the rights of the Charter, and of the outcome of the Convention as a whole, in the eyes of the citizen.

Which of the techniques mentioned above is (are) deemed preferable?

2. The question of the current Article 6(2) of the EU Treaty

If the Charter is incorporated into the Treaties (irrespective of the technique chosen) the question arises whether or not a reference should be kept, as currently in Article 6(2) of the EU Treaty, to the two outside sources of legal inspiration – the constitutional traditions common to the Member States and the ECHR. There are valid arguments on both sides here. For example, retaining such a clause – even if it were worded differently –¹ could be justified on the grounds that it makes it clear that the Charter will not prevent the Court of Justice from continuing to draw on these additional sources, which may also develop over time. The argument is also put forward that to retain a reference to the ECHR in the Treaty would be a desirable addition, from the point of view of legal certainty, to the reference to the ECHR in Article 52(3) of the Charter. Furthermore, deletion of current Article 6(2) TEU could be defended on the grounds that the Charter now constitutes the most

¹ In the case of options (a) and (b), the expression "and as they are recognised in the Charter ..." could be added to Article 6(2). In the case of option (c), (d) or (e), a second sentence reading as follows could be added to the sentence suggested in footnote 4 on page 7 above: "The Union shall also observe fundamental rights as guaranteed ..." (followed by the current content of Article 6(2) TEU). While option (f) sits less easily with retaining a provision such as Article 6(2) TEU, it would not be out of the question, for example, to add such a provision to the new heading, just after the last article of the Charter, or to insert a reference of the type "notwithstanding" in the latter's horizontal provisions.

authentic expression of the body of acquired fundamental rights specific to the European Union. According to that view, a "concurrent" reference to the other two sources would scarcely be comprehensible, since the Charter has already incorporated the rights in the ECHR and crystallises most fully the traditions common to the Member States¹; nor would such a reference be necessary since, as in other constitutional legal systems, a written catalogue of fundamental rights would not be understood as "exhaustive" and preventing the development, through case-law, of new rights when the times so demand.

Should incorporation of the Charter into the Treaties lead to deletion of the reference to the two outside sources represented by the constitutional traditions common to the Member States and the ECHR (see the current Article 6(2) of the EU Treaty)? Or should such a reference be kept? In the affirmative, how should it be reworded in the light of incorporation of the Charter?

3. The question of the preamble to the Charter

The articles of the Charter are preceded by a preamble, certain aspects of which played an important role in achieving the final compromise in the previous Convention. If the European Convention were to choose option (e) above, the question would arise of what should become of the preamble. It would then be conceivable to use the preamble to the Charter as the basis for drafting the preamble to a new basic Treaty or, alternatively, to incorporate its different aspects into a reformulated preamble to the EU Treaty. This question does not arise in relation to the other options, which would leave the preamble to the Charter attached to the Charter text.

What should be done with the preamble to the Charter if the Charter is incorporated into the Treaties?

¹ For this view, see judgment of the CFI of 31 January 2002, *max. mobil*, mentioned above.

4. The question of "replication" in the Charter

In order to draw up a full catalogue of the fundamental rights of the Union, the Charter, in a number of its articles, simply restates rights already expressly enshrined in the EC Treaty, often, however, in the interests of readability, shortening the wording as compared with the corresponding articles of the Treaty. These relate to rights to freedom of movement ¹, almost all the rights in the "citizenship" section of the Charter (right to vote, access to documents, right of petition, etc.) ² and the clauses relating to non-discrimination on grounds of nationality and equality between the sexes ³. Since the previous Convention had no brief to amend the Treaties, but only to draft a Charter which could be added to them, it formulated a referral clause (Article 52(2) of the Charter ⁴) to make it clear that, with regard to those rights, the legal situation as defined in the Treaties was unaffected by the Charter. That clause also made it possible to avoid the repetition, in each Charter article in question, of formulae to the effect that these rights are exercised under the conditions and within the limits provided for in the corresponding article of the Treaty and of secondary legislation ⁵.

If the option of integrating the body of the Charter into a new basic Treaty or a protocol annexed thereto (options (e) and (f)) were to be considered, some have suggested that the question would then arise whether the "replications" mentioned above between some of the Charter articles and the same rights recognised in the Treaties should be eliminated, either by deleting either the Charter articles in question or the corresponding articles from the current Treaties (which would then become the "second part" of primary legislation). However, others have commented that this

¹ Articles 15(2) and 45 of the Charter.

² Articles 39, 40, 41(4), 42 – 46 of the Charter.

³ Articles 21(2) and 23 of the Charter.

⁴ Article 52(2) reads as follows: "Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties."

⁵ On this point, see also the explanations of the Praesidium (cited in footnote 1 on page 3) relating to this Article ("Paragraph 2 specifies that where a right results from the Treaties it is subject to the conditions and limits laid down by them. The Charter does not alter the system of rights conferred by the Treaties.")

problem is more apparent than real or that in any event it would arise only in relation to a very limited number of rights¹. This question will have to be examined in greater detail if the occasion arises.

If the corpus of the articles of the Charter were to be incorporated into the new basic treaty or a protocol annexed thereto (option e), how should the "replication" arising from the fact that some articles of the Charter repeat rights already enshrined in the EC Treaty be dealt with?

5. Examination of certain technical adjustments in the provisions of the Charter

Some observers have suggested that, if the Charter is incorporated, certain technical adjustments to its wording would be needed. Other observers have challenged the need for these changes, taking the view that the general provisions of the Charter (Articles 51 to 54) are sufficient to clarify the points dealt with.

On the one hand, the criticism has been levelled that some articles of the Charter repeat rights enshrined in the EC Treaty without specifying in each article that those rights are exercised under the conditions and within the limits laid down by the Treaty, which would lead to legal uncertainty². Others hold that the horizontal provision of Article 52(2) of the Charter was designed to clarify this issue for all the articles of the Charter, while avoiding the cumbersome repetition, in each article in question, of references to the Treaty. On the other hand, it has been held that some provisions of the Charter took over those of the TEC, but with changes to them. In this connection

¹ We are thinking here in particular of the following Charter articles: Articles 39 and 40 (Right to vote and to stand as a candidate at municipal elections and elections to the European Parliament) – see Articles 19 and 190(1) TEC); 42 (access to documents – see Article 255 TEC); 43 (Ombudsman – see Articles 21 and 195 TEC), 44 (petition – Articles 21 and 194 TEC), 45(1) (freedom of movement for citizens – Article 18 TEC) and 46 (diplomatic protection – Article 20 TEC). On the other hand, in the context of equality between the sexes and freedom of movement for workers and the self-employed, it seems perfectly appropriate for the more succinct Charter text and the more detailed text in the current Treaties to exist side by side.

² In this connection mention has been made of Articles 39, 40, 42, 43 and 44 of the Charter.

reference is made to Article 21(1) of the Charter, on non-discrimination, which some claim modifies Article 13 of the EC Treaty; others point out, however, that there is no incompatibility between these two provisions, as they are different in nature and scope ¹.

In the event of incorporation of the Charter being integrated into the Treaties, would certain technical adjustments to some of its provisions be necessary? Would Article 52(2) of the Charter be sufficient or would it be necessary to make repeated reference to the conditions and limits laid down in the Treaty in each Article concerned in the Charter?

6. Treaty provisions concerning the Court of Justice

In this connection, there are three distinct issues, only the first of which arises directly as a consequence of the possible incorporation of the Charter, while the other two exist independently of it in principle even though a link has often been established:

(a) Amendment of Article 46(d) of the TEU

Depending on the option chosen for the incorporation of the Charter into the Treaties (see above), a change to the wording of Article 46(d) of the EU Treaty could prove necessary in order to ensure that the Charter is included among the provisions over which the Court has jurisdiction.

At the same time, it appears that the words "with regard to action of the institutions" in the current Article 46(d) should be deleted. As noted earlier, since the 1980s the Court of Justice has monitored compliance with fundamental rights not only by the action of the institutions, but also by that of the authorities of the Member States where they act within the scope of Community law. The significance of inserting the above terms into Article 46 of the EU Treaty by means of the

¹ Thus, while Article 13 TEC creates a legal basis to combat discrimination by adopting legislative provisions applying between individuals, Article 21(1) of the Charter contains a directly applicable ban on discrimination comparable to Article 14 ECHR and Protocol No 12 thereto, but binding only on the institutions and bodies of the Union and on the Member States solely when implementing Union law.

Amsterdam Treaty in relation to that well established case-law was never very clear; nevertheless, the Court confirmed its established case-law following the entry into force of the Amsterdam Treaty. In any event, the earlier Convention was at pains to define its scope explicitly, in Article 51(1) of the Charter ¹, by codifying earlier case-law; the current wording of Article 46(d), which could be interpreted differently with the Charter, should then give way to this definition.

Should the reference to action of the institutions alone in Article 46 of the EU Treaty be deleted in the event of that article being adapted to a Charter incorporated into the Treaties?

(b) competences of the Court in the field of justice and home affairs

While the provisions of the Treaty of Amsterdam introducing jurisdiction for the Court of Justice with regard to justice and home affairs reflect progress, many criticise the remaining limitations and the complexity of these rules in relation to the common arrangements of the EC Treaty ². Thus, Article 35 of the EU Treaty has led to extremely complex "variable geometry" arrangements with regard to the preliminary ruling procedure under the 3rd pillar. Article 35(5) of the EU Treaty completely rules out any jurisdiction of the Court over 3rd pillar matters in respect of national police or law and order measures. Provision is made for a similar exclusion, in accordance with Article 68(2) of the EC Treaty, even under the Community pillar, in respect of acts of the Community institutions against which national courts can offer no protection. Finally, the limitation of the right of preliminary referral provided for in Article 68(1) of the EC Treaty seems hard to justify since it obliges those concerned to go through all the national courts before they can be heard by the Community judge.

¹ Article 51(1) of the Charter reads as follows: "The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect these rights, observe the principles and promote the application thereof *in accordance with their respective powers.*" (Our italics).

² On these points, see also discussion paper CONV 69/02 on "Justice and Home Affairs".

It is clear that this problem goes beyond the issue of incorporating the Charter ¹. However, effective protection of fundamental rights is considered to be an essential aspect of the "area of freedom, security and justice", especially insofar as many actions of the Union in this area are particularly sensitive with regard to those rights. Moreover, any exemption from control by the Court of Justice would expose Union law and the acts of the institutions to appeal before the European Court of Human Rights.

Could concern for the protection of fundamental rights give rise to a review of the current provisions relating to the Court of Justice in matters relating to justice and home affairs ?

- (c) The question of liberalising the conditions for direct action before the Court or even introducing a "constitutional appeal" (Verfassungsbeschwerde", "recurso de amparo")

For some time, some legal scholars have criticised the conditions for direct appeal by individuals to the Community jurisdiction, as defined in Article 230(4) of the EC Treaty and interpreted by case-law ², as being too narrow or inadequate for guaranteeing the fundamental right to effective judicial protection (or: "right to seise a judge") against acts of the institutions. While this criticism was voiced independently of the Charter and prior to its drafting – the latter does not codify the right to appear before a judge, as developed by the Court of Justice on the basis of the ECHR since the 1980s ³ – it has been reiterated in connection with it. Some have even gone so far as to call for the introduction of a new special form of legal action enabling any individual to challenge directly any Community act, including those of a legislative nature, for violation of his or her fundamental rights, along the lines of procedures that exist in some Member States (Verfassungsbeschwerde", "recurso de amparo").

¹ See the discussion paper on " Justice and Home Affairs".

² Article 230(4) TEC restricts actions for annulment to persons to whom a Community act is addressed and to persons to whom it is "of direct and individual" concern. Since the *Plaumann* judgment, Case 25/62, ECR 197, case-law has interpreted this phrase as ruling out, in principle, action against acts that are general in scope, even where they directly affect individuals, since the person bringing a case would not be individually concerned unless they are affected "by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons, and by virtue of these factors distinguishes them individually just as in the case of the person addressed."

³ See in particular the judgments of the Court of Justice in Case 222/84 – *Johnston* –, ECR 1986, 1651, No 18; Case 222/86 – *Heylens* –, ECR 1987, 4097, No 14; C-97/91 – *Borelli* –, ECR 1992, I-6313, No 14.

Others claim that Community law possesses a comprehensive appeal system providing effective judicial protection, including for fundamental rights: individuals may, according to circumstances, either challenge a Community act directly, in accordance with Article 230(4) of the EC Treaty, or bring an action before a national court against measures implementing the Community act, the national court being in a position – or under an obligation, in the latter case – to make a preliminary referral to the Court (Article 234 of the EC Treaty) in order to check the validity of the Community act. It then lies with the Member States, under Article 10 of the EC Treaty, to contribute to this dual system of protection by making provision for legal remedies at national level that leave no gaps in this indirect control of the acts of the institutions¹. It has also been observed that a new form of legal action based on the violation of fundamental rights would be difficult to distinguish from other legal actions since these rights may be adduced in nearly every dispute. Critics retort that the "detour" via the national court and the preliminary ruling procedure do not always provide sufficient guarantees, partly because referral to the Court of Justice may be slow and it is not in the hands of the applicant.

A specific case which has in the meantime been very broadly recognised as problematic is where Community law introduces a ban that is directly applicable without the need for a national implementing act. The only option for an individual wishing to assert his or her rights against such a ban is to appeal against the sanction which might be applied by national authorities in the event of violation of Community law. Many believe that it is unreasonable for an individual to be induced to commit an infringement in order to have a right of appeal because he has no right of direct legal action against the Community instrument in question. In a recent judgment² concerning precisely such a case, the Court of First Instance, departing from previous case-law, which it deemed too restrictive, admitted an action by an individual, invoking the right to seise a judge. Recent conclusions by Advocate-General Jacobs in case C-50/00 P³ criticised in more general terms the interpretation of Article 230(4) of the EC Treaty by traditional case-law. It is therefore possible that a significant change may be in the making in case-law relating to the admissibility of direct legal actions by individuals.

¹ See CFI judgment of 27 June 2000, T-172/98 et a., *Salamander et a.*, ECR 2000, II-2487, par. 74.

² Judgment of 3 May 2002, T-177/01, *Jégo-Quéré v. Commission*.

³ Conclusions of 21 March 2002 in C-50/00 P, *Unión de Pequeños Agricultores v. Council*; the conclusions also give a very full picture of discussions on this issue. The judgment of the Court is expected in the next few months.

Should Article 230(4) of the EC Treaty be amended to extend the conditions of admissibility for direct actions by individuals? If so, how? Or would it be better to allow case-law to define the conditions of admissibility, taking into account the right to effective judicial protection?

Would it be appropriate to establish a new direct form of legal action to protect the fundamental rights of individuals, along the lines of certain national constitutional procedures? What consequences would an amendment to the Treaty on this issue have for the organisation and operation of the Community's judicial system?

III. Modalities and consequences of possible accession by the Community/Union to the ECHR

Preliminary remark: complementarity between the Charter and the idea of accession to the ECHR

Firstly, an observation made by many institutions and prominent persons must be borne in mind, namely that the elaboration of the Charter and the proposal for accession to the ECHR by the Community (or in future by the Union, once its legal personality has been recognised) are complementary and not alternative initiatives¹: on the one hand, the existence of the Charter does not in any way detract from the assumed benefits of making the external control mechanism established by the ECHR applicable to the Union; and on the other, accession to the ECHR would not reduce the usefulness to the Union of having its own catalogue of fundamental rights, all the more so since the ECHR allows the contracting parties to go beyond the rights which it ensures (Article 53 of the ECHR), and since the manner in which the relationship between the ECHR and the Charter is expressed in the text of the latter has been judged satisfactory².

¹ On this subject, see the Commission communication of 11 October 2000 (COM(2000)644 final, paragraph 9); the speeches by Mr Wildhaber, President of the European Court of Human Rights ("The Council of Europe has always regarded those two options as complementary rather than as alternatives.") and by Mr Rodríguez Iglesias, President of the Court of Justice, on 31 January 2002; and the speech by Mr Krüger, Secretary-General of the Council of Europe, on 18 March 2002.

² See Mr Wildhaber in his speech mentioned above; also Mr Rodríguez Iglesias as above ("Thus, rather than competing with each other and creating a schism in the protection of fundamental rights in Europe, the Convention and the Charter should serve to enrich one another"), and the comments by the Council of Europe observers on the final draft of the Charter, CHARTE 4961/00 CONTRIB 356 of 13 November 2000, and by the Commission in the communication mentioned above.

1. The arguments for and against accession

Rather than rehearsing in detail the arguments exchanged in the course of a debate which has been going on for more than twenty years, this document will merely very briefly recall the main arguments¹. The advocates of accession stress above all that it would increase the protection of fundamental rights, by extending to the actions of the Union's institutions the same external judicial control mechanism to which all the Member States are already subject. In their view, filling this gap in protection seems increasingly urgent given the steady transfer of competences from the Member States to the Union, and also to avoid contradictions as regards the commitments required from the candidate countries by the Union. The Union's accession would also be the best way to avoid "new divides in Europe" between two systems of protecting fundamental rights, by ensuring the harmonious development of the case-law of the two European Courts.

The main concern of the opponents of accession to the ECHR is that it would be incompatible with the principle of the autonomy of Community law, including the position of the Court of Justice as the sole arbiter of that law. This question will be examined in more detail below. Another argument which is sometimes put forward is that it would not be appropriate for the Union to be subject to control by judges who are not nationals of the Union, and who might lack comprehension of the special nature of European integration.

In the light of the arguments on both sides, would accession to the ECHR have the effect of strengthening the authority and credibility of Union law and its jurisdiction, or of weakening it?

¹ See the arguments put forward by the various parties before the Court of Justice during the proceedings leading to Opinion 2/94, ECR [1996] I-1772 et seq.; see also the report on the Charter of Fundamental Rights by the House of Lords Select Committee on the European Union dated 24 May 2000, paragraphs 104 to 112 (summary of the evidence given on this subject to the Committee).

2. Modalities of accession

(a) At Union level

In accordance with Opinion 2/94 of the Court of Justice, the Community's accession to the ECHR would require the insertion of a specific legal basis in the EC Treaty; this could be inserted, for example, in Article 303 of the EC Treaty. If the Convention were to recommend that the legal personality of the Union should be formally recognised and merged with that of the Community, this legal basis should allow accession by the Union ¹.

(b) At Council of Europe level

Accession by the Community/Union to the ECHR would in any case also require an amendment to the ECHR, necessarily to its Article 59 which currently restricts the circle of contracting parties to the members of the Council of Europe (which may only be European *States*). It would also raise a number of other technical questions which could lead to adaptations of the Strasbourg system ².

3. The implications of accession for the principle of the autonomy of the Community legal order

Some believe that the Community's accession to the ECHR would jeopardise the principle of the autonomy of Community law. This is said to be so partly because the Court of Justice would then lose its monopoly in ruling on the validity of acts of Community law – which would from then on

¹ In formulating the legal basis, one would need to determine whether this provision should mention only the case of accession to the ECHR or whether it should also cover the possibility of acceding to other international human rights conventions. Rules should also be laid down concerning the decision-making procedure to be applied to the signing and conclusion of the accession agreement.

² These questions have recently been examined by an ad hoc working group within the Steering Committee for Human Rights of the Council of Europe; see the activity report by this group dated 2 April 2002 (GT-DH-EU (2002) 012).

also be monitored by the European Court of Human Rights. Also, the Court of Human Rights could also be called on to give an opinion on questions of the interpretation of Community law, for example in connection with checking the proportionality of Community acts, but also in the allocation of competences between the Union and the Member States or the exhaustion of domestic remedies. The Court of Justice would also lose its role as the sole arbiter in disputes amongst the Member States and between the Member States and the institutions, as such disputes could be brought before the Strasbourg Court by virtue of Article 33 of the ECHR. At the same time, all this would significantly weaken the political authority of the Court of Justice vis-à-vis the authorities of the Member States, including their supreme courts.

However, others contest this analysis and contend that accession would be perfectly compatible with the autonomy of Community law. They point out that the Strasbourg Court has no power to reverse or declare invalid the instruments of the contracting parties or judgments by their supreme courts, but can only note violations of the ECHR, the practical consequences of this for their domestic legal systems remaining within the competence of the institutions of the contracting parties. They also point out that domestic law is not taken into account by the Strasbourg Court except as a question of fact, and that in judging the proportionality of national acts the Court allows some leeway which would also make it possible to take account of the specific nature of Community law. The Strasbourg Court cannot therefore be described as a "superior" court in relation to the supreme courts of the contracting parties, but simply as a more specialised body which exercises subsidiary external control, with the Court of Justice having already admitted the possibility of subjecting the Union to such external control ¹. As for the risk of appeals between the Community and the Member States, or amongst the Member States, being taken to the Strasbourg Court, one might suppose that this would in any case be prohibited by Community law ²; but a

¹ See Opinion 1/91 of the Court of 14 December 1991, ECR [1991] I-6079, point 40: "The Community's competence in the field of international relations necessarily entails the power to submit to the decisions of a court which is created or designated by such an agreement as regards the interpretation and application of its provisions".

² Taking appeals between Member States to the Strasbourg Court would be contrary to Article 292 of the EC Treaty as regards the application of Community law (appeals concerning acts not related to Community law would of course remain possible). In the same way, it could be assumed that taking disputes between the Community/Union and the Member States before that Court would violate Article 10 of the EC Treaty, as this would diverge from the procedures laid down in Articles 226 and 230 of the EC Treaty respectively.

specific clarification at the time of any accession agreement, for example by means of a declaration in which the Community/Union and the Member States would renounce their right to bring appeals between the States to the Strasbourg Court, might seem desirable.

Finally, some suggest that the continuing non-participation of the Community/Union in the Strasbourg system would itself produce risks for the Community legal order in future. It does in fact happen that Member States are held indirectly responsible before the Strasbourg Court for claimed violations of the ECHR which result in reality from acts by the institutions of the Union. This responsibility is already recognised for acts of primary legislation not subject to the control of the Court of Justice¹ and for applications contesting a national act which only transposes a Community Directive word for word²; an application against the 15 Member States is currently pending before the Strasbourg Court alleging that a Commission Decision on competition, confirmed by the Court of Justice, violates the ECHR³. If accession does not take place, these observers fear that increasingly often the Strasbourg Court will rule indirectly on acts of the Community/Union, without the latter being able to defend itself and without its legal system being represented by a judge within the Court, and that the Member States, responsible for this defence in the place of the Community, might argue with the latter and amongst themselves about the conformity of Community acts in relation to the ECHR.

Would accession to the ECHR harm the principle of the autonomy of the Community legal order and the role of the Court of Justice as the ultimate arbiter of that legal order? Or would it rather have positive consequences for that legal order?

¹ See judgment of the Strasbourg Court of 18 February 1999, *Matthews v. United Kingdom*, application 24833/94 concerning the 1976 Act on elections to the European Parliament, Annex II of which excludes Gibraltar from those elections.

² See judgment of the Strasbourg Court of 15 November 1996, *Cantoni v. France*, application 17862/91. See also judgment of 7 March 2000, *T. I. v. United Kingdom*, application 43844/98, concerning the Dublin Convention.

³ *DSR Senator Lines v. the 15 Member States*, application 56672/00. The Court has not yet ruled on the admissibility of the application, which is contested by the 15 Member States who refer to the case-law of the former Commission of Human Rights (decision of 9 February 1990, *M & Co v. Germany*).

4. **Consequences for the system of allocating competences between the Community and the Member States**

In this area, two issues need to be distinguished:

Firstly, since in accordance with Opinion 2/94 of the Court of Justice, accession to the ECHR would require the inclusion in the Treaty of a specific legal basis (on its form, see below), some have said that this could have the effect of recognising a general competence¹ for the Community/Union in the area of fundamental rights, including at internal level. This analysis is disputed by others: since the aim and effect of accession would only be to make the institutions subject to the fundamental rights of the ECHR and to external control by the Strasbourg Court, it is difficult to see why a legal basis in the Treaty restricted to this end would give rise to a general Union competence to legislate at internal level by prescribing fundamental rights binding the Member States in their own actions. However, one might consider clarifying this point in the legal basis permitting accession, if the need was felt. Others have suggested that this question be resolved by subjecting the action of the institutions to the Strasbourg system without providing for accession (this model is presented below).

Secondly, some have pointed out that accession could lead the Strasbourg Court to rule on the Union's system of allocating competences, since it could sometimes be difficult to decide whether an issue fell under the "jurisdiction" (Article 1 of the ECHR) of the Community/Union or that of a Member State. However technical solutions, to be determined when any accession agreement was drawn up, have been suggested to avoid this situation².

¹ It should be noted that while such general competence is lacking, the Community does in some areas adopt specific measures relating to fundamental rights, either on the basis of particular Articles of the Treaty (see, for example Articles 13 and 141 of the EC Treaty) or "annexed" to the exercise of the competences attributed to it (see, for example, Article 2 of Regulation No 2679/98 mentioned above (right to strike), or Regulations Nos 975/99 and 976/99 in connection with Community cooperation measures in third countries.

² In particular, following the example of the solution found in the case of the Convention on the Law of the Sea, a mechanism is proposed allowing the Community/Union to attach itself to a Member State as a co-defendant, being jointly and severally liable, and *vice versa*, with the addition of a declaration underlining that it would be a matter solely for the Community/Union and the Member States to decide how to allocate competences according to their internal procedures.

Would accession to the ECHR be neutral as regards the allocation of internal competences between the Union and its Member States? Would it be appropriate to devise a provision of the Treaty to clarify this neutrality, following the example of Article 51(2) of the Charter?

Is there a real risk that the Strasbourg Court would be caused to rule on the allocation of competences between the Union and the Member States? Would the proposed mechanisms make it possible to exclude this risk?

5. Alternative ways of ensuring consistency between the law of the Union and that of the ECHR

It is generally admitted that the informal contacts and exchanges existing between the two European Courts are very positive and considerably facilitate the harmonious development of their case-law. However, while many observers insist on the accession of the Community/Union as the ideal solution to ensure consistency, some have suggested developing alternative mechanisms for this purpose, of which the following are most frequently discussed:

(a) A mechanism for referral or consultation

One suggestion is to set up a mechanism for referral or consultation, making it possible for the Luxembourg Court to put to the Strasbourg Court a question of interpretation of the ECHR.

Such proposals have been made both as a measure to accompany accession to the ECHR, and as an alternative to it. In the latter case, some have suggested that the reply or opinion delivered by the Strasbourg Court could be qualified as "non-binding" on the Court of Justice. Some also assert that this mechanism would be the best way to ensure consistency between the two sets of case-law, particularly in cases where the Court of Justice is called on to rule on human rights questions in the absence of any Strasbourg case-law, and might subsequently be contradicted by Strasbourg. For those who advocate combining a referral mechanism with accession, this would also make it possible to reduce the number of individual applications to the Strasbourg Court relating to the law of the Union.

However, several objections have been raised to these proposals. Above all, it has been pointed out that such a referral mechanism would, contrary to the right to effective judicial protection, considerably delay the resolution of the main proceedings (particularly in cases where this procedure was additional to a reference for a preliminary ruling to the Court of Justice by a national court). Also, the Court of Justice would risk being placed in uncomfortable situations in which no national constitutional court ever finds itself: since it could most probably only make use of this procedure in carefully selected cases, its choice *not to* make a referral for a preliminary ruling to the Strasbourg Court in any particular case might always be criticised later, particularly if the Strasbourg Court then took a different line from that taken in Luxembourg. If, as an alternative to accession, Strasbourg's opinions were to be made "non-binding", the Court of Justice would still hardly be able to deviate openly from such opinions, and yet its judgments would risk being subject to discussion of the extent to which the Strasbourg opinion had actually faithfully been followed.

Finally, some suggest that an opinion or referral procedure would mix the legal systems unduly, and would have more significant effects on the autonomy of Community law than "pure and simple" accession: the Strasbourg Court would intervene directly in pending disputes by giving interpretations which would be authoritative for the Court of Justice – either *de jure* or at least *de facto*; whereas any other national constitutional court may freely assess the fundamental rights of its own legal system, with the role of the Strasbourg Court being limited to controlling *ex post* compliance with obligations under international law stemming from the ECHR.

Technically, the establishment of such a procedure for referral or consultation would require not only a special protocol annexed to the EC/EU Treaties but also amendments to the ECHR, as it would constitute a derogation from the normal function of the Strasbourg Court.

(b) A joint chamber

Mention should also be made of an idea which is sometimes put forward, namely that if there is no accession, the Court of Justice and the Strasbourg Court could form a "joint chamber" or "panel" which could have cases referred to it by either jurisdiction when a need was felt to ensure a uniform interpretation of fundamental rights, and especially when one Court wanted to depart from the case-law of the other. Supporters of this idea point out that it would reflect a strict equality between the two Courts and would do least damage to their current operation. However, one might wonder whether this proposal does not conflict with the rule established by the Court of Justice, stemming from the principle of the autonomy of Community law, that judges at the Court of Justice must not sit simultaneously in other jurisdictions where they would have to interpret provisions identical to those of Community law but using different approaches, methods and concepts¹.

(c) Creating a right of appeal to the Strasbourg Court without acceding to the ECHR

Finally, the suggestion has been made of submitting the actions of the institutions of the Union to the individual application mechanism of the Strasbourg Court, by means of a special protocol to the EC and EU Treaties and a protocol to the ECHR, without providing for the accession of the Community/Union to the ECHR. While this model aims to create a situation which is broadly similar to that of accession as regards the position of the two Courts and the protection of individuals, the main difference would be that the Community/Union would not participate in negotiations on amendments to the ECHR or its additional protocols. Some have commented that this model would raise problems of principle for the autonomy of Community law, as well as practical complications: in effect, the institutions would be subject to the Strasbourg appeal

¹ See Opinion 1/91 of the Court of Justice of 14 December 1991, paragraph 52, concerning the first draft agreement on the European Economic Area and the "EEA Court" system proposed therein.

system, without Strasbourg law formally being part of Community law (even if it may be said that the material standards of the ECHR are *de facto* applied in the case-law of the Court of Justice mentioned above), and that the Community/Union and its law would not, within the Strasbourg system, be treated on an equal footing with the other signatories to the ECHR.

Are the alternatives proposed to accession to the ECHR satisfactory? In particular, would it be appropriate to establish a mechanism for referral by the Court of Justice to the Strasbourg Court, either as an alternative or as a complementary measure to accession by the Community/Union to the ECHR? Or would it be preferable, if accession were to take place, to stick to the joint system (individual application to the Strasbourg Court following exhaustion of domestic remedies)?

THE EUROPEAN CONVENTION

Brussels, 24 June 2002

THE SECRETARIAT

Working Group II

Working document 1

**Working group II - "Incorporation of the Charter/
accession to the ECHR"**

**Subject: Modalities and consequences of incorporation into the Treaties of the Charter of
Fundamental Rights and accession of the Community/Union to the ECHR**

Please find attached a contribution by Mr. Bobby McDonagh to the working group.

The European Convention: Working Group on the Charter

Contribution by Bobby McDonagh (alternate representative of Irish Government)

The decision of the Praesidium to establish Working Groups is an important step in the work of the Convention. It is clear that their role should be to *assist* the Convention by setting out the full range of options for consideration by the Convention as a whole. It would be inappropriate for a Working Group, necessarily comprising a small cross-section of the Convention's membership, to *limit* the deliberations of the Convention by presenting only a single preferred option.

The Working Group on the Charter should therefore identify the full range of options as regards both the Charter on Fundamental Rights and the accession of the Community/Union to the European Convention on Human Rights (ECHR). It should explore these options including their advantages, the problems which they may give rise to and ways of addressing those problems.

3. As regards the Charter, it seems important as a first step to consider certain key questions. It will be possible to begin to assess coherently the merits of the various options- including as regards the basic political choices to be made in due course, which ought not to be pre-judged - in the light of the answers to those questions. The questions include:

(A) Could the incorporation of the Charter into the EU Treaties lead to the unintended extension of Union/Community competence, either in areas where it already has some competence or possibly across a wide range of new areas? Articles 51.2 and 52.2 of the Charter appear designed to preclude this but it is not clear that they would achieve this in the event of incorporation of the Charter into the EU Treaties. The stipulation in the Charter that the institutions and bodies of the Union should “promote the application” of its provisions- would need to be reconciled with a view that its incorporation would not involve an extension of competence. Also could the Charter impact on the exercise by EU institutions of their existing competences in areas that indirectly affected rights set out in the Charter?

(B) What is to be understood by the provision in Article 51.1 that the Charter is addressed to the Member States “only when they are implementing European law”? Given the strong emphasis on subsidiarity which has emerged at the Convention, it is important to clarify this point.

C) How is consistency to be ensured between the provisions of the Charter and (a) the existing EU/EC Treaty provisions and (b) the ECHR? Articles 52.2 and 53 of the Charter appear insufficient on their own to achieve this consistency if the Charter were incorporated in the EU/EC Treaties. The fact that similar rights are expressed in different terms in the various instruments is a significant consideration. If there are inconsistencies - for example in relation to socio-economic rights - is the judiciary to play an important role in determining policy and expenditure? As regards consistency with the ECHR, important considerations include the margin of appreciation allowed by it as well as the reservations and derogations entered by individual States. The question of defining what are to be deemed respectively “rights”, “freedoms” or “principles” under the Charter also arises.

(D) How is the potential for a conflict of jurisdiction between the Courts in Strasbourg and Luxembourg to be resolved?

(E) What would be the implications for the 2nd and 3rd Pillars of incorporation of the Charter into the Treaties?

4. It is precisely because of the importance of the rights enunciated in the Charter, as well as in the Treaties and other relevant instruments, that the Charter Working Group should address the questions identified above from the outset of its work so as to identify the most coherent and appropriate options for giving effect to those rights.
5. It will be important to draw on the expertise available in addressing these complex questions. Consideration should therefore be given to inviting the Head of the Council Legal Service, Mr Piris, as well as experts from the Council of Europe/Court of Human Rights to make known their views and to assist the Working Group in carrying out its mandate.

Dublin

16 June 2002

THE EUROPEAN CONVENTION
THE SECRETARIAT

Brussels, 25 June 2002 (28.06)

CONV 157/02

COVER NOTE

from : Secretariat

to : Convention

Subject : **Note from the Council of Europe, forwarded by Mr Jacques Santer, member of the Convention**

The Secretary-General of the Convention has received from Mr Jacques Santer, member of the Convention, the attached note from the Council of Europe, to which Mr Santer wishes to draw the attention of the members of the Convention.

ANNEX**Convention on the Future of Europe**

Contribution from
the Secretary General of the Council of Europe,
Mr Walter Schwimmer

800 MILLION EUROPEANS**Involving the Greater Europe
in responding to key Laeken questions**

The purpose of this memorandum is to propose to the members of the Convention at an early stage of their work ways in which the Council of Europe can contribute to addressing certain key questions in the Laeken Declaration:

- ❶ by building the future European Union on the solid foundations of the Council of Europe's existing instruments and institutions;
- ❷ by the accession of the EC/EU to the European Convention on Human Rights as part of a coherent approach to the effective protection of human rights in Europe;
- ❸ by developing pan-European responses to major challenges (terrorism, organised crime, drug and human trafficking, etc.);
- ❹ by providing the forum for EU foreign policy towards its immediate neighbours.



Building Europe on solid foundations of freedom and equal partnership

1.1 Shared values and principles

Created in 1949 to "achieve a greater unity between its Members for the purpose of safeguarding and realising the ideals and principles which are their common heritage", the Council of Europe now unites 44 European states in a common adherence to the values and principles of pluralist democracy, human rights and the rule of law. These include all EU member and candidate countries, as well as all other European states which have committed themselves to the same concept of a democratic society.

1.2 SHARED OBJECTIVE

The Council of Europe shares with the European Union the objective of building a peaceful, stable, democratic and prosperous Europe.

1.3 Pan-european enlargement

The European Union is preparing itself for the most far-reaching enlargement in its history and, rightly, all the candidate states are full partners in the discussions on the future of the Union of which they will be members. The Council of Europe has practically achieved its own enlargement to become a truly pan-European organisation. By next year, all European states, except Belarus – where democratic reform is still needed – will be members.

1.4 Partnership with the European Union

The political criteria laid down by the European Council in 1993 in Copenhagen were modeled on those developed by the Council of Europe in the course of its enlargement process. Furthermore, in recent years, the partnership between the Council of Europe and the European Commission has developed considerably, to providing joint assistance to candidates on the path to EU accession, in particular in the fields of institution building, justice and home affairs.

1.5 All European States on an equal footing

Even after completion of the enlargement process currently under way, almost half of the states of Europe will remain outside the European Union. Therefore, the Council of Europe will continue to be the only truly European organisation in which all European states cooperate on an equal footing.

1.6 Best use of existing structures

Building the future enlarged EU is best done on solid foundations, on existing legal frameworks and institutions. With Laeken, there is a unique opportunity to ensure a coherent architecture of interlocking European institutions. To consider how the European Union – which is the centrepiece in the European construction – may best make use of existing structures should be one of the challenging tasks of the Convention.

②

The accession of the EC/EU to the European Convention on Human Rights as part of a coherent approach to the effective protection of human rights in Europe

2.1 Protection for 800 Million Europeans

The Council of Europe is the home of Europe's main human rights conventions, the European Convention on Human Rights (ECHR) being the prime example. Its rights and freedoms are common to all European states and its international control mechanism offers protection for 800 Million Europeans. It is significant that the ECHR was the principal reference point for the preparation of the EU Charter of Fundamental Rights as regards the human rights provisions. Social and economic rights developed within the Union were influenced by the Council of Europe's European Social Charter and the revised Social Charter.

2.2 Accession to the European Convention on Human Rights

I therefore welcome the fact that the Laeken Declaration has put the question of accession by the EC/EU to the ECHR on the agenda of this Convention. It is very appropriate that this is compared with the question of integration of the EU Charter of Fundamental Rights into the Treaties, because these issues go hand in hand. Accession to the ECHR has been repeatedly advocated by the European Commission¹ and the European Parliament². Therefore Laeken has provided the Convention with a unique opportunity to achieve a coherent mechanism for the protection of fundamental rights in the whole of Europe.

2.3 Why is accession so important?

First of all, it is vital if we are to ensure coherence and legal certainty between the legal systems of both the EU and the Council of Europe in the field of fundamental rights. In applying Community law, member states are indeed bound by both Community law *and* the ECHR. However, this may lead to genuine problems if the Community itself is not also legally bound by the ECHR and if its action is not subject to the same review by the European Court of Human Rights, as is applicable to the action of individual EU member states. Avoiding divergence between the interpretation of fundamental rights in Europe is therefore essential for the legislatures, governments and courts of Union member states, as it is, evidently, for the individual citizen. This can best be achieved by accession.

2.4 Increase legal accountability

In addition, by extending to the EU the *external* control mechanism of the ECHR to which the member states are already subject, accession would confer upon the action of the EU institutions the same level of legitimacy, credibility and legal accountability now enjoyed by the member states' authorities.

¹ Communication on the accession of the Community to the ECHR and the Community legal order, Commission Communication of 19.10.1990, SEC(90)2087 final; Memorandum on the Accession of the European Communities to the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted by the Commission on 4 April 1979, *Bulletin of the EC*, supp. 2/79.

² Most recently in European Parliament Resolution A5-0064/2000 on the drafting of a European Union Charter of Fundamental Rights (Plenary Session, 16 March 2000).

2.5 No subordination between Courts

The Presidents of both the European Court of Human Rights and the Court of Justice of the European Communities, at the opening of the judicial year in Strasbourg on 31 January 2002, expressed support for the idea of accession to the ECHR. They concluded that there was no question of perceived or real “subordination” between the two courts ¹.

2.6 No major obstacles to accession

The Committee of Ministers of the Council of Europe has asked governmental experts to undertake a technical examination of the changes to the ECHR required to make EC/EU accession possible. Preliminary results indicate that there are no major obstacles to accession that cannot be overcome by the necessary political will. A full report is expected by the end of June this year.

2.7 A common legal area for the Greater Europe

How fundamental rights in the European Union should best be protected in the future is undoubtedly one of the most important questions that the Convention will have to examine. I trust that the Convention will conclude that accession to the ECHR is essential for the effective protection of fundamental rights in the Union. This will also be a significant step in bringing the Union closer to its citizens by providing them with the same means of redress as the ECHR gives them at national level. However, accession of the EU/EC to the ECHR would be a major step forward in the construction of a common legal area for the Greater Europe.

¹ The text of the speech can be found on the website of the Strasbourg Court (<http://www.echr.coe.int>).

3

Developing pan-European responses to major challenges

3.1 All-European challenge

Many treaties concluded within the Council of Europe have contributed to the creation of an area of freedom, security and justice which is a common goal of our institutions. They are part of the European Union's *acquis* on the basis of which closer cooperation within the Union has been developed. Meeting the challenges to our democratic societies cannot stop at the borders of the European Union. These include:

- fighting against terrorism;
- combating corruption, organised crime and human trafficking;
- preventing drug abuse and drug trafficking;
- responding to violence;
- fighting against racism and xenophobia.

3.2 Multilateral solutions

The best way of taking effective action in these areas is not by a series of bilateral agreements with each of the Union's immediate neighbours, but by the adoption of pan-European multilateral solutions which are coherent with the European Union's own internal measures. The conclusions of the European Council in Tampere rightly foresee cooperation with the Council of Europe in this area. We have already created an effective interface between Council of Europe and European Union activities, in particular through the presence of the European Commission in all intergovernmental structures, including ministerial sessions. An increasing number of Council of Europe conventions and agreements are open to accession by the European Community¹. We should develop this further.

¹ See my annual reports on relations and co-operation between the Council of Europe and the EU: www.coe.int/sg/e (Documents SG/Inf(2002)7 and SG/Inf(2002)12)

④

A forum for EU foreign policy towards its immediate neighbours

4.1 A Europe without dividing lines

This steadily developing common legal area for the 800 million Europeans within the Council of Europe's borders, from Reykjavik to Vladivostok, presents a solid basis for our joint vision of building a Europe without dividing lines and consolidating it through a network of interlocking institutions.

4.2 Extending Article 303 of the EC Treaty

The Convention could give its political support to this joint task by recommending in its review of the present Treaties that the European Union make full use of the structures of the Council of Europe. To this end, it would seem desirable not only to preserve Art. 303 of the EC Treaty, which stipulates that the *Community* shall establish all appropriate forms of cooperation with the Council of Europe, but also to extend its scope of application to include all matters falling within the competence of the European *Union*, notably those dealt with under the present second and third pillars.

4.3 Discuss questions of common concern on an equal footing

The Laeken Declaration underlines that the relations between the Union and the other European states which are its immediate neighbours are of particular importance, both for the Union itself and for those states. The European Union, with its common external borders, its internal market and freedom of movement, runs the risk of creating a sense of exclusion among those states which will remain for the time being outside the Union. There is therefore a legitimate common interest in having a meeting place where representatives from the whole of Europe at parliamentary, government, local or regional level can come together to discuss questions of common concern on an equal footing - a Europe without dividing lines¹. The Council of Europe provides such a framework. The European Union is already an important actor in the Council of Europe. There is nonetheless scope for a much more active participation of the EU institutions in the various bodies of the Council of Europe in order to reinforce the dialogue and cooperation between representatives of the whole of Europe.

4.4 EU accession to the Council of Europe?

I therefore invite the European Commission to step up its participation in the Council of Europe at the level of the Committee of Ministers and its subsidiary bodies. This will be of mutual benefit to both partners. The same applies to committees of governmental experts. This would enable the European Union to pursue further the recent experience of extending rules in Community legislation to the whole of Europe by transposing such provisions into Council of Europe conventions or agreements. The political option of the Union's future membership of the Council of Europe merits closer consideration.

¹ For a greater Europe without dividing lines – The Budapest Declaration of the Committee of Ministers (7 May 1999) on the occasion of the Council of Europe's 50th anniversary

4.5 Develop parliamentary cooperation

The Parliamentary Assembly with its representatives of 44 national parliaments offers a unique framework for promoting the common European project. Existing cooperation with the European Parliament can be developed further. Members of the European Commission could address the Assembly much more frequently than is at present the case.

4.6 Develop CFSP within the Council of Europe

The High Representative/Secretary General of the EU Council could at regular intervals address the Assembly and the Committee of Ministers. This would be one way to promote synergies between the Common Foreign and Security Policy of the EU and the enlarged political dialogue amongst all European democracies. The Council of Europe thus provides a platform on which to develop the European Union's foreign policy with regard to its immediate neighbours.

5

In conclusion

I am convinced that:

- The instruments and activities of the Council of Europe assist the EU enlargement process
- Together we need a coherent approach to the protection of human rights in Europe
- The Council of Europe provides a forum for the Greater democratic Europe

The Council of Europe is following with the greatest interest the ambitious plans for the future of the Union expressed in the Laeken Declaration and is keen to contribute, at both intergovernmental and parliamentary level, to the discussions in the Convention, as appropriate, during the completion of its important mandate.

I wish the Convention every success in its historic task.

Strasbourg, 31 May 2002.



Walter Schwimmer



Council of Europe Key Dates

- 5 May 1949, London
Ten States (Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden and the United Kingdom) sign the Treaty of London, setting up the Council of Europe
- 4 November 1950, Rome
Signature of the Council's Convention for the Protection of Human Rights and Fundamental Freedoms – the first international legal instrument safeguarding human rights. Signature of the European Cultural Convention, forming the framework for the Council's work in education, culture, youth and sport
- 19 March 1958, Strasbourg
The European Communities meet for the first time at the headquarters of the Council of Europe, in Strasbourg
- 18 October 1961, Turin
The Council's European Social Charter is signed as the economic and social counterpart of the European Convention on Human Rights
- 5 May 1972, Strasbourg
The Committee of Ministers adopts, as the European Anthem, the prelude to the Ode to Joy from Beethoven's Ninth Symphony
- 29 May 1986
The European Community adopts the flag of the Council of Europe
- 8 June 1989
The Parliamentary Assembly introduces the Special guest status to forge closer links with the parliaments of new member states moving towards democracy
- 6 November 1990, Rome
A year after the fall of the Berlin Wall, Hungary is the first former communist country to join the Council of Europe.
- 8-9 October 1993, Vienna
First Council of Europe summit of heads of State and government. Adoption of a declaration confirming the Organisation's pan-European vocation and setting new political priorities in protecting national minorities and combating all forms of racism, xenophobia and intolerance.
- 17 January 1994, Strasbourg
The Congress of Local and Regional Authorities of Europe (CLRAE) is set up by the Committee of Ministers to replace the Standing Conference of Local and Regional Authorities of Europe.
- 10 – 11 October 1997, Strasbourg
Second Summit of the Heads of State and Government of the Council of Europe member States. Adoption of a declaration and plan of action "to strengthen democratic stability in the member States". Creation of the Office of the Commissioner for Human Rights.
- 1 November 1998
Single permanent European Court of Human Rights established in Strasbourg under Protocol No. 11 to the Council's European Convention on Human Rights.
- 4 November 2000
50th Anniversary of the European Convention on Human Rights
- 24 April 2002
Bosnia & Herzegovina becomes the 44th member State of the Council of Europe.

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THE EUROPEAN CONVENTION

Brussels, 28 juin 2002

THE SECRETARIAT

Working Group II

Working document 02

Working group II " Incorporation of the Charter/accession to the ECHR"**Subject** : Contribution of Elena PACIOTTI - MEP

During the first exchange of views of 25 June 2002 inside the Working Group "Charter" some observations and questions were made to which I deem appropriate to react:

1. *The Charter of fundamental rights of the European Union (from now on called "the Charter") is a political document, not a juridical one.*

No, the Charter was explicitly drafted *as if* it should be integrated in the Treaties; the aim was to leave it to the IGC in Nice to decide about whether or not it should be integrated in the Treaties. The fact that at the time no agreement was reached on the integration of the Charter in the Treaties - despite the request of several member States and of the European Parliament - doesn't change the intrinsic characteristics of the document. Indeed it is and remains formulated so as to potentially constitute the first part of a "constitutional" text, similar to the first parts of the constitutions of many Nation-States.

2. *The Charter lacks precision in many articles and this could cause judges several problems as to its implementation.*

No, it couldn't. In the first parts of many modern constitutions there are articles affirming general principles and others affirming specific rights. This has never prevented national Constitutional Courts from enforcing both. Besides, up to now fundamental rights - apart from those stated in the European Convention for Human Rights now included in the Charter - have been granted by the European Court of Justice on the sole basis of a much more generic mention to "constitutional traditions common to the Member States" in article 6 of the TEU.

3. *The Charter includes principles and rights which do not concern the European Union competencies:*

a) *Why? b) If the Charter is integrated in the Treaties, will this give rise to new competencies of the Union?*

a) The Charter was drafted to render the whole of the fundamental rights already into force in the European Union more evident, following the principle of the indivisibility of fundamental rights. It would have been absurd to try and highlight only those rights involving present competencies of the Union and of the Community: firstly because it would have meant redrafting the Charter with every change in the framework of the Union's competencies; secondly because, above all, the meaning of every single article of the Charter must be interpreted in the context of all the others and the scope of a fundamental right is in relation to the need to guarantee other rights (quite evidently, affirming the freedom principle alone is different from affirming the freedom, equality and solidarity principles together).

b) The need to draft an exhaustive list of fundamental rights and principles in force in the EU has nothing to do with the attribution of competencies. The powers of the EU and EC institutions are foreseen in the Treaties and their exercise is limited by the obligation to respect the fundamental rights and principles included in the Charter.

In the framework of their specific competencies, the institutions also have the right to promote the respect of those rights and principles.

4. *Is the Charter, with its 54 articles, too long to be part of a simplified "constitutional" Treaty?*

No, it isn't. All contemporary constitutions are "long" constitutions because the catalogue of fundamental rights that citizens want to be granted has widened and the complexity of procedures concerning the exercise of public powers in modern States has grown. This is all the more so for such a complex supranational entity like the European Union.

For example, while the Swedish constitution of 1809 has 13 articles, the Italian one of 1948 has 139 articles (54 of which constituting its first part), the German one of 1949 has 146 articles, the Portuguese one of 1976 has 299 articles and the Polish one of 1997 has 243 articles (57 of which constituting the Chapter "Freedom, rights and duties of man and citizen").

Brussels, 26 June 2002

THE EUROPEAN CONVENTION

THE SECRETARIAT

Brussels, 5 July 2002

(OR. En)

Working Group II

Working document 03

Working group II "Incorporation of the Charter/ accession to the ECHR"

From: António Vitorino, President

To: Working Group II

Subject : **The relationship between the Charter and the Union's competencies**

1. It has been observed that some articles set out in the Charter concern areas in which the Community or the Union have little or no competence to act. This point has notably been made for the right to strike or to education, freedom of religion, the prohibition of the death penalty and of torture, the articles of the Charter on criminal law, as well as the articles on social security and social assistance and on access to healthcare¹. The concern has been expressed that integration of the Charter into the Treaties could lead to an extension of Community / Union competencies in such areas, despite the provision in Article 51 § 2 of the Charter that "this Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties".
2. This issue was extensively discussed in the preceding Convention which established the Charter. It might be worthwhile to recall some considerations which had helped to build consensus, within that Convention, on inclusion of the above-mentioned articles in the text of the Charter.

¹ Articles 2, § 2, 4, 10, 14, 19 - § 2, 28, 34, 35, 48 - 50 of the Charter.

3. The preceding Convention was guided by the idea that a distinction should be made between the extent of the Union's legislative competencies, on the one hand, and respect by the Union of all fundamental rights wherever it acts, on the other hand. Indeed, several examples drawn from the institutions' practice appear to illustrate that the Union's action may well have important impacts even on such fundamental rights that concern areas where the Union would have no or little competence to legislate:
- Council Regulation No 2679/98 on the functioning of the internal market in relation to the free movement of goods among the Member States, in which it was deemed necessary to include an article ensuring that the regulation is without prejudice to respect notably for the right to strike ¹;
 - the exclusion, in agreements with third countries on mutual legal assistance in criminal matters, of extradition of persons facing a serious risk of being subjected to the death penalty;
 - the current draft Directive on minimum standards for the reception of asylum seekers in the Member States, on which the Council has reached political agreement, and which includes provisions guaranteeing asylum seekers access to school education and to health care;
 - convocation of a staff competition by a Community institution on a Jewish holiday which may impinge on freedom of religion of the participants; it was in this situation that the European Court of Justice recognised freedom of religion as part of the fundamental rights of Community law ².
 - Community agriculture legislation which could have impacts on freedom of religion by limiting ritual slaughtering as practised by certain religions.

¹ See Article 2: "This Regulation may not be interpreted as affecting in any way the exercise of fundamental rights as recognised in Member States, including the right or freedom to strike. These rights may also include the right or freedom to take other actions covered by the specific industrial relations systems in Member States." See also recital N° 4: "Whereas such measures [i.e. measures which the Member States are obliged to take under the regulation with a view to facilitating the free movement of goods in their territory] must not affect the exercise of fundamental rights, including the right or freedom to strike."

² Case 130/75, *Vivien Prais v. Council*, ECR 1976, 1589.

4. This distinction is already reflected in the opinion 2/94 of the Court of Justice, points 27 - 35, where the Court found no general power of the Community to enact rules on fundamental rights¹ but at the same time recalled that respect for fundamental rights, as general principles of Community law, is a condition of the lawfulness of Community acts. Furthermore, it appears that in Regulation 2679/98, the Council has recognised explicitly the point that its acts, as well as Member States' action implementing them, must *respect* even such fundamental rights as the right to strike on which it would not have *competence to legislate*.
5. It is in the light of this distinction that the preceding Convention opted for a complete catalogue of all fundamental rights which the Union is to respect, including the above-mentioned articles, while at the same time stipulating in Article 51 § 2 that the Charter does not establish new Community / Union powers, or modify the existing ones.
6. In addition, some more recent extensions of the Union's competencies should be noted, notably in the field of criminal law, as created by the Treaty on the European Union ("3rd pillar"), which informed inclusion in the Charter of the fundamental safeguards set out in its Articles 48 through 50.²
7. It has however been argued that Article 51 § 1, second sentence, of the Charter, stipulating that the institutions of the Union not only respect the rights and observe the principles of the Charter, but also "promote the application thereof", could be interpreted as creating new competencies insofar as the above-mentioned Charter articles are concerned, and that this wording could be regarded as contradicting Article 51 § 2 of the Charter. However, in full the provision at issue reads: "They [i.e. the institutions and bodies of the Union *and* Member States when implementing Union law] shall respect the rights, observe the principles and promote the application thereof *in accordance with their respective powers*." (emphasis added). It appears that this wording can be read as clarifying that obligations to promote the

¹ It should be noted that while such general power is lacking, the Community does in some areas adopt specific measures relating to fundamental rights, either on the basis of particular Articles of the Treaty (see, for example Articles 13 and 141 of the EC Treaty) or "annexed" to the exercise of the competences attributed to it, see on this point doc. CONV 116/02, page 22, footnote 1.

² In particular, as noted in the Praesidium's Explanations to Article 50 of the Charter, the right not to be tried or punished twice is already enshrined in Articles 54 to 58 of the Schengen Convention, as well as in Article 7 of the Convention of the Communities's Financial Interests and in Article 10 of the Convention on the fight against corruption (conventions established by the Council in accordance with the EU Treaty).

application of Charter rights and principles arise only within the limits of the existing division of competencies between the Union and the Member States, thus confirming the principle of Article 51 § 2 of the Charter, and that the extent to which competencies for such "promotion" exist may vary, depending on the different Charter articles and on whether Union institutions or Member States authorities (implementing Union law) are concerned.

In the light of the above elements, can it be assumed that the Charter, if integrated into the Treaties, would not create new powers of the Community / the Union, or modify its existing powers, as it states in its Article 51 § 2?

If the body of the articles of the Charter were to be inserted into the EU Treaty itself or in a new basic Treaty (option f), would then a possible drafting adjustment of Article 51(2) of the Charter, clarifying that the Charter articles do not alter the powers and tasks as defined by the other provisions of the Treaties, be necessary or useful?¹

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¹ On this point, see already doc. CONV 116/02 WG II 1, page 7, footnote 1.

THE EUROPEAN CONVENTION

Brussels, 9 July 2002

THE SECRETARIAT

Working Group II

Working document 04

**Working group II "Incorporation of the Charter / accession to the
ECHR"**

Working document by Baroness Scotland of Asthal

Subject: The “missing” horizontal article in the Charter of Rights

1. Introduction

At the Working Group’s first meeting, I made reference to Charter articles based neither on the ECHR nor on the EC Treaty. I attach a table showing examples of these. My particular concern is that there appears to be no horizontal article governing these articles.

2. Existing horizontal articles

Of course, Charter articles corresponding to the ECHR are clarified by Article 52(3); and Charter articles based on the Treaties are clarified by Article 52(2). These so-called “horizontal” articles are of great importance - and their significance would be even greater were the Charter to be incorporated into the Treaties. But they do not help us with the other Charter provisions. These other provisions have no clarification other than the Praesidium Commentary (which is not part of the Charter) and perhaps Article 51(2), which confirms that the Charter is not intended to establish any new power or task for the Community or Union¹.

¹ For some Articles, this qualification is reinforced by Treaty provisions, which forbid the EC to legislate in certain areas (e.g. Education and vocational training [TEC Art 149(4) and c.f. Charter Art 14]; or Employment [TEC Art 129 and c.f. Charter Arts 15, 23, 29, 30, 31, 32, 33]); and reserve other areas to the Member States (e.g.

3. *Implications*

I believe that this absence of clarification (for articles not based on the ECHR or Treaties) would be a serious problem were the Charter to be given greater legal status than it currently enjoys. The third column of the attached table identifies some practical implications which, I believe, the Group should have in mind when it considers this legal problem. Citizens and Member State Governments would not be clear precisely which rights and responsibilities are entailed by the Charter. There would be some major questions:

- Definition: what is the agreed basis for the article concerned? Is it a principle? Or a fundamental right or freedom, perhaps with some irreducible minimum “essence” such as is found with the rights in the ECHR?
- Scope: what is the extent and enforceability of the article concerned?
- Limitation: what are the circumstances in which the right may be curtailed and balanced, if any?

If the Charter were to be incorporated in its current form, the task of answering these questions would fall to the ECJ. But the questions involve important political considerations. Would it be right to delegate these from democratically elected politicians?

4. *Common constitutional traditions?*

It is relevant to note that some of the Articles in the attachment may be part of the constitutional traditions common to the Member States (this is indicated in the Charter Preamble paragraph 5). But is that true in every case:

- Charter Article 3: according to the Commentary, this is based on the Council of Europe Convention on Biomedicine. But the Convention appears not to have been ratified by all the Member States.
- Charter Article 10(2): according to the Commentary, this is based on the common constitutional traditions. But is this right currently guaranteed by all the Member States?
- Charter Article 14: according to the Commentary, this is based on the common constitutional traditions and on Article 2 of the First Protocol to the ECHR. Have all Member States legal provision for parental “pedagogical convictions”? And Germany, Ireland, the Netherlands and the UK have reservations against Article 2 of the First Protocol to the ECHR.
- Charter Article 24: according to the Commentary, this is based on the UN Convention on the Rights of the Child. All Member States have accepted this Convention but Austria, Denmark, France, the Netherlands and the

Health services [TEC Art 152(5) and c.f. Charter Art 1, 3, 25, 31, 34, 35]; or Public order and public security [TEC Art 64(1) and c.f. Charter Art 6, 10, 47]). *See also CONV 47/02 (Brussels, 15 May 2002).*

UK have entered reservations. The Charter has no provision to respect those reservations.

- All the Charter articles entirely or partly based on the European Social Charter or the Revised European Social Charter (Articles 14, 15, 23 and from 25 to 35) which are not accepted by all the Member States.

5. Recommendations

I believe the Working Group should consider the need for a supplementary horizontal article or alternatively an appropriate provision in any proposed article of incorporation.

Baroness Scotland of Asthal

UK Government Alternate Representative to the Convention on the Future of the European Union

Attachment to UK paper: “The “missing” horizontal article in the Charter of Rights”

TABLE

Charter Article	Existing legal base (according to the “informal” Praesidium commentary from 1999/2000)	Practical implications
<p><i>Article 3</i> Right to the integrity of the person</p>	<p>The Commentary states that the "principles" are included in the Council of Europe Convention on Human Rights and Biomedicine. But 3(1) appears not to be; and the provisions in 3(2) have not yet been ratified by all Member States. Not clear which if any horizontal Article governs the interpretation of this Charter Article and its limitations.</p>	<p>"Integrity" in 3(1) is very wide in scope, and could interfere with e.g. national penal laws and policies, as well as health policies, such as compulsory AIDs screening and immunisation programmes. In Canada, “integrity” has been used to campaign against infant male circumcision. 3(2) has no qualifications at all and may outlaw Member State arrangements for e.g. genetic and pre-natal testing. 3(2) addresses matters reserved to the Member States (organisation and supply of medical care) – see final section below</p>
<p><i>Article 9</i> Right to marry and right to found a family</p>	<p>The Commentary states that this is based on ECHR Article 12, but the scope is wider, embracing "same-sex" marriages – which a court might find is part of the essence of the right, which cannot therefore be curtailed by the laws and practices of Member States.. Though Charter Article 52 may apply, 52(3) does not "prevent Union law providing more extensive protection".</p>	<p>Despite the reference to national laws, Article 9 may lead to new national obligations e.g. to grant EC free movement rights to partners in same sex and transsexual marriages, including third country nationals, as well as an extension of asylum rights and family reunification rules. It might also have implications regarding adoption by homosexual couples ("right to found a family") which may cause problems for some MSs.</p>
<p><i>Article 10</i> Freedom of thought, conscience and religion (conscientious objection)</p>	<p>The Commentary states that paragraph 2 (conscientious objection) corresponds to national constitutional traditions. Not clear which if any horizontal Article governs the interpretation of this Charter Article and its limitations.</p>	<p>On its face, 10(2) defers to national legislation, but the Court could find an irreducible minimum right, drawing upon ECtHR jurisprudence on fundamental rights and the first sentence of Charter Article 52(1). This would reduce the scope for national limitations and may lead to new States obligations.</p>
<p><i>Article 13</i> Freedom of the arts and sciences</p>	<p>The Commentary states that this Article is "deduced" from the right to freedom of thought and expression. Not clear which if any horizontal Article governs the interpretation of this Charter Article and its limitations.</p>	<p>Article 13 claims to be deduced from the principles in ECHR Article 10, but the wording, and its separation from Charter Article 10, seems apt to create a new right and new positive duties. State controls on some forms of scientific research may not survive challenge under this Article. “Free of constraint” is as odd for the arts as for scientific research – some expression needs to be constrained in the public interest – obscenity laws?</p>

Attachment to UK paper: “The “missing” horizontal article in the Charter of Rights”

TABLE

<p><i>Article 14</i> Right to education</p>	<p>The Commentary states that Article 14(1) and (3) is based on the common Constitutional traditions and on Article 2 of the First Protocol to the ECHR, but with a wider scope. Article 14(2): Unclear. The Commentary states that this is a "principle" which was necessary to <u>add</u> to this provision. Article 14(2) is not based on the Treaties or ECHR. Unclear which if any horizontal Article governs the interpretation of this Charter Article and its limitations.</p>	<p>Article 14 goes beyond the ECHR provisions regarding access to <u>vocational and continuing training, parents pedagogical convictions and free compulsory education</u>. On its face, 14(3) defers to national legislation, but it may be argued that there is an irreducible minimum right, drawing upon ECtHR jurisprudence on fundamental rights and the first sentence of Charter Article 52(1) (in which case the scope for national limitations may be limited). New positive duties (e.g. an access to vocational training) are implied in an area where the EU is precluded from legislation. Germany, Ireland, the Netherlands and the UK have entered reservations against Article 2 of First Protocol to the ECHR. It is unclear that these would be respected.</p>
<p><i>Article 19</i> Protection in the event of removal, expulsion or extradition</p>	<p>The Commentary states that paragraph 1 is based on Article 4 of the Fourth Protocol to the ECHR (which not all Member States have accepted) and on ECHR Article 3 (same scope).</p>	<p>The national positions of Member States which have chosen not to accept the Fourth Protocol to the ECHR on which 19(1) is based (Greece, Spain, UK) is not respected.</p>
<p><i>Article 21</i> Non-discrimination</p>	<p>The Commentary states that this draws partly on Article 13 EC, but it contains a prohibition whereas Article 13 provides a power to legislate; and partly on Article 14 ECHR, but it is not mentioned in the list given for Article 52(3). Not clear which if any horizontal Article governs the interpretation of this Charter Article and its limitations.</p>	<p>Article 21(1) is close to ECHR Protocol 12 (which <u>no</u> Member State has yet ratified and several have not signed at all). Making the Charter legally binding could affect existing national derogations, including those expressly permitted in existing Community secondary legislation.</p>
<p><i>Article 24</i> The rights of the child</p>	<p>The Commentary states that this is based on the UN Convention on the Rights of the Child, against which some Member States have entered reservations. Not clear which if any horizontal Article governs the interpretation of this Charter Article and its limitations.</p>	<p>All Member States have ratified the UN Convention, but not all have incorporated the provisions in domestic law. There are implications for national laws and policies (e.g. immigration, family reunification and social services). Article 24(1) provides no qualifying phrases such as "under conditions provided for by national laws and practices".</p>
<p><i>Articles 25 and 26</i> The rights of the elderly; Integration of persons with disabilities</p>	<p>Mainly based on the Revised European Social Charter. Not clear which if any horizontal Article governs the interpretation of these Charter Articles and their limitations.</p>	<p>The Court could find new positive duties and States obligations here regarding special measures interfering with national arrangements and budgets. Note that Article 26 appears to include third country nationals. This could well have financial implications.</p>

Attachment to UK paper: “The “missing” horizontal article in the Charter of Rights”

TABLE

<i>Article 28</i> Right of collective bargaining and action	As for Article 25.	Could entail a positive duty to prohibit dismissal of striking workers. This topic is outwith EU competence (see below).
<i>Article 29</i> Right of access to placement services	As for Article 25.	Article 29 implies an irreducible minimum right not to be denied access to free placement services. Who is to define and limit that – and to pay for it?
<i>Article 30</i> Protection in the event of unjustified dismissal	As for Article 25.	The language is apt for a wide-ranging constitutional statement of rights, allowing a wide measure of judicial discretion and interference in national employment laws and practices. Does "every worker" include those unlawfully employed? And what is the scope of "unjustified dismissal"? Who is to decide and to pick up any bill?
<i>Article 31</i> Fair and just working conditions	Mainly based on the European Social Charter. Not clear which if any horizontal Article governs the interpretation of these Charter Articles and their limitations.	Do unlawful workers have a right to annual paid leave? Note absence of reference to "national laws and practices". Implies Community power to legislate on health and safety matters and positive duties.
<i>Article 32</i> Prohibition of child labour and protection of young people at work	As for Article 31.	Implications for national policies and finances (working hours, fair wages, paid holidays etc).
<i>Article 33</i> Family and professional life	As for Article 31.	Implications for laws and policies concerning paternity leave, depending on the approach taken by the Court. Implies positive duties to promote the economic, legal and social protection of family life by all appropriate means?
<i>Article 50</i> Right not to be tried or punished twice in criminal proceedings for the same criminal offence	The Commentary states that this is based on Article 4 of Protocol 7 to the ECHR which not all Member States have ratified. Horizontal article 52(3) applies.	Article 50 goes beyond Protocol 7 to the ECHR by protecting freedom from double jeopardy <u>between the jurisdiction of the Member States</u> , and not just within the same jurisdiction. The implication is that the EU constitutes a single criminal jurisdiction concerning the finality of the criminal process. Not all Member States have accepted Protocol 7 to the ECHR (i.e. Belgium, Germany, Ireland, Netherlands, Portugal, Spain and UK).

THE EUROPEAN CONVENTION

Brussels, 9 July 2002

THE SECRETARIAT

Working Group II

Working document 05

Working group II "Incorporation of the Charter/accession to the ECHR"

Working document by Mr. Vytenis Povilas Andriukaitis

Subject : Legal status of the Charter of Fundamental Rights of the European Union

Taking into account that the Charter of Fundamental Rights of the European Union (hereinafter "Charter") was adopted with a view to strengthening the protection of fundamental rights in the European Union, systematising all fundamental rights stipulated in different legal acts of the European Communities and international instruments and setting them out in a single text, making these rights more visible and explicit to the EU citizens, and ensuring the confidence of the European people in the process of further European integration as well as considering that the declarative nature of the Charter creates obstacles for the effective implementation of the rights foreseen in it, a conclusion may be drawn that the Charter should have a binding effect. This effect can be granted by incorporating the Charter into the Treaty on the European Union or the future EU Constitution.

The modality of the incorporation of the Charter into the Treaty (Constitution) should be determined on the basis of the requirements of legal certainty and clarity. As the Charter might be seen as a compromise in itself, the most appropriate way of its incorporation would be by introducing the least possible modifications in the contents of the Charter and the EU/EC legal system.

Modalities and consequences of the incorporation of the Charter into the Treaty on the EU (EU Constitution):

1. The incorporation of the Charter into the Treaty on the European Union or a new basic treaty

This alternative is supported by the Commission of the European Union, the European Parliament and a number of member states.

The preamble of the Charter, with minor changes, could be incorporated into the preamble of the Treaty on the European Union; the text of the Charter, excluding the general provisions, could be added as a separate chapter of the Treaty. Within the Treaty, the provisions of the Charter would have the status of the primary EU legislation (the legal status of the Charter would be similar to that of the EC/EU Treaties). Direct applicability of the provisions of the Charter could be guided by the general terms of the direct applicability of the EC law. A point should be made that the wording of some of the provisions of the Charter does not meet the terms of direct applicability set by the European Court of Justice. Therefore, problems could be avoided by applying the community method for the regulation of fundamental rights.

Some of the provisions in the Charter replicate the provisions of the Treaty establishing the European Communities, therefore, while integrating the Charter into the Treaty, the problem of the replication of rights should be addressed. This is primarily relevant to the rights of the citizens' of the European Union, principle of non-discrimination, and equal opportunities between men and women. Thus, the citizens' rights could be either deleted from the EC Treaty or only the provisions specifying these rights could be retained which establish additional obligations to institutions, certain procedures of their discharge, etc. Other rights envisaged in the Treaty could be modified. If some of the rights foreseen in the Charter were further regulated under the same or other Treaties, the wording "it shall be exercised within the limits and under conditions set in the treaties" should be added to every right stipulated in the Charter.

Major problems would be created by the need to change the general provisions of the Charter. If these provisions were left out, the meaning and effectiveness of the Charter as a whole could be jeopardised. Therefore, it would be expedient to consider the necessity of retaining (or modifying) each of the general provisions of the Charter in the new Treaty. Already now, it is possible to foresee that Article 51(1) would lose its sense if the Charter was included into the Treaty, while the necessity of Article 51(2) of the Charter will have to be assessed after the final solution of the issues of the status and competencies of the EC and EU. Article 52(2) and the provisions concerning the relationship between the Charter and the European Convention on Human Rights listed in Article 52(3) should be specified. There is some uncertainty about Article 53 of the Charter dealing with the relationship between the Charter and the national constitutions of the member states regarding its compliance with the principle of the supremacy of the EC law. The problem could be solved by indicating (like in the case of the definition of the EU citizenship) that the Charter shall not replace the human rights stipulated in national constitutions but rather supplement them. This could be laid down in Article 6 of the EU Treaty or in an article of the Constitution.

2. Incorporation of the Charter in the form of a separate Protocol annexed to the Treaty

In this case, incorporation of the Charter would have the same legal value and consequences as in the first case as under both international and EU law protocols are construed as an integral part of a Treaty. Such an option would be in line with the wishes of some EU member states to see the Charter as a separate document and would provide a solution if no EU Constitution is adopted. This option would be simpler in technical terms in comparison with the first option and would require fewer amendments to the Charter and the Treaties. In this case, however, the general provisions of

the Charter would have to be modified. A reference to the Charter could be made in Article 6(2) of the EU Treaty.

3. Reference to the Charter in Article 6(2) of the EU Treaty

This possibility was foreseen already before the Nice conference. The reference could be direct, in a separate additional part of the article, or indirect – by expanding Article 6(2) and making a reference to the Charter as to yet another source on which the European Court of Justice draws in protecting human rights as the general principles of the EC law. Although this option would be technically simpler than the first ones, a problem would arise with the reference to ECHR made in Article 6(2) because the greater part of the rights stipulated in the Charter are based on the Convention. An indirect reference to the Charter without changing its status would merely mean a formal statement of recognition of the rights stipulated in the Charter as general principles. It is doubtful whether such a reference would be expedient.

The control mechanism over the protection of the rights enshrined in the Charter.

In connection with incorporation of the Charter into the Treaties, the question arises whether paragraph 4 of Article 230 of the EC Treaty should be amended to extend the conditions of admissibility for direct action by individuals in the European Court of Justice or whether a new form of legal action should be introduced for the purposes of protection of fundamental rights. An introduction of a new form of legal action would not be expedient because violations of fundamental rights are usually related to a specific form of already existing actions. If the European Court of Justice is given the competence to apply and interpret the provisions of the Charter, it would become the last instance in cases related to the violation of rights stipulated in the ECHR and the Charter. Such a situation could lead to a conflicting case-law of the European Court of Human Rights and the European Court of Justice; besides, the Charter provisions with regard to actions by member states would not have equal legal value and consequences. It should also be noted that all the rulings by the European Court of Justice are passed unanimously. Such a method of handing down decisions could create obstacles for a dynamic interpretation of human rights provisions. As the European Court of Justice itself falls within the Charter's sphere of control, a question arises whether an external control mechanism should be introduced. That is why it may be worthwhile to discuss an option of establishing a judicial or legal institution with a competence to ensure the compliance with the standards enshrined in the Charter. In view of the problems mentioned above and of the possible extension of the competencies of the European Court of Justice in the field of justice and home affairs, some of the Lithuanian experts believe that it would be expedient to establish a new permanent judicial institution to ensure the implementation of the rights under the Charter. Initially, a Fundamental Rights Commission could be established which would also be able to supervise the compliance with the provisions of the Charter by EU institutions.

After an analysis of the modalities and consequences of incorporation of the Charter into the Treaty, it must be emphasised that this issue is closely linked with other issues being discussed at the Convention, such as division of competencies, accession by the Community/Union to the ECHR, simplification of the Treaties. It is therefore necessary to take into account the results of work of other working groups and their proposals.

THE EUROPEAN CONVENTION

Brussels, 12 July 2002

THE SECRETARIAT

Working Group II

Working document 06

Working group II -"Incorporation of the Charter/accession to the ECHR"**Working document by Elena Paciotti****Subject: Answers to questions in chapter II of doc. CONV 116/02**

Referring to the Secretariat's discussion paper CONV 116/02 of 18 June 2002 concerning "Modalities and consequences of incorporation into the Treaties of the Charter of Fundamental Rights and accession of the Community/Union to the ECHR", I will try to answer the questions raised in chapter II:

1. Possible techniques for incorporation of the Charter

The problem of the incorporation of the Charter of fundamental rights of the European Union in a Treaty having the contents and the value of a European constitution can be easily solved looking at the only distinguished precedent of a constitution written shortly after the declaration of fundamental rights. I am referring to the French Constitution of 1791 that incorporated the Declaration of human rights of 1789 simply by inserting it before the text of the other constitutional norms.

I enclose this document for better information.

As highlighted in the meeting of 25 June, every modern constitution includes a catalogue of fundamental rights and principles: in the European Union this catalogue was recently drafted and adopted by an ad hoc Convention and subsequently signed and proclaimed by the three European institutions. It is difficult to imagine a European "constitution" without the Charter of fundamental rights constituting its first part (see indent f of point 1 of the Secretariat's

discussion paper). This solution would further allow the Charter to be amended or updated with the same modalities as those for "constitutional" revision.

2. The question of current Article 6(2) of the EU Treaty

If the Charter is incorporated into the "constitutional" Treaty, it would neither be necessary or useful to maintain current art. 6.2 of the TEU mentioning common constitutional traditions of Member states and the European Convention for Human Rights.

It would not be necessary because the ECHR is already included in the Charter and reference is made in its preamble to the common constitutional traditions of Member states. Another reason is that in European constitutional systems the catalogue of fundamental rights is not exhaustive and does not avoid adjustment and evolution of jurisprudence, without any need to mention external sources. It would not be useful because the mention of plurality of juridical sources would seem incomprehensible and could create uncertainty and confusion.

3. The question of the preamble to the Charter

The incorporation of the Charter includes its preamble (that played a relevant role in the acceptance of the final compromise leading to the adoption of the Charter) as in the above-mentioned precedent of the French Constitution of 1791.

Instead, a part of the Treaties' preamble might be redrafted so to be integrated into the "constitutional" Treaty, but probably this will not be necessary because all the essential references to the Union's objectives and principles are already included in the preamble to the Charter .

4. The question of "replication" in the Charter

The rights included in the Charter and already stated in the ECT will not have to be replicated through articles of the "constitutional" treaty; they can nonetheless be specified and clarified in the text in order to group systematically all the non "constitutional" provisions present in the treaties currently in force.

5. Examination of certain technical adjustments in the provisions of the Charter

The Charter as a whole must not be modified in order to become the first part of a European constitution; nevertheless some limited technical adjustments will be useful concerning the final clauses such as those contained in articles 51.2 and 52.2.

6. Treaty provisions concerning the Court of Justice

a) In the event of the incorporation of the Charter in the "constitutional" Treaty, the provision concerning the jurisdiction of the Court of Justice (current article 46 TEU) will have to be changed extending its scope to the Charter without limiting it to the activity of the institutions. In fact, article 51.1 of the Charter, in compliance with the jurisprudence of the Court of Justice, already states that it applies to the institutions and bodies of the Union and to Member States when implementing the Union's law.

b) Competencies of the Court on subjects related to Justice and Home affairs

The incorporation of the Charter in the "constitutional" Treaty (i.e. the need to guarantee fundamental rights) implies that some of the current limitations to the competencies of the Court of Justice are eliminated, such as those foreseen by current articles 35.5 EUT and 68.2 and 3 ECT.

c) The question of the liberalisation of conditions for direct referral to the Court

To establish a balance between the need to protect fundamental rights of citizens and the need for efficiency of the Court of Justice, the following might be sufficient:

- the incorporation of the Charter in the "constitutional" Treaty allowing for the exercise of the control of legitimacy, even from the point of view of the respect of all the fundamental rights included in the Charter.
- The redrafting of current article 230.4 ECT following the extensive interpretation adopted by the Court of First Instance in the case *Jégo-Quéré*. In this case the Court stated that everyone can bring referral against decisions affecting him/her and against decisions that, while appearing as regulations or decisions affecting other persons, de facto concern him/her directly and individually or touch at his/her juridical position by restricting his/her right or imposing additional obligations.

ANNEX**Texte de la Constitution française de 1791 (dont la Déclaration des droits de l'homme de 1789 constitue le préambule)**

Les représentants du peuple français, constitués en Assemblée nationale, considérant que l'ignorance, l'oubli ou le mépris des droits de l'homme sont les seules causes des malheurs publics et de la corruption des gouvernements, ont résolu d'exposer, dans une déclaration solennelle, les droits naturels, inaliénables et sacrés de l'homme, afin que cette déclaration, constamment présente à tous les membres du corps social, leur rappelle sans cesse leurs droits et leurs devoirs ; afin que les actes du pouvoir législatif et ceux du pouvoir exécutif, pouvant être à chaque instant comparés avec le but de toute institution politique, en soient plus respectés ; afin que les réclamations des citoyens, fondées désormais sur des principes simples et incontestables, tournent toujours au maintien de la Constitution et au bonheur de tous.

En conséquence, l'Assemblée nationale reconnaît et déclare, en présence et sous les auspices de l'Être Suprême, les droits suivants de l'homme et du citoyen.

Article premier. - Les hommes naissent et demeurent libres et égaux en droits. Les distinctions sociales ne peuvent être fondées que sur l'utilité commune.

Article 2. - Le but de toute association politique est la conservation des droits naturels et imprescriptibles de l'homme. Ces droits sont la liberté, la propriété, la sûreté et la résistance à l'oppression.

Article 3. - Le principe de toute souveraineté réside essentiellement dans la Nation. Nul corps, nul individu ne peut exercer d'autorité qui n'en émane expressément.

Article 4. - La liberté consiste à pouvoir faire tout ce qui ne nuit pas à autrui : ainsi, l'exercice des droits naturels de chaque homme n'a de bornes que celles qui assurent aux autres membres de la société la jouissance de ces mêmes droits. Ces bornes ne peuvent être déterminées que par la loi.

Article 5. - La loi n'a le droit de défendre que les actions nuisibles à la société. Tout ce qui n'est pas défendu par la loi ne peut être empêché, et nul ne peut être contraint à faire ce qu'elle n'ordonne pas.

Article 6. - La loi est l'expression de la volonté générale. Tous les citoyens ont droit de concourir personnellement ou par leurs représentants à sa formation. Elle doit être la même pour tous, soit qu'elle protège, soit qu'elle punisse. Tous les citoyens, étant égaux à ses yeux, sont également admissibles à toutes dignités, places et emplois publics, selon leur capacité et sans autre distinction que celle de leurs vertus et de leurs talents.

Article 7. - Nul homme ne peut être accusé, arrêté ou détenu que dans les cas déterminés par la loi et selon les formes qu'elle a prescrites. Ceux qui sollicitent, expédient, exécutent ou font exécuter des ordres arbitraires doivent être punis ; mais tout citoyen appelé ou saisi en vertu de la loi doit obéir à l'instant ; il se rend coupable par la résistance.

Article 8. - La loi ne doit établir que des peines strictement et évidemment nécessaires, et nul ne peut être puni qu'en vertu d'une loi établie et promulguée antérieurement au délit, et légalement appliquée.

Article 9. - Tout homme étant présumé innocent jusqu'à ce qu'il ait été déclaré coupable, s'il est jugé indispensable de l'arrêter, toute rigueur qui ne serait pas nécessaire pour s'assurer de sa personne doit être sévèrement réprimée par la loi.

Article 10. - Nul ne doit être inquiété pour ses opinions, même religieuses, pourvu que leur manifestation ne trouble pas l'ordre public établi par la loi.

Article 11. - La libre communication des pensées et des opinions est un des droits les plus précieux de l'homme ; tout citoyen peut donc parler, écrire, imprimer librement, sauf à répondre de l'abus de cette liberté dans les cas déterminés par la loi.

Article 12. - La garantie des droits de l'homme et du citoyen nécessite une force publique ; cette force est donc instituée pour l'avantage de tous, et non pour l'utilité particulière de ceux à qui elle est confiée.

Article 13. - Pour l'entretien de la force publique, et pour les dépenses d'administration, une contribution commune est indispensable ; elle doit être également répartie entre les citoyens, en raison de leurs facultés.

Article 14. - Les citoyens ont le droit de constater, par eux-mêmes ou par leurs représentants, la nécessité de la contribution publique, de la consentir librement, d'en suivre l'emploi, et d'en déterminer la quotité, l'assiette, le recouvrement et la durée.

Article 15. - La société a le droit de demander compte à tout agent public de son administration.

Article 16. - Toute société dans laquelle la garantie des droits n'est pas assurée ni la séparation des pouvoirs déterminée, n'a point de Constitution.

Article 17. - La propriété étant un droit inviolable et sacré, nul ne peut en être privé, si ce n'est lorsque la nécessité publique, légalement constatée, l'exige évidemment, et sous la condition d'une juste et préalable indemnité.

L'Assemblée nationale voulant établir la Constitution française sur les principes qu'elle vient de reconnaître et de déclarer, abolit irrévocablement les institutions qui blessaient la liberté et l'égalité des droits.

- Il n'y a plus ni noblesse, ni pairie, ni distinctions héréditaires, ni distinctions d'ordres, ni régime féodal, ni justices patrimoniales, ni aucun des titres, dénominations et prérogatives qui en dérivent, ni aucun ordre de chevalerie, ni aucune des corporations ou décorations, pour lesquelles on exigeait des preuves de noblesse, ou qui supposaient des distinctions de naissance, ni aucune autre supériorité, que celle des fonctionnaires publics dans l'exercice de leurs fonctions.

- Il n'y a plus ni vénalité, ni hérédité d'aucun office public.

- Il n'y a plus, pour aucune partie de la Nation, ni pour aucun individu, aucun privilège, ni exception au droit commun de tous les Français.

- Il n'y a plus ni jurandes, ni corporations de professions, arts et métiers.

- La loi ne reconnaît plus ni vœux religieux, ni aucun autre engagement qui serait contraire aux droits naturels ou à la Constitution.

TITRE PREMIER

Dispositions fondamentales garanties par la Constitution

La Constitution garantit, comme droits naturels et civils :

1° Que tous les citoyens sont admissibles aux places et emplois, sans autre distinction que celle des vertus et des talents ;

2° Que toutes les contributions seront réparties entre tous les citoyens également en proportion de leurs facultés ;

3° Que les mêmes délits seront punis des mêmes peines, sans aucune distinction des personnes.

La Constitution garantit pareillement, comme droits naturels et civils :

- La liberté à tout homme d'aller, de rester, de partir, sans pouvoir être arrêté, ni détenu, que selon les formes déterminées par la Constitution ;

- La liberté à tout homme de parler, d'écrire, d'imprimer et publier ses pensées, sans que les écrits puissent être soumis à aucune censure ni inspection avant leur publication, et d'exercer le culte religieux auquel il est attaché ;

- La liberté aux citoyens de s'assembler paisiblement et sans armes, en satisfaisant aux lois de police ;

- La liberté d'adresser aux autorités constituées des pétitions signées individuellement.

Le Pouvoir législatif ne pourra faire aucunes lois qui portent atteinte et mettent obstacle à l'exercice des droits naturels et civils consignés dans le présent titre, et garantis par la Constitution ; mais comme la liberté ne consiste qu'à pouvoir faire tout ce qui ne nuit ni aux droits d'autrui, ni à la sûreté publique, la loi peut établir des peines contre les actes qui, attaquant ou la sûreté publique ou les droits d'autrui, seraient nuisibles à la société.

La Constitution garantit l'inviolabilité des propriétés ou la juste et préalable indemnité de celles dont la nécessité publique, légalement constatée, exigerait le sacrifice. - Les biens destinés aux dépenses du culte et à tous services d'utilité publique, appartiennent à la Nation, et sont dans tous les temps à sa disposition.

La Constitution garantit les aliénations qui ont été ou qui seront faites suivant les formes établies par la loi.

Les citoyens ont le droit d'élire ou choisir les ministres de leurs cultes.

Il sera créé et organisé un établissement général de Secours publics, pour élever les enfants abandonnés, soulager les pauvres infirmes, et fournir du travail aux pauvres valides qui n'auraient pu s'en procurer.

Il sera créé et organisé une Instruction publique commune à tous les citoyens, gratuite à l'égard des parties d'enseignement indispensables pour tous les hommes et dont les établissements seront distribués graduellement, dans un rapport combiné avec la division du royaume. - Il sera établi des fêtes nationales pour conserver le souvenir de la Révolution française, entretenir la fraternité entre les citoyens, et les attacher à la Constitution, à la Patrie et aux lois.

Il sera fait un Code de lois civiles communes à tout le Royaume.

TITRE II

De la division du royaume, et de l'état des citoyens

ARTICLE PREMIER. - Le Royaume est un et indivisible : son territoire est distribué en quatre-vingt-trois départements, chaque département en districts, chaque district en cantons.

ART. 2. - Sont citoyens français : - Ceux qui sont nés en France d'un père français ; - Ceux qui, nés en France d'un père étranger, ont fixé leur résidence dans le Royaume ; - Ceux qui, nés en pays étranger d'un père français, sont venus s'établir en France et ont prêté le serment civique ; - Enfin

ceux qui, nés en pays étranger, et descendant, à quelque degré que ce soit, d'un Français ou d'une Française expatriés pour cause de religion, viennent demeurer en France et prêtent le serment civique.

ART. 3. - Ceux qui, nés hors du Royaume de parents étrangers, résident en France, deviennent citoyens français, après cinq ans de domicile continu dans le Royaume, s'ils y ont, en outre, acquis des immeubles ou épousé une Française, ou formé un établissement d'agriculture ou de commerce, et s'ils ont prêté le serment civique.

ART. 4. - Le Pouvoir législatif pourra, pour des considérations importantes, donner à un étranger un acte de naturalisation, sans autres conditions que de fixer son domicile en France et d'y prêter le serment civique.

ART. 5. - Le serment civique est : Je jure d'être fidèle à la Nation à la loi et au roi et de maintenir de tout mon pouvoir la Constitution du Royaume, décrétée par l'Assemblée nationale constituante aux années 1789, 1790 et 1791.

ART. 6. - La qualité de citoyen français se perd : 1° Par la naturalisation en pays étranger ; 2° Par la condamnation aux peines qui emportent la dégradation civique, tant que le condamné n'est pas réhabilité ; 3° Par un jugement de contumace, tant que le jugement n'est pas anéanti ; 4° Par l'affiliation à tout ordre de chevalerie étranger ou à toute corporation étrangère qui supposerait, soit des preuves de noblesse, soit des distinctions de naissance, ou qui exigerait des vœux religieux.

ART. 7. - La loi ne considère le mariage que comme contrat civil. - Le Pouvoir législatif établira pour tous les habitants, sans distinction, le mode par lequel les naissances, mariages et décès seront constatés ; et il désignera les officiers publics qui en recevront et conserveront les actes.

ART. 8. - Les citoyens français considérés sous le rapport des relations locales qui naissent de leurs réunions dans les villes et dans de certains arrondissements du territoire des campagnes, forment les Communes. - Le Pouvoir législatif pourra fixer l'étendue de l'arrondissement de chaque commune.

ART. 9. - Les citoyens qui composent chaque commune, ont le droit d'élire à temps, suivant les formes déterminées par la loi, ceux d'entre eux qui, sous le titre d'Officiers municipaux, sont chargés de gérer les affaires particulières de la commune. - Il pourra être délégué aux officiers

municipaux quelques fonctions relatives à l'intérêt général de l'Etat.

ART. 10. - Les règles que les officiers municipaux seront tenus de suivre dans l'exercice des fonctions, tant municipales que de celles qui leur auront été déléguées pour l'intérêt général, seront fixées par les lois.

TITRE III

Des pouvoirs publics

ARTICLE PREMIER. - La Souveraineté est une, indivisible, inaliénable et imprescriptible. Elle appartient à la Nation ; aucune section du peuple, ni aucun individu, ne peut s'en attribuer l'exercice.

ART. 2. - La Nation, de qui seule émanent tous les Pouvoirs, ne peut les exercer que par délégation.
- La Constitution française est représentative : les représentants sont le Corps législatif et le roi.

ART. 3. - Le Pouvoir législatif est délégué à une Assemblée nationale composée de représentants temporaires, librement élus par le peuple, pour être exercé par elle, avec la sanction du roi, de la manière qui sera déterminée ci-après.

ART. 4. - Le Gouvernement est monarchique : le Pouvoir exécutif est délégué au roi, pour être exercé sous son autorité, par des ministres et autres agents responsables, de la manière qui sera déterminée ci-après.

ART. 5. - Le Pouvoir Judiciaire est délégué à des juges élus à temps par le peuple.

CHAPITRE PREMIER

DE L'ASSEMBLÉE NATIONALE LÉGISLATIVE

ARTICLE PREMIER. - L'Assemblée nationale formant le corps législatif est permanente, et n'est composée que d'une Chambre.

ART. 2. - Elle sera formée tous les deux ans par de nouvelles élections. - Chaque période de deux

années formera une législature.

ART. 3. - Les dispositions de l'article précédent n'auront pas lieu à l'égard du prochain Corps législatif, dont les pouvoirs cesseront le dernier jour d'avril 1793.

ART. 4. - Le renouvellement du Corps législatif se fera de plein droit.

ART. 5. - Le Corps législatif ne pourra être dissous par le roi.

Section première. - Nombre des représentants. Bases de la représentation.

ARTICLE PREMIER. Le nombre des représentants au Corps législatif est de sept cent quarante-cinq à raison des quatre-vingt-trois départements dont le Royaume est composé et indépendamment de ceux qui pourraient être accordés aux Colonies.

ART. 2. - Les représentants seront distribués entre les quatre-vingt-trois départements, selon les trois proportions du territoire, de la population, et de la contribution directe.

ART. 3. - Des sept cent quarante-cinq représentants, deux cent quarante-sept sont attachés au territoire. - Chaque département en nommera trois, à l'exception du département de Paris, qui n'en nommera qu'un.

ART. 4. - Deux cent quarante-neuf représentants sont attribués à la population. - La masse totale de la population active du Royaume est divisée en deux cent quarante-neuf parts, et chaque département nomme autant de députés qu'il a de parts de population.

ART. 5. - Deux cent quarante-neuf représentants sont attachés à la contribution directe. - La somme totale de la contribution directe du Royaume est de même divisée en deux cent quarante-neuf parts, et chaque département nomme autant de députés qu'il paie de parts de contribution.

Section II. - Assemblées primaires. Nomination des électeurs.

ARTICLE PREMIER. - Pour former l'Assemblée nationale législative, les citoyens actifs se réuniront tous les deux ans en Assemblées primaires dans les villes et dans les cantons. - Les Assemblées primaires se formeront de plein droit le second dimanche de mars, si elles n'ont pas été convoquées plus tôt par les fonctionnaires publics déterminés par la loi.

ART. 2. - Pour être citoyen actif, il faut : - Etre né ou devenu Français ; - Etre âgé de vingt-cinq ans accomplis ; - Etre domicilié dans la ville ou dans le canton depuis le temps déterminé par la loi ; - Payer, dans un lieu quelconque du Royaume, une contribution directe au moins égale à la valeur de trois journées de travail, et en représenter la quittance ; - N'être pas dans un état de domesticité, c'est-à-dire de serviteur à gages ; - Etre inscrit dans la municipalité de son domicile au rôle des gardes nationales ; - Avoir prêté le serment civique.

ART. 3. - Tous les six ans, le Corps législatif fixera le minimum et le maximum de la valeur de la journée de travail, et les administrateurs des départements en feront la détermination locale pour chaque district.

ART. 4. - Nul ne pourra exercer les droits de citoyen actif dans plus d'un endroit, ni se faire représenter par un autre.

ART. 5. - Sont exclus de l'exercice des droits de citoyen actif : - Ceux qui sont en état d'accusation ; - Ceux qui, après avoir été constitués en état de faillite ou d'insolvabilité, prouvé par pièces authentiques, ne rapportent pas un acquit général de leurs créanciers.

ART. 6. - Les Assemblées primaires nommeront des électeurs en proportion du nombre des citoyens actifs domiciliés dans la ville ou le canton. - Il sera nommé un électeur à raison de cent citoyens actifs présents, ou non, à l'Assemblée. - Il en sera nommé deux depuis cent cinquante et un jusqu'à deux cent cinquante, et ainsi de suite.

ART. 7. - Nul ne pourra être nommé électeur, s'il ne réunit aux conditions nécessaires pour être citoyen actif, savoir : - Dans les villes au-dessus de six mille âmes, celle d'être propriétaire ou usufruitier d'un bien évalué sur les rôles de contribution à un revenu égal à la valeur locale de deux cents journées de travail, ou d'être locataire d'une habitation évaluée sur les mêmes rôles, à un

revenu égal à la valeur de cent cinquante journées de travail ; - Dans les villes au-dessous de six mille âmes, celle d'être propriétaire ou usufruitier d'un bien évalué sur les rôles de contribution à un revenu égal à la valeur locale de cent cinquante journées de travail, ou d'être locataire d'une habitation évaluée sur les mêmes rôles à un revenu égal à la valeur de cent journées de travail ; - Et dans les campagnes, celle d'être propriétaire ou usufruitier d'un bien évalué sur les rôles de contribution à un revenu égal à la valeur locale de cent cinquante journées de travail, ou d'être fermier ou métayer de biens évalués sur les mêmes rôles à la valeur de quatre cents journées de travail ; - A l'égard de ceux qui seront en même temps propriétaires ou usufruitiers d'une part, et locataires, fermiers ou métayers de l'autre, leurs facultés à ces divers titres seront cumulées jusqu'au taux nécessaire pour établir leur éligibilité.

Section III. - Assemblées électorales. Nomination des représentants.

ARTICLE PREMIER. - Les électeurs nommés en chaque département se réuniront pour élire le nombre des représentants dont la nomination sera attribuée à leur département, et un nombre de suppléants égal au tiers de celui des représentants. - Les Assemblées électorales se formeront de plein droit le dernier dimanche de mars, si elles n'ont pas été convoquées plus tôt par les fonctionnaires publics déterminés par la loi.

ART. 2. - Les représentants et les suppléants seront élus à la pluralité absolue des suffrages, et ne pourront être choisis que parmi les citoyens actifs du département.

ART. 3. - Tous les citoyens actifs, quel que soit leur état, profession ou contribution, pourront être élus représentants de la Nation.

ART. 4. - Seront néanmoins obligés d'opter, les ministres et les autres agents du Pouvoir exécutif révocables à volonté, les commissaires de la Trésorerie nationale, les percepteurs et receveurs des contributions directes, les préposés à la perception et aux régies des contributions indirectes et des domaines nationaux, et ceux qui, sous quelque dénomination que ce soit, sont attachés à des emplois de la maison militaire et civile du roi. - Seront également tenus d'opter les administrateurs, sous-administrateurs, officiers municipaux, et commandants des gardes nationales.

ART. 5. - L'exercice des fonctions judiciaires sera incompatible avec celles de représentant de la

Nation, pendant toute la durée de la législature. - Les juges seront remplacés par leurs suppléants et le roi pourvoira par des brevets de commission au remplacement de ses commissaires auprès des tribunaux.

ART. 6. - Les membres du Corps législatif pourront être réélus à la législature suivante, et ne pourront l'être ensuite qu'après l'intervalle d'une législature.

ART. 7. - Les représentants nommés dans les départements, ne seront pas représentants d'un département particulier, mais de la Nation entière, et il ne pourra leur être donné aucun mandat.

Section IV. - Tenue et régime des Assemblées primaires et électorales.

ARTICLE PREMIER. - Les fonctions des Assemblées primaires et électorales se bornent à élire ; elles se sépareront aussitôt après les élections faites, et ne pourront se former de nouveau que lorsqu'elles seront convoquées, si ce n'est au cas de l'article premier de la Section II et de l'article premier de la Section III ci-dessus.

ART. 2. - Nul citoyen actif ne peut entrer ni donner son suffrage dans une assemblée, s'il est armé.

ART. 3. - La force armée ne pourra être introduite dans l'intérieur sans le voeu exprès de l'Assemblée, si ce n'est qu'on y commît des violences ; auquel cas, l'ordre du président suffira pour appeler la force publique.

ART. 4. - Tous les deux ans, il sera dressé, dans chaque district, des listes, par cantons, des citoyens actifs, et la liste de chaque canton y sera publiée et affichée deux mois avant l'époque de l'Assemblée primaire. - Les réclamations qui pourront avoir lieu, soit pour contester la qualité des citoyens employés sur la liste, soit de la part de ceux qui se prétendront omis injustement, seront portées aux tribunaux pour y être jugées sommairement. - La liste servira de règle pour l'admission des citoyens dans la prochaine Assemblée primaire, en tout ce qui n'aura pas été rectifié par des jugements rendus avant la tenue de l'Assemblée.

ART. 5. - Les Assemblées électorales ont le droit de vérifier la qualité et les pouvoirs de ceux qui s'y présenteront, et leurs décisions seront exécutées provisoirement, sauf le jugement du Corps

législatif lors de la vérification des pouvoirs des députés.

ART. 6. - Dans aucun cas et sous aucun prétexte, le roi, ni aucun des agents nommés par lui, ne pourront prendre connaissance des questions relatives à la régularité des convocations, à la tenue des Assemblées, à la forme des élections, ni aux droits politiques des citoyens, sans préjudice des fonctions des commissaires du roi dans les cas déterminés par la loi, où les questions relatives aux droits politiques des citoyens doivent être portées dans les tribunaux.

Section V. - Réunion des représentants en Assemblée nationale législative.

ARTICLE PREMIER. - Les représentants se réuniront le premier lundi du mois de mai, au lieu des séances de la dernière législature.

ART. 2. - Ils se formeront provisoirement en Assemblée, sous la présidence du doyen d'âge, pour vérifier les pouvoirs des représentants présents.

ART. 3. - Dès qu'ils seront au nombre de trois cent soixante-treize membres vérifiés, ils se constitueront sous le titre d'Assemblée nationale législative : elle nommera un président, un vice-président et des secrétaires, et commencera l'exercice de ses fonctions.

ART. 4. - Pendant tout le cours du mois de mai, si le nombre des représentants présents est au-dessous de trois cent soixante-treize, l'Assemblée ne pourra faire aucun acte législatif. - Elle pourra prendre un arrêté pour enjoindre aux membres absents de se rendre à leurs fonctions dans le délai de quinzaine au plus tard, à peine de trois mille livres d'amende, s'ils ne proposent pas une excuse qui soit jugée légitime par l'Assemblée.

ART. 5. - Au dernier jour de mai, quel que soit le nombre des membres présents, ils se constitueront en Assemblée nationale législative.

ART. 6. - Les représentants prononceront tous ensemble, au nom du peuple français, le serment de vivre libres ou mourir. - Ils prêteront ensuite individuellement le serment de maintenir de tout leur pouvoir la Constitution du royaume, décrétée par l'Assemblée nationale constituante, aux années 1789, 1790 et 1791, de ne rien proposer ni consentir, dans le cours de la Législature, qui puisse y porter atteinte, et d'être en tout fidèles à la Nation, à la loi et au roi.

ART. 7. - Les représentants de la Nation sont inviolables : ils ne pourront être recherchés, accusés ni jugés en aucun temps pour ce qu'ils auront dit, écrit ou fait dans l'exercice de leurs fonctions de représentants.

ART. 8. - Ils pourront, pour faits criminels, être saisis en flagrant délit, ou en vertu d'un mandat d'arrêt ; mais il en sera donné avis, sans délai, au Corps législatif ; et la poursuite ne pourra être continuée qu'après que le Corps législatif aura décidé qu'il y a lieu à accusation.

CHAPITRE II

DE LA ROYAUTÉ, DE LA RÉGENCE ET DES MINISTRES

Section première. - De la Royauté et du roi.

ARTICLE PREMIER. - La Royauté est indivisible, et déléguée héréditairement à la race régnante de mâle en mâle, par ordre de primogéniture, à l'exclusion perpétuelle des femmes et de leur descendance. - (Rien n'est préjugé sur l'effet des renonciations, dans la race actuellement régnante.)

ART. 2. - La personne du roi est inviolable et sacrée ; son seul titre est Roi des Français.

ART. 3. - Il n'y a point en France d'autorité supérieure à celle de la loi. Le roi ne règne que par elle, et ce n'est qu'au nom de la loi qu'il peut exiger l'obéissance.

ART. 4. - Le roi, à son avènement au trône, ou dès qu'il aura atteint sa majorité, prêtera à la Nation, en présence du Corps législatif, le serment d'être fidèle à la Nation et à la loi, d'employer tout le pouvoir qui lui est délégué, à maintenir la Constitution décrétée par l'Assemblée nationale constituante, aux années 1789, 1790 et 1791, et à faire exécuter les lois. - Si le Corps législatif n'est pas assemblée, le roi fera publier une proclamation, dans laquelle seront exprimés ce serment et la promesse de la réitérer aussitôt que le Corps législatif sera réuni.

ART. 5. - Si, un mois après l'invitation du Corps législatif, le roi n'a pas prêté ce serment, ou si, après l'avoir prêté, il le rétracte, il sera censé avoir abdicqué la royauté.

ART. 6. - Si le roi se met à la tête d'une armée et en dirige les forces contre la Nation, ou s'il ne s'oppose pas par un acte formel à une telle entreprise, qui s'exécuterait en son nom, il sera censé avoir abdiqué la royauté.

ART. 7. - Si le roi, étant sorti du royaume, n'y rentrait pas après l'invitation qui lui en serait faite par le Corps législatif, et dans le délai qui sera fixé par la proclamation, lequel ne pourra être moindre de deux mois, il serait censé avoir abdiqué la royauté. - Le délai commencera à courir du jour où la proclamation du Corps législatif aura été publiée dans le lieu de ses séances ; et les ministres seront tenus, sous leur responsabilité, de faire tous les actes du Pouvoir exécutif, dont l'exercice sera suspendu dans la main du roi absent.

ART. 8. - Après l'abdication expresse ou légale, le roi sera dans la classe des citoyens, et pourra être accusé et jugé comme eux pour les actes postérieurs à son abdication.

ART. 9. - Les biens particuliers que le roi possède à son avènement au trône, sont réunis irrévocablement au domaine de la Nation ; il a la disposition de ceux qu'il acquiert à titre singulier ; s'il n'en a pas disposé, ils sont pareillement réunis à la fin du règne.

ART. 10. - La Nation pourvoit à la splendeur du trône par une liste civile, dont le Corps législatif déterminera la somme à chaque changement de règne pour toute la durée du règne.

ART. 11. - Le roi nommera un administrateur de la liste civile, qui exercera les actions judiciaires du roi, et contre lequel toutes les actions à la charge du roi seront dirigées et les jugements prononcés. Les condamnations obtenues par les créanciers de la liste civile, seront exécutoires contre l'administrateur personnellement et sur ses propres biens.

ART. 12. - Le roi aura, indépendamment de la garde d'honneur qui lui sera fournie par les citoyens gardes nationales du lieu de sa résidence, une garde payée sur les fonds de la liste civile ; elle ne pourra excéder le nombre de douze cents hommes à pied et de six cents hommes à cheval. - Les grades et les règles d'avancement y seront les mêmes que dans les troupes de ligne ; mais ceux qui composeront la garde du roi rouleront pour tous les grades exclusivement sur eux-mêmes, et ne pourront en obtenir aucun dans l'armée de ligne. - Le roi ne pourra choisir les hommes de sa garde que parmi ceux qui sont actuellement en activité de service dans les troupes de ligne, ou parmi les

citoyens qui ont fait depuis un an le service de gardes nationales, pourvu qu'ils soient résidents dans le royaume, et qu'ils aient précédemment prêté le serment civique. - La garde du roi ne pourra être commandée ni requise pour aucun autre service public.

Section II. - De la Régence.

ARTICLE PREMIER. - Le roi est mineur jusqu'à l'âge de dix-huit ans accomplis ; - et pendant sa minorité, il y a un régent du royaume.

ART. 2. - La régence appartient au parent du roi, le plus proche en degré, suivant l'ordre de l'hérédité au trône, et âgé de vingt-cinq ans accomplis, pourvu qu'il soit Français et regnicole, qu'il ne soit pas héritier présomptif d'une autre couronne, et qu'il ait précédemment prêté le serment civique. - Les femmes sont exclues de la régence.

ART. 3. - Si un roi mineur n'avait aucun parent réunissant les qualités ci-dessus exprimées, le régent du royaume sera élu ainsi qu'il va être dit aux articles suivants :

ART. 4. - Le Corps législatif ne pourra élire le régent.

ART. 5. - Les électeurs de chaque district se réuniront au chef-lieu de district, d'après une proclamation qui sera faite dans la première semaine du nouveau règne, par le Corps législatif, s'il est réuni ; et s'il était séparé, le ministre de la justice sera tenu de faire cette proclamation dans la même semaine.

ART. 6. - Les électeurs nommeront en chaque district, au scrutin individuel, et à la pluralité absolue des suffrages, un citoyen éligible et domicilié dans le district, auquel ils donneront, par le procès-verbal de l'élection, un mandat spécial borné à la seule fonction d'élire le citoyen qu'il jugera en son âme et conscience le plus digne d'être régent du royaume.

ART 7. - Les citoyens mandataires nommés dans les districts, seront tenus de se rassembler dans la ville où le Corps législatif tiendra sa séance, le quarantième jour, au plus tard, à partir de celui de l'avènement du roi mineur au trône ; et ils y formeront l'assemblée électorale, qui procédera à la nomination du régent.

ART. 8. - L'élection du régent sera faite au scrutin individuel, et à la pluralité absolue des suffrages.

ART. 9. - L'assemblée électorale ne pourra s'occuper que de l'élection, et se séparera aussitôt que l'élection sera terminée ; tout autre acte qu'elle entreprendrait de faire est déclaré inconstitutionnel et de nul effet.

ART. 10. - L'assemblée électorale fera présenter, par son président, le procès-verbal de l'élection au Corps législatif, qui, après avoir vérifié la régularité de l'élection, la fera publier dans tout le royaume par une proclamation.

ART. 11. - Le régent exerce, jusqu'à la majorité du roi, toutes les fonctions de la royauté, et n'est pas personnellement responsable des actes de son administration.

ART. 12. - Le régent ne peut commencer l'exercice de ses fonctions qu'après avoir prêté à la Nation, en présence du Corps législatif, le serment d'être fidèle à la Nation, à la loi et au roi, d'employer tout le pouvoir délégué au roi, et dont l'exercice lui est confié pendant la minorité du roi, à maintenir la Constitution décrétée par l'Assemblée nationale constituante, aux années 1789, 1790 et 1791, et à faire exécuter les lois. - Si le Corps législatif n'est pas assemblé, le régent fera publier une proclamation, dans laquelle seront exprimés ce serment et la promesse de les réitérer aussitôt que le Corps législatif sera réuni.

ART. 13. - Tant que le régent n'est pas entré en exercice de ses fonctions, la sanction des lois demeure suspendue ; les ministres continuent de faire, sous leur responsabilité, tous les actes du Pouvoir exécutif.

ART. 14. - Aussitôt que le régent aura prêté le serment, le Corps législatif déterminera son traitement, lequel ne pourra être changé pendant la durée de la régence.

ART. 15. - Si, à raison de la minorité d'âge du parent appelé à la régence, elle a été dévolue à un parent plus éloigné, ou déférée par élection, le régent qui sera entré en exercice continuera ses fonctions jusqu'à la majorité du roi.

ART. 16. - La régence du royaume ne confère aucun droit sur la personne du roi mineur.

ART. 17. - La garde du roi mineur sera confiée à sa mère ; et s'il n'a pas de mère, ou si elle est remariée au temps de l'avènement de son fils au trône, ou si elle se remarie pendant la minorité, la garde sera déferée par le Corps législatif. - Ne peuvent être élus pour la garde du roi mineur, ni le régent et ses descendants, ni les femmes.

ART. 18. - En cas de démence du roi, notoirement reconnue, légalement constatée, et déclarée par le Corps législatif après trois délibérations successivement prises de mois en mois, il y a lieu à la régence, tant que la démence dure.

Section III. - De la famille du roi.

ARTICLE PREMIER. - L'héritier présomptif portera le nom de Prince royal. - Il ne peut sortir du royaume sans un décret du Corps législatif et le consentement du roi. - S'il en est sorti, et si, étant parvenu à l'âge de dix-huit ans, il ne rentre pas en France après avoir été requis par une proclamation du Corps législatif, il est censé avoir abdicqué le droit de succession au trône.

ART. 2. - Si l'héritier présomptif est mineur, le parent majeur, premier appelé à la régence, est tenu de résider dans le royaume. - Dans le cas où il en serait sorti et n'y rentrerait pas sur la réquisition du Corps législatif, il sera censé avoir abdicqué son droit à la régence.

ART. 3. - La mère du roi mineur ayant sa garde, ou le gardien élu, s'ils sortent du royaume, sont déchus de la garde. - Si la mère de l'héritier présomptif mineur sortait du royaume, elle ne pourrait, même après son retour, avoir la garde de son fils mineur devenu roi, que par un décret du Corps législatif.

ART. 4. - Il sera fait une loi pour régler l'éducation du roi mineur, et celle de l'héritier présomptif mineur.

ART. 5. - Les membres de la famille du roi appelés à la succession éventuelle au trône, jouissent des droits de citoyen actif, mais ne sont éligibles à aucune des places, emplois ou fonctions qui sont à la nomination du peuple. - A l'exception des départements du ministère, ils sont susceptibles des places et emplois à la nomination du roi : néanmoins, ils ne pourront commander en chef aucune

armée de terre ou de mer, ni remplir les fonctions d'ambassadeurs, qu'avec le consentement du Corps législatif, accordé sur la proposition du roi.

ART. 6. - Les membres de la famille du roi, appelés à la succession éventuelle au trône, ajouteront la dénomination de prince français, au nom qui leur aura été donné dans l'acte civil constatant leur naissance et ce nom ne pourra être ni patronymique, ni formé d'aucune des qualifications abolies par la présente Constitution. - La dénomination de prince ne pourra être donnée à aucun autre individu, et n'emportera aucun privilège, ni aucune exception au droit commun de tous les Français.

ART. 7. - Les actes par lesquels seront légalement constatés les naissances, mariages et décès des princes français, seront présentés au Corps législatif, qui en ordonnera le dépôt dans ses archives.

ART. 8. - Il ne sera accordé aux membres de la famille du roi aucun apanage réel. - Les fils puînés du roi recevront à l'âge de vingt-cinq ans accomplis, ou lors de leur mariage, une rente apanagère, laquelle sera fixée par le Corps législatif, et finira à l'extinction de leur postérité masculine.

Section IV. - Des ministres.

ARTICLE PREMIER. - Au roi seul appartiennent le choix et la révocation des ministres.

ART. 2. - Les membres de l'Assemblée nationale actuelle et des législatures suivantes, les membres du Tribunal de cassation, et ceux qui serviront dans le haut-juré, ne pourront être promus au ministère, ni recevoir aucunes places, dons, pensions, traitements, ou commissions du Pouvoir exécutif ou de ses agents, pendant la durée de leurs fonctions, ni pendant deux ans après en avoir cessé l'exercice. - Il en sera de même de ceux qui seront seulement inscrits sur la liste du haut-juré, pendant tout le temps que durera leur inscription.

ART. 3. - Nul ne peut entrer en exercice d'aucun emploi, soit dans les bureaux du ministère, soit dans ceux des régies ou administrations des revenus publics, ni en général d'aucun emploi à la nomination du Pouvoir exécutif, sans prêter le serment civique, ou sans justifier qu'il l'a prêté.

ART. 4. - Aucun ordre du roi ne pourra être exécuté, s'il n'est signé par lui et contresigné par le ministre ou l'ordonnateur du département.

ART. 5. - Les ministres sont responsables de tous les délits par eux commis contre la sûreté nationale et la Constitution ; - De tout attentat à la propriété et à la liberté individuelle ; - De toute dissipation des deniers destinés aux dépenses de leur département.

ART. 6. - En aucun cas, l'ordre du roi, verbal ou par écrit, ne peut soustraire un ministre à la responsabilité.

ART. 7. - Les ministres sont tenus de présenter chaque année au Corps législatif, à l'ouverture de la session, l'aperçu des dépenses à faire dans leur département, de rendre compte de l'emploi des sommes qui y étaient destinées, et d'indiquer les abus qui auraient pu s'introduire dans les différentes parties du gouvernement.

ART. 8. - Aucun ministre en place, ou hors de place, ne peut être poursuivi en matière criminelle pour fait de son administration, sans un décret du Corps législatif

CHAPITRE III

DE L'EXERCICE DU POUVOIR LÉGISLATIF

Section première. - Pouvoirs et fonctions de l'Assemblée nationale législative.

ARTICLE PREMIER. - La Constitution délègue exclusivement au Corps législatif les pouvoirs et fonctions ci-après : 1° De proposer et décréter les lois : le roi peut seulement inviter le Corps législatif à prendre un objet en considération ; 2° De fixer les dépenses publiques ; 3° D'établir les contributions publiques, d'en déterminer la nature, la quotité, la durée et le mode de perception ; 4° De faire la répartition de la contribution directe entre les départements du royaume, de surveiller l'emploi de tous les revenus publics, et de s'en faire rendre compte ; 5° De décréter la création ou la suppression des offices publics ; 6° De déterminer le titre, le poids, l'empreinte et la dénomination des monnaies ; 7° De permettre ou de défendre l'introduction des troupes étrangères sur le territoire français, et des forces navales étrangères dans les ports du royaume ; 8° De statuer annuellement, après la proposition du roi, sur le nombre d'hommes et de vaisseaux dont les armées de terre et de mer seront composées ; sur la solde et le nombre d'individus de chaque grade ; sur les règles

d'admission et d'avancement, les formes de l'enrôlement et du dégageant, la formation des équipages de mer ; sur l'admission des troupes ou des forces navales étrangères au service de France, et sur le traitement des troupes en cas de licenciement ; 9° De statuer sur l'administration, et d'ordonner l'aliénation des domaines nationaux ; 10° De poursuivre devant la haute Cour nationale la responsabilité des ministres et des agents principaux du Pouvoir exécutif ; - D'accuser et de poursuivre devant la même Cour, ceux qui seront prévenus d'attentat et de complot contre la sûreté générale de l'Etat ou contre la Constitution ; 11° D'établir les lois d'après lesquelles les marques d'honneurs ou décorations purement personnelles seront accordées à ceux qui ont rendu des services à l'Etat ; 12° Le Corps législatif a seul le droit de décerner les honneurs publics à la mémoire des grands hommes.

ART. 2. - La guerre ne peut être décidée que par un décret du Corps législatif, rendu sur la proposition formelle et nécessaire du roi, et sanctionné par lui. - Dans le cas d'hostilités imminentes ou commencées, d'un allié à soutenir, ou d'un droit à conserver par la force des armes, le roi en donnera, sans aucun délai, la notification au Corps législatif, et en fera connaître les motifs. Si le Corps législatif est en vacances, le roi le convoquera aussitôt. - Si le Corps législatif décide que la guerre ne doit pas être faite, le roi prendra sur-le-champ des mesures pour faire cesser ou prévenir toutes hostilités, les ministres demeurant responsables des délais. - Si le Corps législatif trouve que les hostilités commencées soient une agression coupable de la part des ministres ou de quelque autre agent du Pouvoir exécutif, l'auteur de l'agression sera poursuivi criminellement. - Pendant tout le cours de la guerre, le Corps législatif peut requérir le roi de négocier la paix ; et le roi est tenu de déférer à cette réquisition. - A l'instant où la guerre cessera, le Corps législatif fixera le délai dans lequel les troupes élevées au-dessus du pied de paix seront congédiées, et l'armée réduite à son état ordinaire.

ART. 3. - Il appartient au Corps législatif de ratifier les traités de paix, d'alliance et de commerce ; et aucun traité n'aura d'effet que par cette ratification

ART. 4. - Le Corps législatif a le droit de déterminer le lieu de ses séances, de les continuer autant qu'il le jugera nécessaire, et de s'ajourner. Au commencement de chaque règne, s'il n'est pas réuni, il sera tenu de se rassembler sans délai. - Il a le droit de police dans le lieu de ses séances, et dans l'enceinte extérieure qu'il aura déterminée. - Il a le droit de discipline sur ses membres ; mais il ne peut prononcer de punition plus forte que la censure, les arrêts pour huit jours, ou la prison pour trois jours. - Il a le droit de disposer, pour sa sûreté et pour le maintien du respect qui lui est dû, des

forces qui, de son consentement, seront établies dans la ville où il tiendra ses séances.

ART. 5. - Le Pouvoir exécutif ne peut faire passer ou séjourner aucun corps de troupes de ligne, dans la distance de trente mille toises du Corps législatif ; si ce n'est sur sa réquisition ou avec son autorisation.

Section II. - Tenue des séances et forme de délibérer.

ARTICLE PREMIER. - Les délibérations du Corps législatif seront publiques, et les procès-verbaux de ses séances seront imprimés.

ART. 2. - Le Corps législatif pourra cependant, en toute occasion, se former en Comité général. - Cinquante membres auront le droit de l'exiger. - Pendant la durée du Comité général, les assistants se retireront, le fauteuil du président sera vacant, l'ordre sera maintenu par le vice-président.

ART. 3. - Aucun acte législatif ne pourra être délibéré et décrété que dans la forme suivante.

ART. 4. - Il sera fait trois lectures du projet de décret, à trois intervalles, dont chacun ne pourra être moindre de huit jours.

ART. 5. - La discussion sera ouverte après chaque lecture ; et néanmoins, après la première ou seconde lecture, le Corps législatif pourra déclarer qu'il y a lieu à l'ajournement ou qu'il n'y a pas lieu à délibérer ; dans ce dernier cas le projet de décret pourra être représenté dans la même session. - Tout projet de décret sera imprimé et distribué avant que la seconde lecture puisse en être faite.

ART. 6. - Après la troisième lecture, le président sera tenu de mettre en délibération, et le Corps législatif décidera s'il se trouve en état de rendre un décret définitif, ou s'il veut renvoyer la décision à un autre temps, pour recueillir de plus amples éclaircissements.

ART. 7. - Le Corps législatif ne peut délibérer, si la séance n'est composée de deux cents membres au moins, et aucun décret ne sera formé que par la pluralité absolue des suffrages.

ART. 8. - Tout projet de loi qui, soumis à la discussion, aura été rejeté après la troisième lecture, ne pourra être représenté dans la même session.

ART. 9. - Le préambule de tout décret définitif énoncera : 1° Les dates des séances auxquelles les trois lectures du projet auront été faites ; 2° Le décret par lequel il aura été arrêté, après la troisième lecture, de décider définitivement.

ART. 10. - Le roi refusera sa sanction au décret dont le préambule n'attestera pas l'observation des formes ci-dessus : si quelqu'un de ces décrets était sanctionné, les ministres ne pourront le sceller ni le promulguer, et leur responsabilité à cet égard durera six années.

ART. 11. - Sont exceptés des dispositions ci-dessus, les décrets reconnus et déclarés urgents par une délibération préalable du Corps législatif ; mais ils peuvent être modifiés ou révoqués dans le cours de la même session. - Le décret par lequel la matière aura été déclarée urgente en énoncera les motifs, et il sera fait mention de ce décret préalable dans le préambule du décret définitif.

Section III. - De la sanction royale.

ARTICLE PREMIER. - Les décrets du Corps législatif sont présentés au roi, qui peut leur refuser son consentement.

ART. 2. - Dans le cas où le roi refuse son consentement, ce refus n'est que suspensif. - Lorsque les deux législatures qui suivront celle qui aura présenté le décret, auront successivement représenté le même décret dans les mêmes termes, le roi sera censé avoir donné la sanction.

ART. 3. - Le consentement du roi est exprimé sur chaque décret par cette formule signée du roi : Le roi consent et fera exécuter. - Le refus suspensif est exprimé par celle-ci : Le roi examinera.

ART. 4. - Le roi est tenu d'exprimer son consentement ou son refus sur chaque décret, dans les deux mois de la présentation.

ART. 5. - Tout décret auquel le roi a refusé son consentement, ne peut lui être présenté par la même législature.

ART. 6. - Les décrets sanctionnés par le roi, et ceux qui lui auront été présentés par trois législatures

consécutives, ont force de loi, et portent le nom et l'intitulé de lois.

ART. 7. - Seront néanmoins exécutés comme lois, sans être sujets à la sanction, les actes du Corps législatif concernant sa constitution en Assemblée délibérante ; - Sa police intérieure, et celle qu'il pourra exercer dans l'enceinte extérieure qu'il aura déterminée ; - La vérification des pouvoirs de ses membres présents ; - Les injonctions aux membres absents ; - La convocation des Assemblées primaires en retard ; - L'exercice de la police constitutionnelle sur les administrateurs et sur les officiers municipaux ; - Les questions soit d'éligibilité, soit de validité des élections. - Ne sont pareillement sujets à la sanction, les actes relatifs à la responsabilité des ministres ni les décrets portant qu'il y a lieu à accusation.

ART. 8. - Les décrets du Corps législatif concernant l'établissement, la prorogation et la perception des contributions publiques, porteront le nom et l'intitulé de lois. Ils seront promulgués et exécutés sans être sujets à la sanction, si ce n'est pour les dispositions qui établiraient des peines autres que des amendes et contraintes pécuniaires. - Ces décrets ne pourront être rendus qu'après l'observation des formalités prescrites par les articles 4, 5, 6, 7, 8, et 9 de la section II du présent chapitre ; et le Corps législatif ne pourra y insérer aucunes dispositions étrangères à leur objet.

Section IV. - Relations du Corps législatif avec le roi.

ARTICLE PREMIER. - Lorsque le Corps législatif est définitivement constitué, il envoie au roi une députation pour l'en instruire. Le roi peut chaque année faire l'ouverture de la session, et proposer les objets qu'il croit devoir être pris en considération pendant le cours de cette session, sans néanmoins que cette formalité puisse être considérée comme nécessaire à l'activité du Corps législatif.

ART. 2. - Lorsque le Corps législatif veut s'ajourner au-delà de quinze jours, il est tenu d'en prévenir le roi par une députation, au moins huit jours d'avance.

ART. 3. - Huitaine au moins avant la fin de chaque session, le Corps législatif envoie au roi une députation, pour lui annoncer le jour où il se propose de terminer ses séances : le roi peut venir faire la clôture de la session.

ART. 4. - Si le roi trouve important au bien de l'Etat que la session soit continuée, ou que

l'ajournement n'ait pas lieu, ou qu'il n'ait lieu que pour un temps moins long, il peut à cet effet envoyer un message, sur lequel le Corps législatif est tenu de délibérer.

ART. 5. - Le roi convoquera le Corps législatif, dans l'intervalle de ses sessions, toutes les fois que l'intérêt de l'Etat lui paraîtra l'exiger, ainsi que dans les cas qui auront été prévus et déterminés par le Corps législatif avant de s'ajourner.

ART. 6. - Toutes les fois que le roi se rendra au lieu des séances du Corps législatif, il sera reçu et reconduit par une députation ; il ne pourra être accompagné dans l'intérieur de la salle que par le prince royal et par les ministres.

ART. 7. - Dans aucun cas, le président ne pourra faire partie d'une députation.

ART. 8. - Le Corps législatif cessera d'être corps délibérant, tant que le roi sera présent.

ART. 9. - Les actes de la correspondance du roi avec le Corps législatif seront toujours contre signés par un ministre.

ART. 10. - Les ministres du roi auront entrée dans l'Assemblée nationale législative ; ils y auront une place marquée. - Ils seront entendus, toutes les fois qu'ils le demanderont sur les objets relatifs à leur administration, ou lorsqu'ils seront requis de donner des éclaircissements. - Ils seront également entendus sur les objets étrangers à leur administration, quand l'Assemblée nationale leur accordera la parole.

CHAPITRE IV

DE L'EXERCICE DU POUVOIR EXÉCUTIF

ARTICLE PREMIER. - Le Pouvoir exécutif suprême réside exclusivement dans la main du roi. - Le roi est le chef suprême de l'administration générale du royaume : le soin de veiller au maintien de l'ordre et de la tranquillité publique lui est confiée. - Le roi est le chef suprême de l'armée de terre et de l'armée navale. - Au roi est délégué le soin de veiller à la sûreté extérieure du royaume, d'en maintenir les droits et les possessions.

ART. 2. - Le roi nomme les ambassadeurs, et les autres agents des négociations politiques. - Il confère le commandement des armées et des flottes, et les grades de maréchal de France et d'amiral. - Il nomme les deux tiers des contre-amiraux, la moitié des lieutenants-généraux, maréchaux de camp, capitaines de vaisseau, et colonels de la gendarmerie nationale. - Il nomme le tiers des colonels et des lieutenants-colonels, et le sixième des lieutenants de vaisseau : - Le tout en se conformant aux lois sur l'avancement. - Il nomme, dans l'administration civile de la marine, les ordonnateurs, les contrôleurs, les trésoriers des arsenaux, les chefs des travaux, sous-chefs des bâtiments civils, la moitié des chefs d'administration et des sous-chefs de constructions. - Il nomme les commissaires auprès des tribunaux. - Il nomme les préposés en chef aux régies des contributions indirectes, et à l'administration des domaines nationaux. - Il surveille la fabrication des monnaies, et nomme les officiers chargés d'exercer cette surveillance dans la commission générale et dans les hôtels des monnaies. - L'effigie du roi est empreinte sur toutes les monnaies du royaume.

ART. 3. - Le roi fait délivrer les lettres-patentes, brevets et commissions aux fonctionnaires publics ou autres qui doivent en recevoir.

ART. 4. - Le roi fait dresser la liste des pensions et gratifications, pour être présentée au Corps législatif à chacune de ses sessions, et décrétée, s'il y a lieu.

Section première. - De la promulgation des lois.

ARTICLE PREMIER. - Le Pouvoir exécutif est chargé de faire sceller les lois du sceau de l'Etat, et de les faire promulguer. - Il est chargé également de faire promulguer et exécuter les actes du Corps législatif qui n'ont pas besoin de la sanction du roi.

ART. 2. - Il sera fait deux expéditions originales de chaque loi, toutes deux signées du roi, contresignées par le ministre de la justice, et scellées du sceau de l'Etat. - L'une restera déposée aux archives du sceau et l'autre sera remise aux archives du Corps législatif.

ART. 3. - La promulgation sera ainsi conçue - " N. (le nom du roi) par la grâce de Dieu, et par la loi constitutionnelle de l'Etat, roi des Français, A tous présents et à venir, Salut. L'Assemblée nationale a décrété, et Nous voulons et ordonnons ce qui suit : " - (La copie littérale du décret sera insérée sans aucun changement.) - " Mandons et ordonnons à tous les corps administratifs et tribunaux, que

les présentes ils fassent consigner dans leurs registres, lire, publier et afficher dans leurs départements et

ressorts respectifs, et exécuter comme loi du royaume : en foi de quoi nous avons signé ces présentes, auxquelles nous avons fait apposer le sceau de l'Etat. "

ART. 4. - Si le roi est mineur, les lois, proclamations et autres actes émanés de l'autorité royale, pendant la régence, seront conçus ainsi qu'il suit : - " N. (le nom du régent) régent du royaume, au nom de N. (le nom du roi) par la grâce de Dieu et par la loi constitutionnelle de l'Etat, roi des Français, etc. "

ART. 5. - Le Pouvoir exécutif est tenu d'envoyer les lois aux corps administratifs et aux tribunaux, de faire certifier cet envoi, et d'en justifier au Corps législatif.

ART. 6. - Le Pouvoir exécutif ne peut faire aucune loi, même provisoire, mais seulement des proclamations conformes aux lois, pour en ordonner ou en rappeler l'exécution.

Section II. - De l'administration intérieure.

ARTICLE PREMIER. - Il y a dans chaque département une administration supérieure, et dans chaque district une administration subordonnée.

ART. 2. - Les administrateurs n'ont aucun caractère de représentation. - Ils sont des agents élus à temps par le peuple, pour exercer, sous la surveillance et l'autorité du roi, les fonctions administratives.

ART. 3. - Ils ne peuvent, ni s'immiscer dans l'exercice du Pouvoir législatif, ou suspendre l'exécution des lois, ni rien entreprendre sur l'ordre judiciaire, ni sur les dispositions ou opérations militaires.

ART. 4. - Les administrateurs sont essentiellement chargés de répartir les contributions directes, et de surveiller les deniers provenant de toutes les contributions et revenus publics dans leur territoire. - Il appartient au Pouvoir législatif de déterminer les règles et le mode de leurs fonctions, tant sur les objets ci-dessus exprimés, que sur toutes les autres parties de l'administration intérieure.

ART. 5. - Le roi a le droit d'annuler les actes des administrateurs de département, contraires aux lois ou aux ordres qu'il leur aura adressés. - Il peut, dans le cas d'une désobéissance persévérante, ou s'ils compromettent par leurs actes la sûreté ou la tranquillité publique, les suspendre de leurs fonctions.

ART. 6. - Les administrateurs de département ont de même le droit d'annuler les actes des sous-administrateurs de district, contraires aux lois ou aux arrêtés des administrateurs de département, ou aux ordres que ces derniers leur auront donnés ou transmis. - Ils peuvent également, dans le cas d'une désobéissance persévérante des sous-administrateurs, ou si ces derniers compromettent par leurs actes la sûreté ou la tranquillité publique, les suspendre de leurs fonctions, à la charge d'en instruire le roi, qui pourra lever ou confirmer la suspension.

ART. 7. - Le roi peut, lorsque les administrateurs de département n'auront pas usé du pouvoir qui leur est délégué dans l'article ci-dessus, annuler directement les actes des sous-administrateurs, et les suspendre dans les mêmes cas.

ART. 8. - Toutes les fois que le roi aura prononcé ou confirmé la suspension des administrateurs ou sous-administrateurs, il en instruira le Corps législatif. - Celui-ci pourra lever la suspension, ou la confirmer, ou même dissoudre l'administration coupable, et s'il y a lieu, renvoyer tous les administrateurs ou quelques-uns d'eux aux tribunaux criminels, ou porter contre eux le décret d'accusation.

Section III. - Des relations extérieures.

ARTICLE PREMIER. - Le roi seul peut entretenir des relations politiques au dehors, conduire les négociations, faire des préparatifs de guerre proportionnés à ceux des Etats voisins, distribuer les forces de terre et de mer ainsi qu'il le jugera convenable, et en régler la direction en cas de guerre.

ART. 2. - Toute déclaration de guerre sera faite en ces termes : De la part du roi des Français, au nom de la Nation.

ART. 3. - Il appartient au roi d'arrêter et de signer avec toutes les puissances étrangères, tous les traités de paix, d'alliance et de commerce, et autres conventions qu'il jugera nécessaire au bien de l'Etat, sauf la ratification du Corps législatif.

CHAPITRE V

DU POUVOIR JUDICIAIRE

ARTICLE PREMIER. - Le Pouvoir judiciaire ne peut, en aucun cas, être exercé par le Corps législatif ni par le roi.

ART. 2. - La justice sera rendue gratuitement par des juges élus à temps par le peuple, et institués par des lettres-patentes du roi qui ne pourra les refuser. - Ils ne pourront être, ni destitués que pour forfaiture dûment jugée, ni suspendus que pour une accusation admise. - L'Accusateur public sera nommé par le Peuple.

ART. 3. - Les tribunaux ne peuvent, ni s'immiscer dans l'exercice du Pouvoir législatif, ou suspendre l'exécution des lois, ni entreprendre sur les fonctions administratives, ou citer devant eux les administrateurs pour raison de leurs fonctions.

ART. 4. - Les citoyens ne peuvent être distraits des juges que la loi leur assigne, par aucune commission, ni par d'autres attributions et évocations que celles qui sont déterminées par les lois.

ART. 5. - Le droit des citoyens, de terminer définitivement leurs contestations par la voie de l'arbitrage, ne peut recevoir aucune atteinte par les actes du Pouvoir législatif.

ART. 6. - Les tribunaux ordinaires ne peuvent recevoir aucune action au civil, sans qu'il leur soit justifié que les parties ont comparu, ou que le demandeur a cité sa partie adverse devant des médiateurs pour parvenir à une conciliation.

ART. 7. - Il y aura un ou plusieurs juges de paix dans les cantons et dans les villes. Le nombre en sera déterminé par le Pouvoir législatif.

ART. 8. - Il appartient au Pouvoir législatif de régler le nombre et les arrondissements des tribunaux, et le nombre des juges dont chaque tribunal sera composé.

ART. 9. - En matière criminelle, nul citoyen ne peut être jugé que sur une accusation reçue par des jurés, ou décrétée par le Corps législatif, dans les cas où il lui appartient de poursuivre l'accusation.

- Après l'accusation admise, le fait sera reconnu et déclaré par des jurés. - L'accusé aura la faculté d'en récuser jusqu'à vingt, sans donner des motifs. - Les jurés qui déclareront le fait, ne pourront être au-dessous du nombre de douze. - L'application de la loi sera faite par des juges. - L'instruction sera publique, et l'on ne pourra refuser aux accusés le secours d'un conseil. - Tout homme acquitté par un juré légal, ne peut plus être repris ni accusé à raison du même fait.

ART. 10. - Nul homme ne peut être saisi que pour être conduit devant l'officier de police ; et nul ne peut être mis en état d'arrestation ou détenu, qu'en vertu d'un mandat des officiers de police, d'une ordonnance de prise de corps d'un tribunal, d'un décret d'accusation du Corps législatif dans le cas où il lui appartient de le prononcer, ou d'un jugement de condamnation à prison ou détention correctionnelle.

ART. 11. - Tout homme saisi et conduit devant l'officier de police, sera examiné sur-le-champ, ou au plus tard dans les vingt-quatre heures. - S'il résulte de l'examen qu'il n'y a aucun sujet d'inculpation contre lui, il sera remis aussitôt en liberté ; ou s'il y a lieu de l'envoyer à la maison d'arrêt, il y sera conduit dans le plus bref délai, qui, en aucun cas ne pourra excéder trois jours.

ART. 12. - Nul homme arrêté ne peut être retenu s'il donne caution suffisante, dans tous les cas où la loi permet de rester libre sous cautionnement.

ART. 13. - Nul homme, dans le cas où sa détention est autorisée par la loi, ne peut être conduit et détenu que dans les lieux légalement et publiquement désignés pour servir de maison d'arrêt, de maison de justice ou de prison.

ART. 14. - Nul gardien ou geôlier ne peut recevoir ni retenir aucun homme qu'en vertu d'un mandat ou ordonnance de prise de corps, décret d'accusation, ou jugement mentionnés dans l'article 10 ci-dessus, et sans que la transcription en ait été faite sur son registre.

ART. 15. - Tout gardien ou geôlier est tenu sans qu'aucun ordre puisse l'en dispenser, de représenter la personne du détenu à l'officier civil ayant la police de la maison de détention, toutes les fois qu'il en sera requis par lui. - La représentation de la personne du détenu ne pourra de même être refusée à ses parents et amis, porteurs de l'ordre de l'officier civil, qui sera toujours tenu de l'accorder, à moins que le gardien ou geôlier ne représente une ordonnance du juge, transcrite sur son registre pour tenir l'arrêté au secret.

ART. 16. - Tout homme, quelle que soit sa place ou son emploi, autre que ceux à qui la loi donne le droit d'arrestation, qui donnera, signera, exécutera ou fera exécuter l'ordre d'arrêter un citoyen, ou quiconque, même dans les cas d'arrestation autorisée par la loi, conduira, recevra ou retiendra un citoyen dans un lieu de détention non publiquement et légalement désigné, et tout gardien ou geôlier qui contreviendra aux dispositions des articles 14 et 15 ci-dessus, seront coupables du crime de détention arbitraire.

ART. 17. - Nul homme ne peut être recherché ni poursuivi pour raison des écrits qu'il aura fait imprimer ou publier sur quelque matière que ce soit, si ce n'est qu'il ait provoqué à dessein la désobéissance à la loi, l'avilissement des pouvoirs constitués, la résistance à leurs actes, ou quelques-unes des actions déclarées crimes ou délits par la loi. - La censure sur les actes des Pouvoirs constitués est permise ; mais les calomnies volontaires contre la probité des fonctionnaires publics et la droiture de leurs intentions dans l'exercice de leurs fonctions, pourront être poursuivies par ceux qui en sont l'objet. - Les calomnies et injures contre quelques personnes que ce soit relatives aux actions de leur vie privée, seront punies sur leur poursuite.

ART. 18. - Nul ne peut être jugé, soit par la voie civile, soit par la voie criminelle, pour fait d'écrits imprimés ou publiés, sans qu'il ait été reconnu et déclaré par un juré : 1° S'il y a délit dans l'écrit dénoncé ; 2° Si la personne poursuivie en est coupable.

ART. 19. - Il y aura pour tout le royaume un seul tribunal de cassation, établi auprès du Corps législatif. Il aura pour fonctions de prononcer - Sur les demandes en cassation contre les jugements rendus en derniers ressort par les tribunaux ; - Sur les demandes en renvoi d'un tribunal à un autre, pour cause de suspicion légitime ; - Sur les règlements de juges et les prises à partie contre un tribunal entier.

ART. 20. - En matière de cassation, le tribunal de cassation ne pourra jamais connaître du fond des affaires ; mais après avoir cassé le jugement qui aura été rendu sur une procédure dans laquelle les formes auront été violées, ou qui contiendra une contravention expresse à la loi, il renverra le fond du procès au tribunal qui doit en connaître.

ART. 21. - Lorsque après deux cassations le jugement du troisième tribunal sera attaqué par les mêmes moyens que les deux premiers, la question ne pourra plus être agitée au tribunal de cassation sans avoir été soumise au Corps législatif, qui portera un décret déclaratoire de la loi, auquel le tribunal de cassation sera tenu de se conformer.

ART. 22. - Chaque année, le tribunal de cassation sera tenu d'envoyer à la barre du Corps législatif une députation de huit de ses membres, qui lui présenteront l'état des jugements rendus, à côté de chacun desquels seront la notice abrégée de l'affaire et le texte de la loi qui aura déterminé la décision.

ART. 23. - Une haute Cour nationale, formée des membres du tribunal de cassation et de hauts-jurés, connaîtra des délits des ministres et agents principaux du Pouvoir exécutif, et des crimes qui attaqueront la sûreté générale de l'Etat, lorsque le Corps législatif aura rendu un décret d'accusation. - Elle ne se rassemblera que sur la proclamation du Corps législatif, et à une distance de trente mille toises au moins du lieu où la législature tiendra ses séances.

ART. 24. - Les expéditions exécutoires des jugements des tribunaux seront conçues ainsi qu'il suit: - " N. (le nom du roi) par la grâce de Dieu et par la loi constitutionnelle de l'Etat, roi des Français. A tous présents et à venir, Salut. Le tribunal de... a rendu le jugement suivant : - (Ici sera copié le jugement dans lequel il sera fait mention du nom des juges.) - Mandons et ordonnons à tous huissiers sur ce requis, de mettre ledit jugement à exécution, à nos commissaires auprès des tribunaux, d'y tenir la main, et à tous commandants et officiers de la force publique, de prêter main-forte, lorsqu'ils en seront légalement requis. En foi de quoi, le présent jugement a été signé par le président du tribunal et par le greffier. "

ART. 25. - Les fonctions des commissaires du roi auprès des tribunaux, seront de requérir l'observation des lois dans les jugements à rendre, et de faire exécuter les jugements rendus. - Ils ne seront point accusateurs publics mais ils seront entendus sur toutes les accusations, et requerront pendant le cours de l'instruction pour la régularité des formes, et avant le jugement pour l'application de la loi.

ART. 26. - Les commissaires du roi auprès des tribunaux dénonceront au directeur du juré, soit d'office, soit d'après les ordres qui leur seront donnés par le roi ; - Les attentats contre la liberté individuelle des citoyens, contre la libre circulation des subsistances et autres objets de commerce,

et contre la perception des contributions ; - Les délits par lesquels l'exécution des ordres donnés par le roi dans l'exercice des fonctions qui lui sont déléguées, serait troublée ou empêchée ; - Les attentats contre le droit des gens ; - Et les rébellions à l'exécution des jugements et de tous les actes exécutoires émanés des pouvoirs constitués.

ART. 27. - Le ministre de la justice dénoncera au tribunal de cassation, par la voie du commissaire du roi, et sans préjudice du droit des parties intéressées, les actes par lesquels les juges auraient excédé les bornes de leur pouvoir. - Le tribunal les annulera ; et s'ils donnent lieu à la forfaiture, le fait sera dénoncé au Corps législatif, qui rendra le décret d'accusation, s'il y a lieu, et renverra les prévenus devant la haute Cour nationale.

TITRE IV

De la force publique

ARTICLE PREMIER. - La force publique est instituée pour défendre l'Etat contre les ennemis du dehors, et assurer au dedans le maintien de l'ordre et de l'exécution des lois.

ART. 2. - Elle est composée - De l'armée de terre et de mer ; - De la troupe spécialement destinée au service de l'intérieur ; - Et subsidiairement des citoyens actifs, et de leurs enfants en état de porter les armes, inscrits sur le rôle de la garde nationale.

ART. 3. - Les gardes nationales ne forment ni un corps militaire, ni une institution dans l'Etat ; ce sont les citoyens eux-mêmes appelés au service de la force publique.

ART. 4. - Les citoyens ne pourront jamais se former ni agir comme gardes nationales, qu'en vertu d'une réquisition ou d'une autorisation légale.

ART. 5. - Ils sont soumis en cette qualité, à une organisation déterminée par la loi. - Ils ne peuvent avoir dans tout le royaume qu'une même discipline et un même uniforme. - Les distinctions de grade et la subordination ne subsistent que relativement au service et pendant sa durée.

ART. 6. - Les officiers sont élus à temps, et ne peuvent être réélus qu'après un intervalle de service comme soldats. - Nul ne commandera la garde nationale de plus d'un district.

ART. 7. - Toutes les parties de la force publique, employées pour la sûreté de l'Etat contre les ennemis du dehors, agiront sous les ordres du roi.

ART. 8. - Aucun corps ou détachement de troupes de ligne ne peut agir dans l'intérieur du royaume sans une réquisition légale.

ART. 9. - Aucun agent de la force publique ne peut entrer dans la maison d'un citoyen, si ce n'est pour l'exécution des mandements de police et de justice, ou dans les cas formellement prévus par la loi.

ART. 10. - La réquisition de la force publique dans l'intérieur du royaume appartient aux officiers civils, suivant les règles déterminées par le Pouvoir législatif.

ART. 11. - Si les troubles agitent tout un département, le roi donnera, sous la responsabilité de ses ministres, les ordres nécessaires pour l'exécution des lois et le rétablissement de l'ordre, mais à la charge d'en informer le Corps législatif, s'il est assemblé, et de le convoquer s'il est en vacance.

ART. 12. - La force publique est essentiellement obéissante ; nul corps armé ne peut délibérer.

ART. 13. - L'armée de terre et de mer, et la troupe destinée à la sûreté intérieure, sont soumises à des lois particulières, soit pour le maintien de la discipline, soit pour la forme des jugements et la nature des peines en matière de délits militaires.

TITRE V

Des contributions publiques

ARTICLE PREMIER. - Les contributions publiques seront délibérées et fixées chaque année par le Corps législatif, et ne pourront subsister au-delà du dernier jour de la session suivante, si elles n'ont pas été expressément renouvelées.

ART. 2. - Sous aucun prétexte, les fonds nécessaires à l'acquittement de la dette nationale et au paiement de la liste civile, ne pourront être ni refusés ni suspendus. — Le traitement des ministres du culte catholique pensionnés conservés, élus ou nommés en vertu des décrets de l'Assemblée nationale constituante, fait partie de la dette nationale. — Le Corps législatif ne pourra, en aucun cas, charger la Nation du paiement des dettes d'aucun individu.

ART. 3. - Les comptes détaillés de la dépense des départements ministériels, signés et certifiés par les ministres ou ordonnateurs généraux, seront rendus publics par la voie de l'impression, au commencement des sessions de chaque législature. — Il en sera de même des états de recette des diverses contributions, et de tous les revenus publics. — Les états de ces dépenses et recettes seront distingués suivant leur nature, et exprimeront les sommes touchées et dépensées année par année dans chaque district. — Les dépenses particulières à chaque département, et relatives aux tribunaux, aux corps administratifs et autres établissements, seront également rendues publiques.

ART. 4. - Les administrateurs de département et sous-administrateurs ne pourront ni établir aucune contribution publique, ni faire aucune répartition au-delà du temps et des sommes fixées par le Corps législatif, ni délibérer ou permettre, sans y être autorisés par lui, aucun emprunt local à la charge des citoyens du département.

ART. 5. - Le Pouvoir exécutif dirige et surveille la perception et le versement des contributions, et donne tous les ordres nécessaires à cet effet.

TITRE VI

Des rapports de la Nation française avec les Nations étrangères

La Nation française renonce à entreprendre aucune guerre dans la vue de faire des conquêtes, et n'emploiera jamais ses forces contre la liberté d'aucun peuple. — La Constitution n'admet point de droit d'aubaine. — Les étrangers établis ou non en France succèdent à leurs parents étrangers ou Français. — Ils peuvent contracter, acquérir et recevoir des biens situés en France, et en disposer, de même que tout citoyen français, par tous les moyens autorisés par les lois. — Les étrangers qui se trouvent en France sont soumis aux mêmes lois criminelles et de police que les citoyens français, sauf les conventions arrêtées par les Puissances étrangères ; leur personne, leurs biens, leur industrie, leur culte sont également protégés, par la loi.

TITRE VII

De la révision des décrets constitutionnels

ARTICLE PREMIER. - L'Assemblée nationale constituante déclare que la Nation a le droit imprescriptible de changer sa Constitution ; et néanmoins, considérant qu'il est plus conforme à l'intérêt national d'user seulement, par les moyens pris dans la Constitution même, du droit d'en réformer les articles dont l'expérience aurait fait sentir les inconvénients, décrète qu'il y sera procédé par une Assemblée de révision en la forme suivante :

ART. 2. - Lorsque trois législatures consécutives auront émis un vœu uniforme pour le changement de quelque article constitutionnel, il y aura lieu à la révision demandée.

ART. 3. - La prochaine législature et la suivante ne pourront proposer la réforme d'aucun article constitutionnel.

ART. 4. - Des trois législatures qui pourront par la suite proposer quelques changements, les deux premières ne s'occuperont de cet objet que dans les deux derniers mois de leur dernière session, et la troisième à la fin de sa première session annuelle, ou au commencement de la seconde. — Leurs délibérations sur cette matière seront soumises aux mêmes formes que les actes législatifs ; mais les décrets par lesquels elles auront émis leur vœu ne seront pas sujets à la sanction du roi.

ART. 5. - La quatrième législature, augmentée de deux cent quarante-neuf membres élus en chaque département, par doublement du nombre ordinaire qu'il fournit pour sa population, formera l'Assemblée de révision. — Ces deux cent quarante-neuf membres seront élus après que la nomination des représentants au Corps législatif aura été terminée, et il en sera fait un procès-verbal séparé. — L'Assemblée de révision ne sera composée que d'une chambre.

ART. 6. - Les membres de la troisième législature qui aura demandé le changement, ne pourront être élus à l'Assemblée de révision.

ART. 7. - Les membres de l'Assemblée de révision, après avoir prononcé tous ensemble le serment de vivre libres ou mourir, prêteront individuellement celui de se borner à statuer sur les objets qui leur auront été soumis par le vœu uniforme des trois législatures précédentes ; de maintenir, au

surplus, de tout leur pouvoir la Constitution du royaume, décrétée par l'Assemblée nationale constituante, aux années 1789, 1790 et 1791, et d'être en tout fidèles à la Nation, à la loi et au roi.

ART. 8. - L'Assemblée de révision sera tenue de s'occuper ensuite, et sans délai, des objets qui auront été soumis à son examen : aussitôt que son travail sera terminé, les deux cent quarante-neuf membres nommés en augmentation, se retireront sans pouvoir prendre part, en aucun cas, aux actes législatifs. Les colonies et possessions françaises dans l'Asie, l'Afrique et l'Amérique, quoiqu'elles fassent partie de l'Empire français, ne sont pas comprises dans la présente Constitution.

Aucun des pouvoirs institués par la Constitution n'a le droit de la changer dans son ensemble ni dans ses parties, sauf les réformes qui pourront y être faites par la voie de la révision, conformément aux dispositions du titre VII ci-dessus.

L'Assemblée nationale constituante en remet le dépôt à la fidélité du Corps législatif, du roi et des juges, à la vigilance des pères de famille, aux épouses et aux mères, à l'affection des jeunes citoyens, au courage de tous les Français.

Les décrets rendus par l'Assemblée nationale constituante, qui ne sont pas compris dans l'Acte de Constitution, seront exécutés comme lois ; et les lois antérieures auxquelles elle n'a pas dérogé, seront également observées, tant que les uns ou les autres n'auront pas été révoqués ou modifiés par le Pouvoir législatif.

L'Assemblée nationale, ayant entendu la lecture de l'Acte constitutionnel ci-dessus, et après l'avoir approuvé, déclare que la Constitution est terminée, et qu'elle ne peut y rien changer. — Il sera nommé à l'instant une députation de soixante membres pour offrir, dans le jour, l'Acte constitutionnel au roi.

THE EUROPEAN CONVENTION

Brussels, 12 July 2002

THE SECRETARIAT

Working Group II

Working document 07

Working group II " Incorporation of the Charter/accession to the ECHR"

Working document by Vytenis Andriukaitis

Subject: ANSWERS TO SOME OF THE QUESTIONS RAISED DURING THE FIRST MEETING OF THE WORKING GROUP

With reference to the discussion during the first meeting of the Working Group on the EU Charter on Fundamental Rights devoted to the modalities and possible consequences of incorporation of the Charter into the EU Treaty (Constitution), I would like to suggest answers to some of the questions raised in the course of the meeting, i.e.

1. What would be the consequences of

- a) "attaching" the Charter to the Treaties in the form of a "Solemn Declaration";**
- b) making a direct reference to the Charter in the EU Treaty or a new basic Treaty;**
- c) the Charter becoming a new Protocol annexed to the Treaties or to a new basic Treaty;**
- d) inserting the full body of the Charter into a title or chapter of the EU Treaty or into a new basic Treaty, of which it would for example form the first title or chapter?**

2. What would be the relationship of the Charter vis-à-vis the ECHR should options a), b) or c), d) be chosen?

3. What would the competencies of the Court of Justice be under one or another option?

A. “Attaching” the Charter to the Treaty in the form of a “Solemn Declaration” would not change the Charter’s status (it would further remain declarative in character). The difference from the present situation would be negligible. It would only acquire a greater political value. The institutions would have to further comply with the provisions of the Charter in the law-making and implementation process. The European Court of Justice would be able to make references to rights enshrined in the Charter as to general principles of Community law. Some believe, however, that the Charter’s declarative status would produce an opposite effect: it would symbolise Europe’s inability and refusal to take the rights seriously. It could be discussed whether retention of the declarative status is possible because this would go counter to the position of the Institutions that initiated and drafted the Charter and of some of the member states. It would also be hard to explain the reluctance to recognise the legal status of a document which merely integrates the rights already established in Community and international legal acts to which all the members states are parties.

B. Direct Reference to the Charter in Article 6 of the EU Treaty. This possibility had already been foreseen before the Nice conference. The consequences would depend on whether the Charter is annexed to the EU Treaty or to a new Treaty in the form of a Protocol. In the first case, the Charter would acquire a binding character, whereas in the second case its status would not change. A problem, however, would arise as to the existing reference in Article 6(2) to the rights enshrined in ECHR because the majority of rights stipulated in the Charter are based on the Convention. A reference to the Charter without changing its status would mean a mere formal acknowledgement of the rights enshrined in the Charter as general principles, an approach emerging in the case law of the Court of Justice. The rights enshrined in the Charter could be interpreted and applied by the Court of Justice on the basis of the structure and goals of the Community in the same way as it presently interprets the ECHR or the rights stipulated in the constitutions of the member states. In this case, the rights enshrined in Charter would serve as a basis for the repeal of acts of Community institutions if the Court of Justice establishes that the latter are in conflict with these rights. The provisions of the Charter would be binding on the member states as general principles of Community law with all the consequences thereof: they would have to comply with them in implementing the Community law, the national courts would have to refrain from applying provisions of national law that go counter to them, and in cases of non-compliance, member states would be liable for breach of Treaty obligations.

C. Incorporation of the Charter in the Form of a Separate Protocol annexed to the Treaty.

Since both international and Community law treats protocols as an integral part of a Treaty, the Charter would acquire the same legal value as the Treaty. This option would be in line with the wishes of some member states to see the Charter as a separate document and would provide a solution if no EU Constitution were adopted.

D. Incorporation of the Charter into the EU Treaty or into a new basic Treaty. If the provisions of the Charter are inserted into the Treaty, they would acquire a binding status, like in option C. The difference from option C would be purely technical (option C would be technically simpler). I believe that effective implementation of human rights is only possible when the document is binding.

Relationship between the Charter and the ECHR

If the Charter remains declarative in character, its relationship with the Convention would not change. According to Article 52(3) of the Charter, the rights (their content and scope, including limitations) which correspond to rights guaranteed by the ECHR are to be interpreted in the same way as the rights laid down by the Convention. The official commentary of the Charter contains a list of correspondence between the rights stipulated by the Charter and the Convention. The rights are broken down into three groups in the list: the rights that correspond to the ones enshrined in the ECHR; the rights the application of which is broader; and the rights not stipulated by the Convention. Since this commentary has no binding legal force, some authors believe that Article 52(3) does not rule out the possibility of conflicting interpretation of the rights by the Court of Justice and the European Court of Human Rights because the problem of identification of these rights remains open. Advocates of the Charter claim that provisions of Article 52(3) and 53 eliminate this problem because, in the case of collision, the Convention would have precedence over the Charter except the cases when Community legislation offers a more effective protection of rights. An analysis of rights enshrined in the Charter shows that a considerable number of them correspond to those in the Convention. One is justified in thinking that the drafters of the Charter tried to avoid a collision between the two documents. It is important to note that even prior to the adoption of the Charter there existed two independent mechanisms for the protection of fundamental rights (one to be found in Community law and the other in the form of Convention). Thus already before the Charter was adopted there were cases of courts interpreting the provisions of the Convention differently. I would think that problems would only arise in cases if the Charter

offers a lower level of protection than that established by the Convention. This variant would hardly be acceptable because it would call for the application of different standards of protection of rights. Articles 52(3) and 53 of the Charter rule such a situation out by stating: “Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised by ... the European Convention for the Protection of Human Rights and Fundamental Freedoms” (Art. 53). I believe, therefore, that the opinion by some of the authors that the Charter poses a threat to the protection of rights enshrined in the ECHR has no grounds.

Compared with the Convention, the Charter has some advantages. The Charter’s scope of application is broader. Alongside political and civil rights of the EU citizen it also embraces social, economic and the “new” rights: the right to good administration, the right to environmental protection, and the right of access to documents. Some of the rights had been modified to take into account the developments after the adoption of the Convention and the case law of the European Court of Human Rights.

If the Charter is granted a legal character, member states would be bound by the same obligations vis-à-vis the Charter as vis-à-vis any other act of EU primary legislation. Depending on the character of amendments introduced to Article 6 of the EU Treaty, adjustments would have to be made to the provisions of Article 52(3) with regard to the relationship between the Charter and the ECHR.

Competencies of the ECJ

If the Charter were incorporated into the EU Treaty, the European Court of Justice would play the key role in the protection of rights enshrined in it (if decision is not made to set up a new institution for this purpose). It is therefore important to ensure that Article 46 or another similar article is changed accordingly, in order to grant the Court jurisdiction in this field.

In case such a decision is adopted, another issue would arise, i.e. who would have the right of legal action in cases related to the implementation of rights enshrined in the Charter. First of all, the standard forms of actions would have to be used:

- Actions by the Commission against member states for violations of the Charter’s provisions;
- Actions by the Institutions, member states, and individuals aimed at repealing EU legal acts, also actions in relation to institutions’ failure to act and to compensation for damage caused by institutions when the basis for the action is a violation of the Charter.

- Preliminary ruling procedure (ECJ, when requested by national courts of member states, could offer an opinion on the compliance of national measures or acts of EU institutions with the Charter).

The possibilities for individuals to take direct action before the ECJ against violations of the Charter by a member state or an EU Institution deserve to be considered separately (presently, the possibilities of direct appeal by individuals to the ECJ are very limited). In order to enable individuals to protect their rights enshrined in the Charter, either the grounds for taking the various existing forms of action have to be expanded or a new special form of action in relation to violations of human rights, and requirements for such an action, have to be introduced. The latter variant, in the opinion of Lithuanian experts, would not be expedient because this type of violation usually interrelates with a specific form of existing actions.

It must be noted that in case the EC/EU does not accede to the ECHR, the ECJ will be the last instance both in cases related to the violation of rights enshrined in the ECHR and stipulated in the Charter and those related to other fundamental rights. At the same time, the compliance with the Charter in member states will have to be ensured by national authorities and national courts. Individuals would be able to seek protection against violations of rights enshrined in the ECHR before the European Court of Human Rights, while this Court would not offer protection against the other rights which are stipulated in the Charter. Thus the Charter provisions would not have equal legal value and consequences vis-à-vis acts of member states. On all the rights stipulated in the Charter, the ECJ would be able to offer its opinion through the preliminary ruling procedure.

If the Charter is not granted legal character, the ECJ would be able to make references to and interpret the rights stipulated in the Charter; but in this case, too, the question of collision of jurisdictions of the ECJ and the European Court of Human Rights remains open.

Some authors believe that the only way to avoid this collision is accession by the EC/EU to the ECHR. It is important to underline that the Charter is not an alternative to the accession by the EC/EU to the ECHR. The accession of the EC/EU to the ECHR poses a number of problems. Adequate attention, therefore

Brussels, 26 June 2002

THE EUROPEAN CONVENTION

Brussels, 12 July 2002

THE SECRETARIAT

Working Group II

Working document 08

Working group II "Incorporation of the Charter/ accession to the ECHR"**From: António Vitorino, President****To: Working Group II**

Subject : Study carried out within the Council of Europe of technical and legal issues of a possible EC/EU accession to the European Convention on Human Rights

Following a request by the Secretary-General of the Council of Europe, the Chairman of the Group has the honour to bring to the attention of members a report, adopted by the Steering Committee on Human Rights (CDDH) of the Committee of Ministers of the Council of Europe, containing a study of technical and legal issues of a possible EC/EU accession to the European Convention on Human Rights. A reference to that study had already been made in document CONV 116/02 WG II 1 (page 19, footnote n°2).

ANNEX

Strasbourg, 28 June 2002

DG-II(2002)006

[CDDH(2002)010 Addendum 2]

**STUDY OF TECHNICAL AND LEGAL ISSUES
OF A POSSIBLE EC/EU ACCESSION TO THE EUROPEAN
CONVENTION ON HUMAN RIGHTS**

**Report adopted by the Steering Committee for Human Rights (CDDH)
at its 53rd meeting (25-28 June 2002)**

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GENERAL INTRODUCTION

It is recalled that, at their 747th meeting (28 March 2001, item 2.3b), the Ministers' Deputies decided to give ad hoc terms of reference to the Steering Committee for Human Rights (CDDH) to carry out "a study of the legal and technical issues that would have to be addressed by the Council of Europe in the event of possible accession by the European Communities/European Union to the European Convention on Human Rights, as well as of the other means to avoid any contradiction between the legal system of the European Communities/Union and the system of the European Convention on Human Rights".

At its 52nd meeting the CDDH decided to this end to set up a working group on legal and technical issues of possible EC/EU accession to the European Convention on Human Rights (GT-DH-EU). The Group, which was chaired by Mr Jan LATHOUWERS (Belgium), held two meetings in Strasbourg (Human Rights Building), on 30 January-1 February 2002 and on 11-13 March 2002. At the end of its second meeting, it adopted an activity report (GT-DH-EU(2002)012). This report was examined and approved by the CDDH at its 53rd meeting (25-28 June 2002). The present document contains the activity report as adopted by the CDDH.

At the outset, the CDDH wishes to stress that, in accordance with its terms of reference, it has refrained from addressing political issues concerning the advisability of such accession. It also avoided to examine questions which are really for the EC/EU to decide upon. It has limited its work to considering what legal and technical adjustments would be necessary in the context of the Council of Europe, particularly in terms of amendments to the ECHR, to make accession possible. The purpose of this Activity Report is merely to identify and clarify those legal and technical issues, which might be useful in the context of any future decisions on the question of accession.

For clarification purposes, some drafting examples are included in Appendix I to this report. They are not to be regarded as proposals of the CDDH.

CHAPTER I – MODALITIES OF ACCESSION FROM THE POINT OF VIEW OF TREATY LAW

I. Introduction

1. Accession must be distinguished from signature and ratification as means of expressing consent to be bound by a treaty (Article 11 of the Vienna Convention on the Law of Treaties). In accordance with Article 59, paragraph 1 of the Convention the member States of the Council of Europe become parties to the Convention through signature followed by ratification. However, when existing Council of Europe treaties have been opened to the participation of the EC/EU, it was usually provided that the latter expresses its consent to be bound by means of accession (eg. the Protocol to the Convention on the Elaboration of a European Pharmacopoeia, ETS 134). The CDDH has taken accession as its working hypothesis.

2. The CDDH has identified three broad categories of provisions that may be necessary or desirable in the event of accession by the EC/EU to the European Convention on Human Rights (ECHR) and its Protocols:

- a) amendments to the text of provisions already contained in the ECHR and its Protocols;
- b) supplementary provisions e.g. provisions clarifying the scope of terms used in the ECHR; adapting them to the special case of the EC/EU, etc. (e.g. terms with a “national” connotation; see Chapter II, point B.1 and A2 option 2);
- c) any technical and administrative issues not pertaining to the text of the Convention but for which a legal basis would be useful, such as the conditions of the budgetary contribution of the EC/EU.

3. In addition, some accommodation in respect of two ancillary agreements would be necessary to accompany EC/EU accession to the ECHR (see under point IV below).

II. Option 1: An amending protocol to the ECHR

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4. All provisions of the type mentioned under a) could be included in an amending protocol. Protocol No. 11 to the ECHR (ETS 155) amended provisions of the Convention itself and of all additional protocols existing at that time (Protocols No. 1, 4, 6 and 7).

5. An amending protocol may also contain supplementary and/or transitional provisions that do not amend the text of the original treaty itself, but remain in force even after the entry into force of the amended text of the Convention. A good example is again Protocol No. 11 to the ECHR. Its Article 5 provided the necessary transitional provisions for the treatment of applications lodged before its entry into force. Article 6 made clear that temporal restrictions made with respect to declarations under former Articles 25 and 46 of the ECHR (which were both abrogated by Protocol No. 11) remained valid for the jurisdiction of the new Court.

6. Inclusion of provisions of the type mentioned under b) in an amending protocol could therefore also be envisaged. There is an advantage in doing so. If these provisions were not included in the amended version of the Convention, the EC/EU would not give its formal consent to be bound by them, because the amending protocol would only be signed and ratified by the current States Parties to the ECHR.¹

7. Provisions of the type mentioned under c) are perhaps less suitable for inclusion in an amending protocol. They could be included in a separate agreement to be concluded directly between the Council of Europe and the EC/EU. Since it would only contain provisions of a technical character, it would not be necessary that all States Parties become Parties to such an agreement. However, it would be useful if a general legal basis for such an agreement be included in the Convention, as amended, at least as far as the EC/EU's financial contribution is concerned (cf. *mutatis mutandis*, Article 50 of the Convention). Such a legal basis could be provided in a supplementary provision of the type mentioned under b).

¹ Unless, of course, a provision were made to append b)-type provisions to the amended Convention (ie. making them part of the Convention as amended).

Modalities for the entry into force of an amending protocol

8. Every amending Protocol to the ECHR concluded to date has provided for entry into force after signature and ratification or acceptance by all the States Parties to the Convention, which typically takes a few years.² For a drafting example see below in Appendix I (Part V. - Entry into force of the amending protocol/accession treaty).

9. In theory, in order to speed up the entry into force of an Amending Protocol, a “tacit acceptance clause” might be envisaged. Such a clause has for example been introduced into the Protocol amending the European Convention on Transfrontier Television (ETS 171, 1998) providing for automatic entry into force following the expiration of a period of two years, in the absence of any objection. The use of such a clause does not prevent States from using their traditional domestic procedures and from depositing an instrument of ratification or acceptance. However, after a fixed period of time (e.g. two years), the Protocol would enter into force automatically unless a Party to the Convention notifies the Secretary General of the Council of Europe of an objection to its entry into force.

10. On the other hand, such tacit acceptance procedures have only been used in the Council of Europe, and more generally in international treaty practice, for relatively technical instruments raising few or minor issues of policy. That is far from the situation here. EC/EU accession would on any view, be a major innovation with important consequences for the Convention control mechanism and it clearly raises many significant policy issues. For such an instrument to enter into force without the positive consent to be bound of all the parties would be unprecedented, and accordingly unlikely to be considered appropriate or acceptable by the High Contracting Parties to the Convention.

III. Option 2: An accession treaty

11. Instead of concluding an amending protocol between the current States Parties to the ECHR, it could be envisaged to conclude an accession treaty between all States Parties to the ECHR and the

² E.g. *Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms* (ETS 155) was opened for signature on 11 May 1994 and, having obtained all necessary ratifications in October 1997, entered into force on 1 November 1998.

EC/EU. Such a procedure is used within the European Union for the admission of new member States. Article 49 paragraph 2 of the EU Treaty provides that the conditions of admission and the adjustments to the EU Treaties “shall be the subject of an agreement between the member States and the applicant State”. The accession agreement usually consists of a rather short text and – annexed – an Act concerning the conditions and adjustments to the Treaties, forming an integral part of the accession agreement. Furthermore, the Act contains single and joint Declarations made by the Contracting States when signing the agreement. All States concerned, i.e. the EU member States and the candidate countries, ratify the accession agreement in accordance with their respective constitutional requirements. They do not sign or ratify the EU Treaties as such, but are considered automatically Parties to them upon entry into force of the accession agreement.

12. The main differences between the use of the traditional procedure of an amending protocol and the use of an accession treaty are that:

- ❑ the EC/EU as such would be directly bound by all the provisions of the accession treaty, including those that do not amend the original Convention or its Protocols;
- ❑ instead of having a two-tier procedure (first adoption and ratification of the amending protocol by all States Parties to the ECHR, then accession by the EC/EU to the amended Convention), there would be a single procedure which would result in the EC/EU being a Party to the revised ECHR upon entry into force of the accession treaty³. Provision could be made for EC/EU accession to the additional protocols simultaneously or at a later date.
- ❑ an accession treaty could more easily contain all the different types of provisions a), b) and c) mentioned in the introduction above. It could also contain the necessary amending and other clauses concerning the ancillary treaties (See Chapter III below and Appendix I Part VI – Amendments to ancillary agreements).

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³ In other words, the EC/EU would not have to wait for the entry into force of an amending protocol before starting the procedures required under Union law to accede to the Convention. According to Opinion 2/94 of the ECJ, accession would require amendments to the Treaty. Such amendments would have to be adopted in accordance with the procedure laid down in Article 48 of the EU Treaty before accession (Article 300 paragraph 5 of the EC Treaty).

13. An accession treaty could contain all the different types of provisions mentioned in the introduction. It could contain separate chapters for each type:

- a) Chapter I: Amendments to the ECHR;
- b) Chapter II: Amendments to the Protocols;
- c) Chapter III: Supplementary provisions;
- d) Chapter IV: Technical and administrative issues;
- e) Chapter V – Clause relating to ancillary agreements;
- f) Chapter VI – Entry into force of the accession treaty.

Entry into force of an accession treaty

14. See paragraphs 8-10 above. In addition, entry into force of an accession treaty would also require that the EC/EU expresses its consent to be bound by the treaty, by way of ratification.

15. For a drafting example see below in Appendix I (Part V - Entry into force of the amending protocol/accession treaty)

IV. Ancillary treaties

16. The ancillary agreements that would need to be amended are: (i) the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights (ETS No. 161) and (ii) the Sixth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe (ETS No. 162).

17. With respect of the first of these treaties the changes could be included either in an amending protocol containing also the amendments suggested for the Convention and its Protocols or in an accession treaty. The solution indicated below for the Sixth Protocol could also be used.

18. The situation is different with respect to the Sixth Protocol to the General Agreement on Privileges and Immunities, which can only be ratified by member States to the Council of Europe which are also Parties to the General Agreement. This Protocol would therefore need to be amended

in a separate text or, alternatively, which would be the simplest solution, a clause could be included in an accession treaty to the effect that the European Communities (European Union) shall respect the provisions contained in the Protocol. That solution could also be used in respect of the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights.

19. A drafting example for the latter alternative is contained in Appendix I (Part VI – Accommodations in respect of ancillary agreements).

V. Final remarks

20. The CDDH noted that both solutions mentioned above are technically feasible as modalities of accession from the point of view of treaty law. It also noted several advantages in opting for an accession treaty. It considered that which option to choose was a matter that extended beyond the remit of the current terms of reference given to the CDDH.

CHAPTER II – OVERVIEW OF LEGAL AND TECHNICAL ISSUES AND CORRESPONDING POSSIBLE AMENDMENTS SOLUTIONS

A. Points on which amendment of the ECHR would be required:

1. Article 59, paragraphs 1 and 4 ECHR (including the question of who should be allowed to accede: the European Communities or the European Union)

21. According to Article 59 only member States of the Council of Europe may sign and ratify the ECHR. This provision would have to be amended in order to enable the EC/EU to accede.

22. It is recalled that of the three pillars that constitute the European Union, for the time being, only the first pillar, the European Communities, undoubtedly enjoys legal personality and can conclude international agreements with States or international organisations. However, there is a

debate within the EU on the question of legal personality of the EU (second and third pillars: Common Foreign and Security Policy; Police and Judicial Cooperation in Criminal Matters) and as to whether or not the distinction between EC and EU should be reviewed (cf. *inter alia*, the Laeken Declaration).

23. Since the situation is uncertain in this respect, three different solutions could be envisaged all of which would allow for the necessary flexibility in case the EU would be authorised to accede to the Convention. These are:

(i) to amend Article 59, paragraph 1 by adding a phrase to the effect that the European Communities⁴/Union may accede to the Convention;⁵

(ii) to amend Article 59, paragraph 1 by adding a phrase to the effect that the European Communities may accede to the Convention. In a separate paragraph, or in a separate provision in the amending protocol, to provide that the European Union may accede in the event of it having been authorised to do so;

(iii) to include a reference in Article 59, paragraph 1 to the possibility for international organisations to accede to the Convention. Under this solution, it would probably be advisable to provide that such accession would be open only to organisations so invited by the Committee of Ministers (cf., *mutatis mutandis*, e.g. Article 29, paragraph 1 of the Framework Convention for the Protection of National Minorities).

24. All three alternatives would imply amendments to Article 59, paragraph 4 as well, by mentioning “accession” in addition to “ratification” and by adding “and the European Communities/Union” (options (i) and (ii)) or “and any other Contracting Parties” (option (iii)).

⁴ The normal practice within the Council of Europe when the European Communities have acceded to a Convention has been to refer to “the European Communities” in the provision opening the treaty for accession.

⁵ See Appendix I below.

25. Whether in actual fact only the European Communities or also, possibly at a later stage, the European Union would accede will depend on decisions within the European Union, as regards both the legal personality of the latter and the question of its legal capacity to accede.
26. The “scope” of EC/EU accession would be limited to issues in respect of which the EC/EU has competence. This has always been the understanding in respect of Council of Europe Conventions to which the EC has acceded. Nonetheless, it might in respect of the ECHR be considered useful to make this understanding explicit either in a general declaration of competence (analogous to the declaration made in connection with the UN Convention on the Law of the Sea) or, alternatively, in the text of the provision allowing accession, for example by adding the words: “... to the extent of its competences”.
27. The solutions indicated above could be adapted also to allow for EC/EU accession to the protocols to the Convention.
28. Hesitations were expressed as to the question of whether the EC/EU would be able to accede to protocols that were not ratified by all its member States. However, it was considered that this should not be an obstacle for at least preparing the instruments so as to make accession possible. It was stressed that the question of accession to the protocols must ultimately be left to the EC/EU.
29. For reasons of simplicity, the drafting examples included in Appendix I below reflect only alternative (i) above. The entity that would accede to the Convention is designated as the (European Communities) (European Union). A definitive designation will have to be made at the moment of the negotiation of accession with the EC/EU.
- 2. ECHR provisions referring to “State” or “States”: Article 10, paragraph 1; Article 11, paragraph 2; Article 17; Article 27, paragraphs 2 and 3, Article 38, paragraph 1.a, Article 56, paragraphs 1 and 4, Article 57, paragraph 1.**
30. In the above-mentioned provisions the term “State” can be considered as a synonym for the term “High Contracting Party” used elsewhere in the Convention.

Option 1: These provisions could be amended, adding an explicit reference to the “*European Communities/Union*” or using the neutral term “*High Contracting Party*”, which would cover both States and the European Communities/Union.⁶

Option 2: It might be preferable from a point of view of legislative technique to include a general interpretation clause in the amending Protocol which would eg provide that “References to a “State” or to “States” shall be understood as references to the broader notions of a “High Contracting Party” and “High Contracting Parties” respectively.” This option would have the advantage of avoiding amendments to a series of individual ECHR provisions.⁷

31. These would be formal amendments which would not entail any substantive change in the nature or scope of obligations under the Convention.

32. The solutions indicated above could be adapted also to allow for EC/EU accession to the protocols to the Convention.

33. Drafting examples are contained in Appendix I (for Option 1: Parts I and II; for Option 2: Part III).

3. Article 46, paragraph 2 ECHR (supervision of execution of judgments); representative of the EC/EU in the Committee of Ministers; need for a Statutory Resolution?

34. The current situation as regards participation in the Committee of Ministers meetings generally is as follows. Following an exchange of letters between the President of the European

⁶ As to the expression “Inter-State cases” in the title of Article 36, ECHR, see under point B.5 below. However, an individual amendment to Article 57, paragraph 1 would probably still be necessary but for another reason: in order to allow the EC/EU to make reservations upon accession, the words “or accession” should be inserted after the word “ratification” (see Appendix I, Part I).

Commission and the Secretary General of the Council of Europe⁸, representatives of the European Commission have been authorised to attend the meetings and activities of the Council of Europe's Committee of Ministers. However, the exchange of letters stated that the Commission will not enjoy voting rights and will not be involved in the Organisation's decision-making process.

35. According to Article 14 of the Statute of the Council of Europe, only member States may be present and vote in the Committee of Ministers, each member State having one vote. Article 46, paragraph 2 of the Convention should therefore be amended to allow the EC/EU to participate with the right to vote in meetings of the Committee of Ministers when the latter exercises its functions under this provision.

36. The question arises whether the Statute of the Council of Europe also needs to be amended. However, from the point of view of treaty law, it could be considered that an amendment to Article 46, paragraph 2 of the Convention would have the status of a later *lex specialis*, which would take precedence over the general rules contained in the Statute of the Council of Europe.⁹ On the other hand, the opposite view could also be defended.

37. The amendment of the Convention might be accompanied by the adoption of a statutory resolution authorising the participation of the EC/EU, although this might not be strictly necessary. Thus, the cumbersome procedure of an amendment to the Statute of the Council of Europe could be avoided.

38. It would seem logical that, as any other Party to the Convention, the EC/EU would be entitled to one vote. It could be argued that the EC/EU's sphere of competence is more limited than the sovereignty of States and that this would justify some limitation of EC/EU participation in the supervision of execution of judgments. This argument might carry more weight here (Article 46, paragraph 2) than in the context of participation of an EC/EU judge in the Court (see point C.1

⁸ Exchange of letters agreed upon at the 575th meeting of the Minister's Deputies (14-17 October 1997).

⁹ See Article 30 (3) of the 1969 Vienna Convention on the Law of Treaties: "When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under Article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty".

below) since the role of the representative in the Committee of Ministers can not be compared to that of an independent judge. However, it could also be argued that, in view of the principle of collective enforcement of the rights contained in the Convention, it would be unjustified to limit the right to vote only to the supervision of judgments involving EC/EU law, which would give rise to an asymmetrical situation *vis-à-vis* other Contracting Parties.

39. For a drafting example (Article 46, paragraph 2) see Appendix I (Part I).

B. Points on which amendment of the ECHR (although such amendment might be deemed advisable) might not be necessary

1. Terminology used in some of the ECHR restriction clauses (eg: “national security”, “economic well-being of the country”, “territorial integrity”, “national laws”; cf. paragraph 2 of Articles 8, 10, 11 and Article 12, ECHR) and the reference to “nation” in Article 15, paragraph 1, ECHR

40. It would appear to be justified to apply these terms, where applicable, *mutatis mutandis*, to the European Communities/European Union. In its 1979 Memorandum, the European Commission took the position that “it should be sufficient to lay down in an accession protocol (...) that the Convention, when it uses terms relating specifically to States, also applies *mutatis mutandis* to the European Communities”. It is understood that this solution would not entail discretion as to the applicability of these terms to the EC/EU.

41. Such a solution would certainly be preferable to attempting to redefine each term so as to tailor them to the EC/EU, which would be a highly complicated exercise.

42. It could be envisaged that a provision to this effect appear only in the amending protocol to the ECHR or in an accession treaty, and not in the amended text of the Convention itself.¹⁰

¹⁰ There are precedents for such provisions, e.g. Articles 5 and 6 of Protocol No. 11 to the ECHR.

43. *The solutions indicated above could be adapted also to allow for EC/EU accession to the protocols to the Convention.*

44. *Drafting examples are contained in Appendix I (Part III).*

2. Question of the EC/EU contribution to the expenditure on the Court (cf. Article 50, ECHR)

45. According to Article 50 of the Convention, the expenditure on the Court shall be borne by the Council of Europe. The question of the EC/EU's contribution to the expenditure on the control system of the Convention (which also includes supervision of execution of judgments, cf. Article 46, paragraph 2 ECHR) in case of accession would need to be negotiated between the Council of Europe and the EC/EU.

46. In fact, as the Court's budget is not separate from that of the Council of Europe, an EC/EU contribution should be made via the ordinary budget of the Council of Europe from which all expenses linked to the Convention control mechanism were paid. It may be necessary to create a legal basis, although it may be of a general character, for this contribution.

47. Such a provision could be included in an amending protocol to the Convention or in an accession treaty in a general formula, with more specific details, notably about the basis for calculation of the contribution, provided in a separate agreement. For a drafting example for a general provision, see below in the Appendix (Part IV – Technical and administrative questions). This would be a supplementary provision; Article 50 itself would not have to be amended.

3. Article 35, paragraph 2.b, ECHR (“another procedure of international investigation or settlement”)

48. Irrespective of the question of whether the procedure before the Luxembourg Court should today be considered as a procedure of “*international investigation or settlement*” in the sense of

Article 35, paragraph 2.b of the ECHR¹¹, it is clear that the answer would be negative as a necessary consequence of accession. Indeed, application of the ECHR control system would be an important object and purpose of accession by the EC/EU to the ECHR and the mere fact that a case has been dealt with by the Luxembourg Court should not prevent the Strasbourg Court from accepting an application as admissible.

49. After accession by the EC/EU, the remedies existing in the legal system of this Contracting Party would have to be considered as domestic remedies within the meaning of Article 35, paragraph 1 of the ECHR. On this point, one could have in mind, *inter alia*, the procedures before the Court of First Instance and the European Court of Justice.

4. Participation of the EC/EU in proceedings before the Court (as Respondent, *amicus curiae* or otherwise)

50. First of all, the EC/EU would, in case an application is brought against it before the Court, participate in the proceedings like any other Respondent.

51. Secondly, the EC/EU could, like other Contracting Parties, be invited under Article 36, paragraph 2, ECHR to submit written comments or take part in hearings.

52. On both of these points, no amendment of the ECHR would be required.

53. Thirdly, a question arises in connection with respect to Article 36, paragraph 1, ECHR. This provision gives a right of third party intervention to a High Contracting Party one of whose “nationals” is an applicant.

54. The Treaty establishing the European Community uses the term “citizens of the Union” which is defined by reference to the nationality of a member State (Article 17 of the EC Treaty). It is not considered necessary to replace the term “nationals” by “citizens” in Article 36 of the ECHR or to specify, in the amending Protocol, that the term “nationals” in this provision shall include

¹¹ The issue has been raised in a case pending before the European Court of Human Rights (the case DSR-Senator Lines).

“citizens of the Union” within the meaning of EC/EU law. The term “nationals” would already cover the “citizens of the Union”.

55. It must be underlined that giving the EC/EU the right to intervene each time one of its citizens is applicant in a case, might, in theory, lead to a large number of interventions.¹² It would have to be decided whether the EC/EU should be allowed to intervene in cases brought against any State. This would mean a “double” right of intervention: one for the EC/EU and one for the member State of which the applicant is a national. Another possibility could be that the EC/EU be given the possibility to intervene only in cases brought against non-member States of the European Union. This question could possibly be solved by an agreement between the EC/EU and its member States, or through an accession agreement between all parties concerned. It is noted that Article 36, paragraph 1 reflects the notion of diplomatic protection and that, within the EU, it is not the Organisation but its component member States that provide such protection for their nationals.

56. In view of the fact that the member States of the Union already have the right to intervene on behalf of their nationals under Article 36, paragraph 1, it may be that the possibility provided for in Article 36, paragraph 2, to request that the President of the Court enable, in this case, the EC/EU to intervene in a particular case, would be sufficient.

Participation as “co-Defendant”?

57. In the fourth place, a separate issue is whether it would be advisable to introduce special rules for the EC/EU, allowing it to participate in the proceedings whenever issues of Community law are at stake in a case before the Strasbourg Court, taking into consideration, in particular, the desirability of giving an opportunity to the EC/EU to defend itself in such a case as well as the fact that with a view to a possible execution of a judgment, it might be useful to ensure the co-operation of the EC/EU (enforceability). This would perhaps be useful in cases concerning an alleged violation of the ECHR by an EC/EU member State on account of a measure taken by that State in implementation of EC/EU law. There might even be a need to oblige the EC/EU to intervene in such a delicate situation.

¹² In accordance with current practice, the EC/EU would be informed about all cases in which it could in principle intervene.

58. It would seem difficult to regulate this question in the context of Article 36, since the idea here would be that the EC/EU take part in the proceedings not by way of a third party intervention, but as a co-Defendant, a fundamentally different situation.

59. Consideration was given to the possibility of introducing a mechanism under which the EC/EU could be invited or even obliged to join the case as a co-Defendant, alongside the EC/EU member state against which the application was initially brought. In principle, various options for such a scheme could be envisaged, depending on whether the EC/EU would have a right or an obligation to join the proceedings as co-Defendant, and on whether acquiring co-Defendant status would be the consequence of an unilateral decision by a Defendant State, of a decision *proprio motu* by the EC/EU, or of an initiative taken by the Court. It would probably be difficult to give the Court the power to oblige the EC/EU to join a case as co-Defendant, for this might be seen as prejudging questions relating to the respective responsibilities of the Contracting Parties or in effect render inoperative certain admissibility criteria in respect of the EC/EU (eg: 6 months rule). It might be more appropriate merely to provide a legal basis in the Convention, by virtue of which the EC/EU may, in cases which appear to raise an issue involving Community or Union law, with the leave of the Court, join the EC/EU member State against which the case had been brought as a party to the proceedings. It was understood that the Court's decision to grant leave would be of a purely procedural nature, in the interest of the proper administration of justice. It was also understood that the EC/EU and its member States would normally not be precluded from coordinating among themselves whether or not leave should be sought under such a mechanism, in a given case or in a more general fashion. This could be explained in an Explanatory Report. It could be envisaged that such a mechanism apply only in respect of cases pending before a Chamber or the Grand Chamber (cf., *mutatis mutandis*, Article 36, paragraph 1 of the Convention).

60. Since such a mechanism would cover, in particular, situations in which there is, arguably, a question of "mixed" responsibility under the Convention between the EC/EU and one of its member States, it would appear logical to open the same possibility, also for the inverse situation: ie: giving a EC/EU member State the possibility to seek leave to join the proceedings as a co-Defendant where the case has been brought against the EC/EU.

61. The question arises whether possibilities should be created for an *individual applicant* to seek to have the EC/EU (in case the application was brought against an EC/EU member State) or an

EC/EU member State (in case the application was brought against the EC/EU) joined to the proceedings as co-Defendant. This could be relevant where applicants had possibly erred in their decision to introduce their application only against the EC/EU or only against an EC/EU member State. The point could be made that, formally at least, the individual has the choice against which Contracting Party he or she wishes to introduce an application. In this respect the applicant's position is not comparable to that of the Defendant. Furthermore, it was noted that, during the initial stages of the introduction of an application, the individual might be given some possibility to "redirect" the application or specify that the application is also directed against a second (or more) Contracting Party/Parties. For the same reasons as set out in paragraph 59 above in relation to the idea of empowering the Court to oblige a Contracting Party to join the proceedings as co-Defendant, it would probably be difficult to give the Court a power to "redirect" the case so as to involve another or an additional Defendant. It should also be noted that introduction of a mechanism allowing for the addition of co-Defendants or for one Defendant to call another as outlined above would also be beneficial to applicants who are in the situation described here.

62. A drafting example for a provision containing a mechanism as described above (a possible "Article 35bis" of the Convention) is contained in Appendix I, Part III. Some indication is also given of implementing provisions (communication of cases to which such a system would apply; time-limits for seeking leave) which could possibly be taken up in the Rules of Court.

5. Article 33, ECHR ("Inter-State" cases; question of whether inter-Party applications should be possible without limitation)

63. Article 33 of the ECHR, while entitled "*Inter-State cases*", uses the term "*High Contracting Party*". The heading was introduced by means of Article 2 of Protocol No. 11, ECHR and, as with other headings so introduced, it should not be understood as an interpretation of the Article itself or as having any legal effect. The headings have been added in order to make the text of the Convention more easily understandable (see the Explanatory report to Protocol No. 11, § 114). Therefore, the legal position under the ECHR is that accession would mean that all States Parties to the Convention, including EU member States, could bring a case against the European Communities/Union and vice versa, in line with the principle of collective enforcement of the ECHR. Changing the heading to "*Inter-Party cases*" would make it correspond better to the content of Article 33.

64. On the other hand, it is recalled that EU member States are prohibited from submitting disputes “concerning the interpretation or application of this Treaty to any method of settlement other than those provided for therein” (Article 292 of the EC Treaty)¹³. The Treaty of Amsterdam introduced a special procedure in cases of “serious and persistent breach by a Member State of principles mentioned in Article 6 (1)”. Article 6 (1) of the EU Treaty refers to “the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law”.

65. The question may therefore arise whether there would be a need for an amendment with a view to excluding any ECHR disputes involving EC/EU law from the scope of application of Article 33. Such an amendment would probably not be necessary since the issue is really one of EC/EU law and both EU member States and the EC/EU may in practice be expected to use Article 33 only to the extent that such use is compatible with their obligations under EC/EU treaties. It would be for the EC/EU and its member States to decide whether or not this matter should be addressed in an agreement between themselves, as long as such an agreement would not institute a system of submitting, by way of petition, a dispute arising out of the interpretation or application of the ECHR, to a means of settlement other than those provided for in the ECHR (cf. Article 55, ECHR (exclusion of other means of dispute settlement)).

C. Other issues (NB: depending on the option(s) retained and modalities to be chosen, amendment of the ECHR might be required)

1. Status and participation in the European Court of Human Rights of the judge elected in respect of the EC/EU

66. Under the current provisions of the ECHR, the Court consists of a number of judges equal to that of the High Contracting Parties (Article 20) and each High Contracting Party nominates three candidates, one of which is elected by the Parliamentary Assembly with respect to that Party (Article 22, paragraph 1).

¹³ It is noted that the Court of Justice Opinion 2/94 left open the question of compatibility of accession with Article 292.

67. This principle of one judge in respect of each Contracting Party is based on the following main considerations and advantages: representation of each legal system in the Court; expertise on each legal system in the Court, participation of each Contracting Party in the system of collective enforcement set up by the Convention which entailed duties but also certain prerogatives; it contributes to the legitimacy of the decisions taken by the Court.

68. Whether or not there should be a judge elected in respect of the EC/EU and, if so, whether that judge should participate on an equal footing with the other judges in the work of the Court depends on an evaluation of the relevance and weight of the above-mentioned considerations in regard to the EC/EU as a Contracting Party, in combination with the significance attached, respectively, to features that distinguish the EC/EU from States Parties, and features that make the EC/EU comparable to a State Party. On the latter point, the view was advanced that the EC/EU did not possess the fullness of sovereign competence which is the attribute of a State. On the other hand, the view was also expressed that the EC had a distinct legal personality from its member States, that its actions do enter the human rights field and that member States of the EC/EU did no longer have full sovereign competence since they had transferred competences to the EC/EU.

69. The – rather theoretical - argument could be made that there would be no need for a judge elected in respect of the EC/EU as there were 15 judges on the Court elected in respect of its member States. However, this option of having no EC/EU judge was discarded since it would not be justified in the light of the main considerations mentioned in paragraph 67 above.

70. A second option, based on the same somewhat theoretical argument, could be to appoint an EC/EU judge on an ad hoc basis, for cases involving Community law. This option would perhaps partly meet the expertise argument, but be difficult to justify in the light of the other main considerations mentioned in paragraph 67 above. It also presented several other disadvantages, some of a more or less practical character:

- it would have to be decided for each case whether it involved Community law or not, which may cause difficulties in practice;
- if there were many cases requiring the participation of an EC/EU judge, ad hoc appointments would need to be made continuously which would be an extra burden for the Court;

- as ad hoc judges are not elected by the Parliamentary Assembly, there would be a problem of legitimacy with respect to the EC/EU judge if systematic recourse were to be had to ad hoc judges in respect of that Contracting party alone.

71. A third option would be to provide for a full-time EC/EU judge with limited participation (only in cases involving EC/EU law). In support of this option, it could be argued that it would be awkward for a member State of the EC/EU to be judged by an EC/EU judge in cases concerning areas for which the EC/EU did not have competence (eg: child care cases). Against this, it could be said that, already now, States with a tradition of a comparatively high level of State intervention are being judged by a judge elected in respect of a country where the State plays a less prominent role.

72. An argument against this option would again be that it may be difficult in practice to establish which cases would require the presence of the EC/EU judge and which cases would not. Also, it was highly doubtful whether this option would be justifiable in the light of some of the main considerations mentioned in paragraph 67 above (notably that relating to the participation of the Contracting States in a collective system of enforcement).

73. Most arguments could be made for a fourth option, which would be the presence of a full-time EC/EU judge participating on an equal footing with other judges. This solution would fully meet the main considerations mentioned in paragraph 67 above, and be most in line with the spirit of the Convention system. Judges do not “represent” any country or area: they are impartial and independent. Providing for special rules in the Convention in respect of the EC/EU judge might carry with it the unfortunate suggestion that that judge might be less impartial and independent. It is true that this solution would not reflect the features that distinguish the EC/EU from States Parties to the Convention, notably its more limited competence. However, as stated above, some of the current Parties to the Convention (the EU member States) no longer possess full competence in matters governed by the Convention. Making a distinction between the EC/EU judge and the other judges based on the limited and attributed competence of the EC would be problematic also because the division of competence between the EC/EU and its member States is constantly evolving.

74. It could be considered that, ultimately, the manner in which the Court would organise the participation of judges, including that of an EC/EU judge, in its judicial decision-making is a matter

that is more appropriately left to the Court itself¹⁴. The same would apply to the question of whether a “special chamber” should be set up within the Court in order to deal with cases against the EC/EU or involving EC/EU law. However, it should be noted that a chamber composed exclusively of judges elected in respect of the EC/EU and its member States would run counter to the philosophy of the Convention system.

2. Introduction of a special procedure whereby the Court of Justice (and the Court of First Instance?) could request an interpretation of the ECHR from the European Court of Human Rights?

75. Consideration could be given to the question of whether it would be advisable, in addition to the operation of the ECHR complaints system (the contentious jurisdiction of the Court), to introduce a special procedure under which the ECJ (and possibly the Court of First Instance) would be authorised to request an interpretation of the ECHR from the European Court of Human Rights. This idea is further elaborated in document DGII(2001)02, paragraph 2.b. Introduction of such a procedure would obviously require amendments to the Convention, for example to Article 47, the wording of which would depend on the precise modalities retained.

76. The main argument in favour of this would be that it would assist in avoiding divergences in case-law. Another advantage could be that it might lead to a lower number of individual applications.

77. On the other hand, it must be pointed out, however, that this idea presents a number of disadvantages, such as:

- (i) It would create an imbalance between the EC/EU and the other Contracting parties to the Convention, the supreme courts of which are not able to benefit from a system of references.

¹⁴ Within the limits, of course, of the rules of the Convention itself: e.g. Article 27, paragraph 2, ECHR provides that the judge elected in respect of the State Party concerned shall sit as an ex officio member of the Chamber and the Grand Chamber. The same would apply with regard to the judge elected in respect of the EC/EU concerning the consideration of cases brought against the EC/EU.

- (ii) Although time-limits may be laid down, it would lead to a prolongation of the procedures before the Luxembourg Court. This would be particularly awkward in the case of successive preliminary reference procedures.
- (iii) If time-limits were laid down it may adversely affect the treatment of other cases before the ECHR.

i) CHAPTER III – OTHER MEANS TO AVOID ANY
CONTRADICTION BETWEEN THE LEGAL SYSTEM OF
THE EUROPEAN COMMUNITIES/UNION AND THE
SYSTEM OF THE EUROPEAN CONVENTION ON
HUMAN RIGHTS

78. The terms of reference of the CDDH require it to study not only issues relating to a possible accession by the EC/EU to the ECHR but also “other means to avoid any contradiction between the legal system of the European Communities/union and the system of the European Convention on Human Rights.”

79. During the examination of this question, the suggestion was made that one “other means” could consist of maintaining the status quo, i.e.: a situation where the main legally binding human rights instrument in Europe was the ECHR, where this instrument and the Court’s case-law were also applied by the Luxembourg Court as general principles of Community Law, with only a small number of cases so far raising the issue of possible contradictions between the case-law of the Strasbourg and Luxembourg Courts. The consistency of the case-law is not accidental and is the result notably of the obligation of Article 6 of the Treaty on the European Union.

80. As was also noted by President Rodríguez Iglesias of the Court of Justice of the European Communities in his Strasbourg speech on 31 January 2002, it must be recognised that that situation could change considerably if the EU Charter of Fundamental Rights were to become legally binding¹⁵. Indeed, in the view of the CDDH, experience tends to show that it is difficult to avoid

¹⁵ Both this speech and that of President Wildhaber of the European Court of Human Rights are reproduced in document GT-DH-EU(2002)11 and published on the Court’s website (www.echr.coe.int).

contradictions where two differently worded texts on the same subject-matter are interpreted by two different courts. The provisions of Articles 52 and 53 of the EU Charter will probably not be sufficient to avoid the risk of contradictions, certainly not where the application and interpretation of the Charter and the ECHR by national courts is concerned. However, the question of whether the EU Charter should be made legally binding or not is, of course, for the EU to decide, not for the Council of Europe. More generally, the point was made that the risk of contradictions might arise independently of whether the EU Charter becomes binding or not.

81. Two potential further means to avoid contradictions were noted, other than accession by the EC/EU to the ECHR. The first was the introduction of a preliminary rulings-procedure whereby the Luxembourg Court could seek a ruling from the Strasbourg Court on the interpretation of the ECHR. Attention was drawn to the question of whether such a ruling by the Strasbourg Court could or should be binding upon the Luxembourg Court, if the EC/EU itself is not a Party to the ECHR. Reference is also made, *mutatis mutandis*, to Chapter II, point C.2. above, where the idea is further discussed, albeit in the context of accession¹⁶.

82. The last idea mentioned was that of setting up a common chamber or “panel” between the Luxembourg and Strasbourg Courts, along the lines of the joint panel that exists between the highest federal courts in Germany. That joint panel decides if one of the highest federal courts intends to adopt an interpretation of the law which diverges from the interpretation adopted by another of the highest federal courts.

*

* *

¹⁶ The CDDH also recalls that the Reflection Group on the reinforcement of the Human Rights Protection Mechanism set up by the CDDH in 2001 had decided not to retain the idea of establishing a system of preliminary rulings, because it would imply additional work for the Court and possibly interfere with the contentious jurisdiction of the Court (see document CDDH-GDR(2001)10, Appendix II, paragraph 31).

APPENDIX I: DRAFTING EXAMPLES

NB. These drafting examples are given for clarification purposes only. They are not to be regarded as proposals of the CDDH.

I. AMENDMENTS TO THE CONVENTION

NB The amendments appearing in square brackets could be avoided if reference to the provisions concerned were to be included in the general interpretative clauses suggested under III below.

[In Article 27, paragraphs 2 and 3, “State Party” shall be replaced by “Party”.]

[In Article 38, paragraph 1.a, "States" shall be replaced by "Party".]

In Article 56, paragraph 1, "State" shall be replaced by "State or the (European Communities) (European Union)". [After "its ratification" add "or accession".]

[In Article 56, paragraph 4, "State" shall be replaced by "Party "].

In Article 57, paragraph 1, "State" shall be replaced by "State or the (European Communities) (European Union)". [After "instrument of ratification" add "or accession".]

Article 46, paragraph 2, shall have the following wording¹⁷:

“The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution. *In the event of their accession*¹⁸, *the (European Communities) (European Union) shall be entitled to participate in meetings of the Committee of Ministers when the latter exercises its functions under this paragraph. The*

¹⁷ Another possibility would be to limit the right to vote to cases where judgment has been given against the EC/EU.

¹⁸ The preceding six words could be omitted in case this provision were to be included in an accession treaty.

representative of the (European Communities) (European Union) shall be entitled to one vote.”

Article 59, paragraphs 1 and 4 shall have the following wording:¹⁹

“1 This Convention shall be open to the signature of the members of the Council of Europe. It shall be ratified. *(The European Communities) (The European Union) may accede to this Convention*²⁰. Instruments of ratification or accession shall be deposited with the Secretary General of the Council of Europe.

(...)

4 The Secretary General of the Council of Europe shall notify all the members of the Council of Europe *and (the European Communities) (the European Union)* of the entry into force of the Convention, the names of the High Contracting Parties who have ratified *or acceded to* it, and the deposit of all instruments of ratification *or accession* which may be effected subsequently.”

II. AMENDMENTS TO THE PROTOCOLS

NB The amendments appearing in square brackets could be avoided if reference to the provisions concerned were to be included in the general interpretative clauses suggested under III below.

Final clauses:

Territorial application:

Protocol No. 1 Article 4 [– paragraph 1 add as follows: "at the time of signature, ratification or *accession*"]

¹⁹ This amendment would not be necessary in the case of an accession treaty for the EU/EC would become bound by the ECHR by virtue of the entry into force of the accession treaty (a provision to that effect could be included in the accession treaty).

²⁰ A subvariant could be added to this sentence: “*to the extent of (their) (its) competences*”.

- Protocol No. 4 Article 5 [– paragraph 1 add as follows: "at the time of signature, ratification or *accession*"]
[– paragraph 4 add as follows: "ratification, *accession* or acceptance"]
[– paragraphs 4 and 5 “State” – replace by “Party”]
- Protocol No. 6 Article 5 – paragraph 1 add as follows: "Any *State or the (European Communities) (European Union)* may at the time of signature or when depositing its instrument of ratification, *accession*, acceptance or approval"
[– paragraph 2 “Any State” – replace by “Any Party”]
- Protocol No. 7 Article 6 – paragraph 1 add as follows: "Any *State or the (European Communities) (European Union)* may at the time of signature or when depositing its instrument of ratification, *accession*, acceptance or approval"
[– paragraph 5 add as follows: "by virtue of ratification, *accession*, acceptance or approval"]
[– paragraphs 2, 5 and 6 “State” – replace by “Party”]
- Protocol No. 12 Article 2 – paragraph 1 add as follows: "Any *State or the (European Communities) (European Union)* may at the time of signature or when depositing its instrument of ratification, *accession*, acceptance or approval"
[– paragraphs 2 and 5 “Any State” – replace by “Any Party”]

Protocol No. 13 Article 4 – paragraph 1 add as follows: "*Any State or the (European Communities) (European Union) may at the time of signature or when depositing its instrument of ratification, accession, acceptance or approval*"
 [– paragraph 2 “Any State” – replace by “Any Party”]

[Relationship to the Convention:

Protocol No. 6 Article 6 “the States parties” replace by “the Parties”
 Protocol No. 7 Article 7 “the States parties” replace by “the Parties”
 Protocol No. 12 Article 3 “the States parties” replace by “the Parties”
 Protocol No. 13 Article 5 “the States parties” replace by “the Parties”]

Signature and ratification/Entry into force:

Protocol No. 1 Article 6 paragraph 1 add: “*The (European Communities) (European Union) may accede to this Protocol following accession to the Convention.*” “*With respect to the (European Communities) (European Union) it shall enter into force at the date of the deposit of the instrument of accession.*”

Protocol No. 4 Article 7 paragraph 1: same as for Protocol No. 1 Article 6 paragraph 1.

Protocol No. 6 Article 7: add before the last sentence: “*The (European Communities) (European Union) may accede to this Protocol following accession to the Convention.*” Then the last sentence shall read: “*Instruments of ratification, accession, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.*”

Article 8 paragraph 1: no change.

Article 8 paragraph 2 shall read: In respect of any member State *or the (European Communities) (European Union)* which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the date of the deposit of the instrument of ratification, *accession*, acceptance or approval.

Protocol No. 7

Article 8: same as for Protocol No. 6 Article 7

Article 9 paragraph 1: no change.

Article 9 paragraph 2: same as for Protocol No. 6 Article 8 paragraph 2 (but add after “the first day of the month”: ”following the expiration of a period of two months after the date...”).

Protocol No. 12

Article 4: same as for Protocol No. 6 Article 7.

Article 5 paragraph 1: a change is perhaps not strictly necessary (it may be assumed that the Protocol will have entered into force by the time of any EC/EU accession to it)

Article 5 paragraph 2: same as for Protocol No. 6 Article 8 paragraph 2 (but add after “the first day of the month”: ”following the expiration of a period of three months after the date...”).

Protocol No. 13

Article 6: same as for Protocol No. 6 Article 7.

Article 7 paragraph 1: same remark as for Protocol No. 12, Article 5 paragraph 1

Article 7 paragraph 2: same as for Protocol No. 6 Article 8 paragraph 2 (but add after “the first day of the month”: ”following the expiration of a period of three months after the date...”).

Depositary functions:

Protocol No. 1, Article 6, paragraph 2 and Protocol No. 4, Article 7, paragraph 2 shall have the following wording:

“The instruments of ratification *or accession* shall be deposited with the Secretary General of the Council of Europe, who will notify all members *and the (European Communities) (the European Union)* of the names of those who have ratified *or acceded*.”

Protocol No. 6, Article 9, Protocol No. 7, Article 10, Protocol No. 12, Article 6 and Protocol No. 13, Article 8 shall have the following wording:

" shall notify the member States of the Council of Europe *and the (European Communities) (the European Union)* of:

(...)

(b) the deposit of any instrument of ratification, *accession*, acceptance or approval;"

III. SUPPLEMENTARY PROVISIONS (notably: general interpretative clauses)

- concerning the Convention :

a) The terms “State”, “State Party” or “States” contained in Article 10, paragraph 1, Article 11, paragraph 2, Article 17, Article 27, paragraphs 2 and 3, Article 38, paragraph 1.a, Article 56, paragraphs 1 and 4, Article 57, paragraph 1, shall be understood as referring to “a High Contracting Party” or “High Contracting Parties”, respectively.

b) The term “ratification” in Articles 56, paragraph 1 and 57 paragraph 1 of the Convention shall be understood as referring also to “accession”.

c) The terms “national security”, “economic well-being of the country”, “territorial integrity”, “national laws” contained in Articles 8, 10, 11 and Article 12 of the Convention and the term “nation” contained in Article 15, paragraph 1, of the Convention shall apply *mutatis mutandis* to the (European Communities) (European Union).

d) Article 35bis: (*Possible new provision to be inserted between Articles 35 and 36 ECHR*):

“1. In cases before a Chamber or the Grand Chamber against a member State of the (European Communities) (European Union) which appear to raise an issue involving (Community) (Union) law, the (European Communities) (European Union) may, with the leave of the Court, be joined to the proceedings as a defendant.

2. In cases before a Chamber or the Grand Chamber against the (European Communities) (European Union), any member State of the latter may, with the leave of the Court, be joined to the proceedings as a defendant.

3. In the event of application of paragraphs 1 or 2 above, Article 27, paragraphs 2 and 3, shall apply accordingly.”

Comments

- It is stressed that this text is just one example of how the idea of a “co-Defendant” status could be introduced in the ECHR system. Other drafting examples could also be elaborated (eg. merging paragraphs 1 and 2 above; or qualifying paragraph 2 above by specifying that, in cases “which appear to raise an issue involving the implementation of (Community) (Union) law by a member State of the (European Communities) (European Union), that member State may, with the leave of the Court....” etc.)

- In the Rules of the Court, more detailed rules could be laid down, for example concerning the communication of cases to Contracting Parties having the possibility to join the proceedings by virtue of Article 35bis, paragraph 1 or 2, and the fixing of a time-limit (eg: three months) for seeking leave to do so.

- **concerning the Protocols :**

a) The terms “State”, “States” or “States Parties” contained in Articles 1 and 2 of Protocol No. 1, Articles 3 and 5 (paragraphs 4 and 5) of Protocol No. 4, Articles 5 (paragraph 2) and 6 of Protocol No. 6, Articles 3, 4 (paragraphs 1 and 2), 5, 6 (paragraphs 2, 5 and 6) and 7 of Protocol No. 7, Articles 2 (paragraphs 2 and 5) and 3 of Protocol No. 12 as well as Articles 4 (paragraphs 1) and 5 of Protocol No. 13, shall be understood as referring to “a High Contracting Party” or “High Contracting Parties”, respectively.²¹

b) The term “ratification” in Article 4 (paragraph 1) of Protocol No. 1, Article 5 (paragraphs 1 and 4) of Protocol No. 4, Article 5 (paragraph 1) of Protocol No. 6, Article 6 (paragraphs 1 and 5) of Protocol No. 7, Article 2 (paragraph 1) of Protocol No. 12 and Article 4 (paragraph 1) of Protocol No. 13 shall be understood as referring also to “accession”.

²¹ In addition, Protocol No. 6, Article 2 (death penalty in time of war) only refers to States. While it is possible to include a reference to this provision in the present interpretative clause, it may be neither necessary nor politically advisable to do so.

c) The terms “territory of a/the State” and “national security”, contained in Articles 2 (paragraphs 1 and 3) and 3 (paragraphs 1 and 2) of Protocol No. 4 as well as Article 1 (paragraphs 1 and 2) of Protocol No. 7 shall apply *mutatis mutandis* to the (European Communities) (European Union).

- *Legal basis for the financial participation of the EC/EU*

A draft provision to be included in an amending protocol to the Convention or in an accession agreement/treaty could read as follows:

“The conditions of the financial participation by the (European Communities) (European Union) shall be determined by agreement between the Council of Europe and the (European Communities) (European Union).”

IV. TECHNICAL AND ADMINISTRATIVE QUESTIONS

Any more detailed rules concerning the conditions for the financial participation of the EC/EU could be set out either in this chapter or in a separate agreement.

As concerns the ancillary treaties, see under VI below.

V. ENTRY INTO FORCE OF THE AMENDING PROTOCOL / ACCESSION TREATY

Traditional clauses:

“Article X

- 1 This Protocol/[Treaty]²² shall be open for signature by member States of the Council of Europe signatories to the Convention [and the (European Communities) (European Union)], which may express their consent to be bound by

²² Option 1 (Amending Protocol) would exclude the text between square brackets; Option 2 (Accession Treaty) would include that text.

- a signature without reservation as to ratification, acceptance or approval; or
 - b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.
- 2 The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe. »

« Article Y

This Protocol/[Treaty] shall enter into force on the first day of the month following the expiration of a period of six months²³ after the date on which all Parties to the Convention [and the (European Communities) (European Union)] have expressed their consent to be bound by the Protocol/[Treaty] in accordance with the provisions of Article X.”

Possible tacit acceptance clause for an amending protocol:

“1 This Protocol shall enter into force on the first day of the month following the date on which the last of the Parties to the Convention has deposited its instrument of acceptance with the Secretary General of the Council of Europe.

2 However, this Protocol shall enter into force following the expiry of a period of two years after the date on which it has been opened to acceptance, unless a Party to the Convention has notified the Secretary General of the Council of Europe of an objection to its entry into force.

3 Should such an objection be notified, the Protocol shall enter into force on the first day of the month following the date on which the Party to the Convention which has notified the objection has deposited its instrument of acceptance with the Secretary General of the Council of Europe. Any objection shall be without prejudice to the other Parties’ tacit acceptance in accordance with the preceding paragraph.”

²³ To provide time for the election of a judge.

VI. ACCOMODATIONS IN RESPECT OF ANCILLARY AGREEMENTS

Option 1: A clause to be included in the accession treaty to the effect that:

“The (European Communities) (European Union) shall respect the substantive provisions of the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights and the Sixth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe.”

Option 2: Introducing a series of technical amendments to the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights and the Sixth Protocol to the General Agreement on Privileges and Immunities, similar to the amendments to the protocols to the ECHR, by two separate amending protocols (see Part II of this Appendix above).

THE EUROPEAN CONVENTION**Brussels, 17 July 2002**

THE SECRETARIAT

CONV 193/02**COVER NOTE**

from : Secretariat

to : Convention

Subject: **Note from the Council of Europe, forwarded by Mr van Linden, member of
the Convention**

The Secretary-General of the Convention has received from Mr van Linden, member of the Convention, the attached note from the Council of Europe.

Parliamentary **Assembly** **Assemblée** parlementaire



Rés. 1290

ANNEXE

Provisional edition

Future of the co-operation between European institutions

Resolution 1290 (2002)¹

1. Europe is reaching an important point of its evolution. The perspective enlargement of the European Union presents it with a formidable challenge. The Convention set up by the Laeken Summit will pave the way for institutional reform and a constitutional framework. Its outcome will have consequences for all the institutions of Europe, including the Council of Europe.
2. The Council of Europe, as the most longstanding and comprehensive of the continent's institutions, needs to re-confirm its unique position among them, based upon its principal assets : the European Convention on Human Rights and the European Court at Strasbourg. These, together with its experience of striving to secure the highest standards of democracy and the rule of law, should be the basis for new forms of co-operation with the enlarging European Union.
3. The Assembly recalls the outstanding achievements of the Council of Europe in the pursuance of its statutory aim to achieve greater unity between its members for the purpose of safeguarding and realising the ideals of pluralist democracy, human rights and the rule of law.
4. The Assembly recalls that the Council of Europe and the European Union share the same values and pursue common aims with regard to the protection of democracy, respect for human rights and fundamental freedoms and the rule of law.

¹ *Assembly debate* on 26 June 2002 (20th Sitting) (see Doc. 9483, report of the Political Affairs Committee, rapporteur: Mr van der Linden). *Text adopted by the Assembly* on 26 June 2002 (21st Sitting).

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5. The Assembly recalls that co-operation between the European Union and the Council of Europe is expressly mentioned in several provisions of the EC Treaty (Articles 149 § 3, 151 § 3 and 303).
6. The Assembly recalls in particular Article 303 of the EC Treaty which stipulates that “the Community shall establish all appropriate forms of co-operation with the Council of Europe”.
7. The Assembly recalls that the European Council in Dublin (December 1996) recognised the Council of Europe’s crucial role in upholding human rights standards and supporting pluralist democracy.
8. The Assembly is convinced that co-operation between the Council of Europe and the European Union should be extended to all areas where it brings added value to both sides and strengthens complementarity of action.
9. The Parliamentary Assembly has always been at the forefront of reflection on new European political projects and on the role the Council of Europe should play in it. In January 1999, it adopted Resolution 1177 on *Building greater Europe without dividing lines*, Resolution 1178 on *European political project* and Recommendation 1394 on *Europe: a continental design*, as part of the follow-up to the 2nd Summit of Heads of State and Government, and the ensuing report of the Committee of Wise Persons on the role of the Council of Europe.
10. The European Union Convention is an opportunity to reinforce legally binding mechanisms for the protection of human rights within the European Union. The objective of strengthening the safeguard of these rights both within the European Union and in Europe as a whole, can only be achieved through the accession of the European Union/European Community to the European Convention of Human Rights, which would create a single legal mechanism applying in equal manner to all state and other authorities in Europe which are exercising the competence affecting the rights protected by the Convention.
11. The European Union and the Council of Europe represent two distinct, but mutually reinforcing approaches to the achievement of ever greater unity among European States. The Council of Europe, with its pan-European membership, its experience and achievements in the field of human rights, democratic institutions, the rule of law, protection of minorities and local and regional authorities offers a privileged platform for dialogue and co-operation, both at parliamentary and inter-governmental levels, between all European States, be they members or non-members of the European Union, and the European Union itself.
12. The Council of Europe’s acquis in standard setting activities in the fields of democracy, the rule of law and fundamental human rights and freedoms should be considered as milestones towards the great European political project, and the European Court of Human Rights should be recognised as the pre-eminent judicial pillar of any future architecture.
13. Recently, the Council of Europe has shown that it is able to respond to the threat of terrorism at European and global level, by sharing, promoting and protecting democratic values and cross-cultural understanding. The Council of Europe has the necessary composition and the tools to be an active player in this area and to implement adequate programmes. It is an excellent platform for inter-cultural and inter-religious dialogue.

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14. The Council of Europe has great experience in co-operating with the OSCE at governmental and parliamentary levels, including field operations and the observation of elections. This asset should be used for redefining their co-operation in the new European institutional architecture.

15. All pan-European and sub-regional institutions should complement each other in their mutual aim to build a democratic, stable, peaceful and prosperous Europe and co-operate effectively.

16. The Assembly calls upon the European Union and on the applicant states:

- a. to consider the Council of Europe as an active partner in the European Union's pre-accession strategy, through its wide spectrum of legal arsenal for democratic governance, protection of human rights and minorities and in particular by making full use of the Council of Europe's increasingly effective monitoring procedure as regards the obligations and commitments entered into by member states;
- b. *to profit from the experience gained by the members of the Parliamentary Assembly of the Council of Europe, as the only truly pan-European inter-parliamentary assembly, where soon every European national parliament will be represented, in the work of the Conference of European Affairs Committees of the Parliaments of the European Union and Candidate Countries (COSAC).*

17. The Assembly calls upon the European Union/European Community to accede to the European Convention on Human Rights, and thus contribute to the creation of a single legal mechanism for the protection of human rights, applied on equal basis to all European States and other bodies exercising competence affecting the rights protected by the Convention.

18. The Assembly invites the European Union to strengthen its presence in the Council of Europe through the participation of the European Commission in the Committee of Ministers, and the European Parliament in the Parliamentary Assembly of the Council of Europe.

19. For this purpose the Assembly calls upon the Convention to ensure that the European Union Charter of Fundamental Rights is designed to complement and enhance the effectiveness of the European Convention on Human Rights.

20. The Assembly considers that the Council of Europe's conventions, which member states are obliged or encouraged to ratify, provide a legal framework for the entire continent of Europe defining standards on human dignity and democracy, social cohesion, cultural identity, daily life and media. They can be enhanced by additional Protocols, and implemented into national law. The Assembly calls upon the Convention to encourage this process rather than undermining it by the introduction of a separate legal framework for the European Union.

21. The Assembly calls upon the institutions of the European Union to examine possibilities for increased participation in the Council of Europe's work, in all relevant areas and at all appropriate institutional levels and enhance financial co-operation with the Council of Europe.

22. The Assembly calls upon the European Union Commission to study carefully the steps that would lead to the development of a coherent European legal order by incorporating the main Council of Europe's standard setting instruments into the European Union legal system, or inversely by acceding to major Council of Europe legal instruments.

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23. The Assembly calls upon the European Parliament to continue and improve co-operation with the Parliamentary Assembly of the Council of Europe, at different levels (Political groups, bureaux, committees), based on the recognition of common values and interests, in an effective and pragmatic manner. The creation of a joint committee is essential as well as the active participation of the European Parliament in the PACE. Institutional co-operation can be improved by co-operation at the level of monitoring procedures, having regard to the good results of the Monitoring Committee of the PACE, by organising together seminars and fact-finding missions and by co-operating in the field of the observing of elections. The PACE and the European Parliament stand for the same European values including a common rule of law avoiding double standards.

24. The Assembly calls upon the Secretary General of the Council of Europe to follow closely the work of the Convention set up at the Laeken Summit, evaluate its potential impact on the work of the Council of Europe, present the accomplishments of the Council of Europe to the Convention in the most appropriate way, especially in areas where the need might arise, and keep the Parliamentary Assembly regularly informed about the progress of work.

25. The Assembly calls upon the Convention to be aware that the Council of Europe is the institution allowing those States which will remain outside the European Union to participate in the European project, thus avoiding the creation of new dividing lines and a sense of exclusion among the non European Union member states of the Council of Europe.

26. The Assembly urges the Convention to avoid the introduction of any duplication or parallel activities by European Union which would undermine the work of the Congress of Local and Regional Authorities (CLRAE) as the only pan-European body for promoting local democracy structures and transfrontier co-operation.

27. The Assembly calls upon member states of the Council of Europe to fully take into account the Organisation's acquis in standard-setting in the fields of democracy, the rule of law and fundamental human rights and freedoms, as well as its political assets, when planning activities of European institutions in which they take part, in order to avoid overlaps and achieve maximum efficiency in building Europe of the future.

Parliamentary **Assembly** **Assemblée** parlementaire



Doc. 9483

5 June 2002

Future of the co-operation between European institutions

Report

Political Affairs Committee

Rapporteur: Mr René van der Linden, Netherlands, Group of the European People's Party

Summary:

The prospect of enlargement presents the European Union with a formidable challenge. The Convention set up by the Laeken Summit will pave the way for institutional reform and a new constitutional framework. Looking ahead to this major development, the Council of Europe must reiterate its unique position, based on its principal assets: the European Convention on Human Rights and the European Court of Human Rights. The Council must also stress its unparalleled experience in the field of human rights, the rule of law and upholding democracy. Finally, it must consolidate its role as a pan-European organisation offering a privileged platform for dialogue and co-operation, both at parliamentary and inter-governmental levels, between all European States, be they members or non-members of the European Union.

The Assembly asks the European Union and the candidate countries to consider the Council of Europe as an active partner in the European Union's pre-accession strategy and to profit from the experience gained by the members of the Council of Europe Parliamentary Assembly. Among a number of recommendations, the Assembly calls on the European Union to accede to the European Convention on Human Rights, and thus contribute to the creation of a single legal mechanism for human rights protection. It also urges the European Commission to accede to the main Council of Europe legal instruments or incorporate them into the European Union legal system.

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I. Draft Resolution

2. Europe is reaching an important point of its evolution. The perspective enlargement of the European Union presents it with a formidable challenge. The Convention set up by the Laeken Summit will pave the way for institutional reform and a constitutional framework. Its outcome will have consequences for all the institutions of Europe, including the Council of Europe.

2. The Council of Europe, as the most longstanding and comprehensive of the continent's institutions, needs to re-confirm its unique position among them, based upon its principal assets : the European Convention on Human Rights and the European Court at Strasbourg. These, together with its experience of striving to secure the highest standards of democracy and the rule of law, should be the basis for new forms of co-operation with the enlarging European Union.

3. The Parliamentary Assembly has always been at the forefront of reflection on new European political projects and on the role the Council of Europe should play in it. In January 1999, it adopted Resolution 1177 on *Building greater Europe without dividing lines*, Resolution 1178 on *European political project* and Recommendation 1394 on *Europe: a continental design*, as part of the follow-up to the 2nd Summit of Heads of State and Government, and the ensuing report of the Committee of Wise Persons on the role of the Council of Europe.

4. The European Union Convention is an opportunity to reinforce legally binding mechanisms for the protection of human rights within the European Union. The objective of strengthening the safeguard of these rights both within the European Union and in Europe as a whole, can only be achieved through the accession of the European Union/European Community to the European Convention of Human Rights, which would create a single legal mechanism applying in equal manner to all state and other authorities in Europe which are exercising the competence affecting the rights protected by the Convention.

5. The European Union and the Council of Europe represent two distinct, but mutually reinforcing approaches to the achievement of ever greater unity among European States. The Council of Europe, with its pan-European membership, its experience and achievements in the field of human rights, democratic institutions, the rule of law, protection of minorities and local and regional authorities offers a privileged platform for dialogue and co-operation, both at parliamentary and inter-governmental levels, between all European States, be they members or non-members of the European Union, and the European Union itself.

6. The Council of Europe's acquis in standard setting activities in the fields of democracy, the rule of law and fundamental human rights and freedoms should be considered as milestones towards the great European political project, and the European Court of Human Rights should be recognised as the pre-eminent judicial pillar of any future architecture.

7. Recently, the Council of Europe has shown that it is able to respond to the threat of terrorism at European and global level, by sharing, promoting and protecting democratic values and cross-cultural understanding. The Council of Europe has the necessary composition and the tools to be an active player in this area and to implement adequate programmes. It is an excellent platform for inter-cultural and inter-religious dialogue.

8. The Council of Europe has great experience in cooperating with the OSCE at governmental and parliamentary levels, including field operations and the observation of elections. This asset should be used for redefining their cooperation in the new European institutional architecture.

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9. All pan-European and sub-regional institutions should complement each other in their mutual aim to build a democratic, stable, peaceful and prosperous Europe and cooperate effectively.
10. The Assembly calls upon the European Union and on the applicant States:
 - a. to consider the Council of Europe as an active partner in the European Union's pre-accession strategy, through its wide spectrum of legal arsenal for democratic governance, protection of human rights and minorities and in particular by making full use of the Council of Europe's increasingly effective monitoring procedure as regards the obligations and commitments entered into by member States;
 - b. *to profit from the experience gained by the members of the Parliamentary Assembly of the Council of Europe, as the only truly pan-European inter-parliamentary assembly, where soon every European national parliament will be represented, in the work of the Conference of European Affairs Committees of the Parliaments of the European Union and Candidate Countries (COSAC);*
11. The Assembly calls upon the European Union / European Community to accede to the European Convention on Human Rights, and thus contribute to the creation of a single legal mechanism for the protection of human rights, applied on equal basis to all European States and other bodies exercising competence affecting the rights protected by the Convention;
12. For this purpose the Assembly calls upon the Convention to ensure that the European Union Charter of Fundamental Rights is designed to complement and enhance the effectiveness of the European Convention on Human Rights.
13. The Assembly considers that the Council of Europe's conventions, which member States are obliged or encouraged to ratify, provide a legal framework for the entire continent of Europe defining standards on human dignity and democracy, social cohesion, cultural identity, daily life and media. They can be enhanced by additional Protocols, and implemented into national law. The Assembly calls upon the Convention to encourage this process rather than undermining it by the introduction of a separate legal framework for the European Union.
14. The Assembly calls upon the institutions of the European Union to examine possibilities for increased participation in the Council of Europe's work, in all relevant areas and at all appropriate institutional levels and enhance financial cooperation with the Council of Europe;
15. The Assembly calls upon the European Union Commission to study carefully the steps that would lead to the development of a coherent European legal order by incorporating the main Council of Europe's standard setting instruments into the European Union legal system, or inversely by acceding to major Council of Europe legal instruments;
16. The Assembly calls upon the European Parliament to continue and improve co-operation with the Parliamentary Assembly of the Council of Europe, at different levels (Political groups, bureaux, committees), based on the recognition of common values and interests, in an effective and pragmatic manner. The creation of a joint committee must be considered as well as the active participation of the European Parliament in the PACE;
17. The Assembly calls upon the Secretary General of the Council of Europe to follow closely the work of the Convention set up at the Laeken Summit, evaluate its potential impact on the work of

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the Council of Europe, present the accomplishments of the Council of Europe to the Convention in the most appropriate way, especially in areas where the need might arise, and keep the Parliamentary Assembly regularly informed about the progress of work;

18. The Assembly calls upon the Convention to be aware that the Council of Europe is the institution allowing those States which will remain outside the European Union to participate in the European project, thus avoiding the creation of new dividing lines and a sense of exclusion among the non European Union member States of the Council of Europe.

19. The Assembly urges the Convention to avoid the introduction of any duplication or parallel activities by European Union which would undermine the work of the Congress of Local and Regional Authorities (CLRAE) as the only pan-European body for promoting local democracy structures and transfrontier co-operation.

20. The Assembly calls upon member States of the Council of Europe to fully take into account the Organisation's acquis in standard-setting in the fields of democracy, the rule of law and fundamental human rights and freedoms, as well as its political assets, when planning activities of European institutions in which they take part, in order to avoid overlaps and achieve maximum efficiency in building Europe of the future.

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II. Draft Recommendation

The Assembly refers to its Resolution(2002) on future co-operation between European institutions, and recommends to the Committee of Ministers to convene a third summit of heads of States and governments, at a moment carefully timed before the inter-governmental conference of the European Union, with a view to giving new political impetus at the highest level to the Organisation, to better taking into account the political needs of its member States and to redefining its relations with other European institutions.

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III. Explanatory memorandum by the Rapporteur

I. Introduction

1. Once again, in 2001, universal values of human rights, the rule of law and democracy have been challenged - showing the need, at European and at global levels, for expressing, sharing, promoting and protecting common values as well as for strengthening a fair and sustainable multicultural and inter-religious dialogue.

2. I strongly support the Council of Europe's Secretary General, Mr Walter Schwimmer, when he reaffirms that "the year 2001 and the date 11 September will remain engraved in our memories. The terrorist attacks could have weakened our convictions. But on the contrary, they have strengthened the Council of Europe universal values of human rights, the rule of law and democracy".

3. In the Assembly of the Council of Europe, democratically chosen representatives from 43 countries work together. They offer an essential contribution to the democratic evolution in Eastern Europe and its transition process. Even after the extension of the European Union almost half the European States will continue to co-operate within the framework of the Council of Europe and outside that of the European Union. Some of them will, by choice, limit their membership of a community of democratic States to that of the Council of Europe.

4. Once again, after 2001, the European institutional landscape is at an important juncture. For instance, the perspective of enlargement presents a formidable challenge to the European Union (EU), and its structural framework is at present under serious scrutiny. No doubt, other organisations, with a potential or consolidated pan-European vocation, such as the Council of Europe, will be affected by this change and it is therefore not surprising to indulge in a soul-searching exercise.

5. The Council of Europe should become the conscience of Europe in the field of human rights, minority rights and democratic functioning. In that sense the Council of Europe must take, consequently and explicitly, real political points of view. More political and less diplomatic action is needed. The Council of Europe should even further develop its control and monitoring mechanisms to guarantee the efficiency of its standard-setting instruments. They should produce better political guidelines for their member States, guidelines which should be more easily enforceable under national legislation.

6. *The members of the Parliamentary Assembly of the Council of Europe are in an unique position and have, in fact, a double mandate.* Therefore, the members of the Parliamentary Assembly should more intensively inform the national parliaments about the political issues which are being treated in the Council of Europe. The Council of Europe, as an intergovernmental body, is too hesitant when defending its own position. Here again, it is up to the Parliamentary Assembly to do more and to bring their political conclusions to their own parliaments and to organise in their own parliaments debates on the national and regional consequences of the Council of Europe's decisions. Accompanied by a more effective organisation of the press and public relations this could make quite a difference already.

7. The Parliamentary Assembly of the Council of Europe is at the forefront of the reflection on the European institutional architecture and on the role of the Council of Europe should play in it. In

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recent years, it contributed substantially to the two Council of Europe Summits of Heads of State and Government, held in 1993 and 1997, analysed meticulously the 1998 report of the Committee of Wise Persons, and adopted in January 1999 a series of texts, which respectively called for a pre-eminent role for the Council of Europe (Recommendation 1394 (99)¹), stressed the importance of the parliamentary dimension (Resolution 1178 (99)²) and proposed a clear definition of the Council of Europe's priorities (Resolution 1177 (99)³).

8. In January 2000, a group of parliamentarians tabled a motion on the 'European Architecture on the 21st Century' (Doc. 8639) with the aim of pursuing and deepening this previously engaged discussion. Their motivation was twofold:

- a. at the turn of the 21st century it is unlikely that so many pan-European organisations, with sometimes similar or overlapping activities, will continue to function unchanged;
- b. if fewer and different organisations are to occupy the scene, the Council of Europe ought to take "a lead in forging its own image, based on its own values"; otherwise the solution would be imposed upon it by others.

9. Without necessarily sharing the defeatist approach contained in this last sentence, one must however thank the authors of the document for generating a renewed reflection, in particular in view of the forthcoming inter-governmental conference of the EU and the beginning of the enlargement process, which is on the way.

10. I believe, however, that the Council of Europe is not only a "waiting room" for the EU. On the contrary, since the existence of the "Copenhagen criteria" for the future EU members, the Council of Europe is an active partner in the Union's pre-accession strategy. Indeed, through its wide spectrum of legal arsenal for the protection of human rights, minorities, democratic governance and social peace, the Organisation plays a key role in consolidating democratic institutions in member States and consequently is a pillar of the European construction. This role, however, could be further emphasised and promoted through political will and energetic measures.

11. When speaking about the European institutional structure our aim is not to interfere with the domestic affairs of the EU, nor to make a judgement on their policy choices. The core of the discussion this paper aims to trigger is the positioning of the Council of Europe vis-à-vis the EU and other political institutions, such as the OSCE. In doing so, we will unavoidably touch upon questions of general interest for the whole of Europe or for a group of member States. The future of relations with other organisations has also close links with the Council of Europe's own structures and Parliamentary Assembly's own activities. The aims of the OSCE are, in general terms, in harmony with the aims of the Council of Europe. The difference is that the OSCE has no formal legal structure, but perhaps it uses its political position better. One reason for this is the interest of the United States in the OSCE. The OSCE is one of the organisations which offers the United States a position of influence in Europe. It should certainly be regretted, in this context, that the US did not make, up to now, appropriate use of their observer status with the Council of Europe.

¹ 'Europe: a continental design'

² 'European political project'

³ 'Building Greater Europe without dividing lines' (opinion on the report by the Committee of Wise Persons)

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II. The idea of concentric circles

12. Considering that membership of the EU, the Council of Europe and the OSCE can be expressed in terms of concentric circles, one could imagine that co-operation could be organised in the same way, the inner circle representing the highest level of integration to which member States aspire.

13. An accurate assessment of different scenarios of co-operation implies a realistic review of the present situation. However, before making any proposals or suggesting new possibilities, it is good to see what is realistic to expect or unlikely to achieve. If high expectations are an acceptable starting point, they must nonetheless be kept under controllable and feasible limits.

14. In this respect, during the drawing-up of the Charter of Fundamental Rights of the EU, though the arguments presented by the Assembly were absolutely right at that time, it was obvious for political reasons that the idea of asking the EU to limit itself to signing the European Convention on Human Rights (ECHR) was doomed as the EU leadership was resolutely committed to giving a human and social rights dimension to the European Union. But it must be stressed that this respectable commitment does in no way question or even call off the request of the Parliamentary Assembly to the EU to adhere to the ECHR.

15. Likewise, comments have been voiced lately that the OSCE has been extending its field of activities to include questions related to human rights and fundamental freedoms, thus encroaching on the Council of Europe's territory. It should be recalled that the OSCE is an offspring of the Helsinki Conference and the Final Act, which included a special basket on human rights. This latter therefore has been an important aspect of its work from the very beginning of its existence and will probably continue to be so.

16. Accordingly, we should on one hand acknowledge the fact that no European organisation can ignore the human rights dimension in its activities and development. On the other hand, we should acknowledge the high degree of experience and expertise which the Council of Europe possesses in this area. It is unanimously recognised that the Council of Europe is the standard setting organisation for human rights in Europe.

17. As regards the idea of a European constitution, one should recall that it is not alien to our Organisation. Already in 1950, when signing the European Convention on Human Rights on behalf of the Federal Republic of Germany, Professor Walter Hallstein stated that one day "... an agreement on what comprises human rights and fundamental freedoms may even be the basis for a European Constitution". In the late '90s, the then existing Committee on Relations with National Parliaments had commissioned a study to be carried out by Professor Rausseau on a 'European Constitution'.

18. Very recently, the 'Convention' set up at the Laeken Summit, under the chairmanship of Mr Giscard d'Estaing has started its work and it is highly probable that it will pave the way for institutional reform and a constitution for the EU. With its long experience, the Council of Europe should follow this work very closely. The Council of Europe was not granted a status of observer. However, it could still make a valuable contribution through a number of members of the Parliamentary Assembly who will be sitting in their national delegations to the convention. One could also envisage special co-ordination meetings amongst them. Moreover, ways should be found to enable the Council of Europe to make contributions to the Convention, in particular with regard to fundamental rights, including the co-operation between the Strasbourg and Luxembourg

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courts, as well as the crucial question of future relations between the Council of Europe and an enlarged EU.

19. Concerning our own Organisation, when making proposals in this field, the Parliamentary Assembly must analyse accurately the reaction of our governments to our past positions in adopted texts. For instance, the Reply¹ of the Committee of Ministers to Recommendation 1394 (1999) on ‘Europe: a continental design’ is revealing on many points. While the Committee of Ministers shares the “ambition and commitment” of the Assembly in respect of European construction “it is aware...that the rediscovered unity of the continent can only be sustained and developed if it is incorporated into a coherent political project in which the efforts of various organisations ...are mutually strengthened”.

20. Thus, the Committee of Ministers does not come forward with a vision, specific to the *raison d’être* of the Council of Europe. In addition, the Committee of Ministers declares that it “is unable to go as far as stating that the Council of Europe can be considered as “a forum capable of meeting the global challenges of the third millennium”. Instead, the Committee of Ministers “reaffirms the major importance it attaches to the complementary functions and co-ordination of efforts between the Council of Europe and its main partners in the European context”. The temptation is strong to interpret this, combined with the increasing absenteeism of Ministers at ministerial level meetings and the stagnating budget, as a way of minimising the political role of the organisation in its own right.

21. One point which is often raised in connection with co-operation between European institutions is work sharing. Here again, many serious efforts aiming at a thematic repartition of activities have failed. We should aim at organising in concrete terms the complementarity which we so often proclaim. Of course we have to take into account that membership of the EU imposes an obligation to its members to act in accordance with the treaties. As regards the Assembly’s own activities, recently co-operation has improved with the European Parliament, at Presidential and political groups level and occasional joint meetings and conferences at committee level. We should not aim at establishing rigid rules for co-operation but develop in a pragmatic way all possible communication channels and common activities.

III. What are the Council of Europe’s assets?

22. I believe that the best method is to emphasise the areas where the Council of Europe could be most effective and instrumental in “building a greater Europe without dividing lines”, as it was expressed so meaningfully in Assembly Resolution 1177 (99), rather than looking at what others are doing or by formulating disguised criticism at partner institutions. Our chances of improving the performance of the Council of Europe, which is already remarkable, are much better than undertaking some global rationalisation and co-ordination scheme. This does, of course, not mean that we should not pursue the dialogue with our partner organisations with whom we share common values and conduct common projects.

23. It is my strong conviction that the widening and deepening of the EU on one hand, and the strengthening of the Council of Europe on the other, are not at antipodes. On the contrary, the existence of the Council of Europe:

¹ Reply adopted by the Committee of Ministers on 23 April 2001

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- a. alleviates the sense of exclusion which could be felt by those member States which are not ready yet for EU membership, or those who do not intend to become members;
- b. reassures applicant States that their progress towards membership of the EU is following the correct path and pace.

24. No less is the argument that in the 21st century inclusion in Europe should not be measured solely by belonging to the EU.

25. The presence of the Russian Federation in the Council of Europe is an indispensable political factor of the new European dialogue between equal and like-minded partners throughout the whole continent. The Parliamentary Assembly's flexible structures and dynamism are assets which must be used to the full. A good illustration of this is the meaningful pressure which is being put on Russia in relation to the conflict in Chechnya. Despite the Committee of Ministers' somewhat passive handling of the matter, the Council of Europe's combined action and the initiatives of the Secretary General of the Council of Europe and the Human Rights Commissioner have substantially contributed to putting in place human rights machinery in Chechnya and also the Duma / PACE Joint Working Group is instrumental in pursuing a political solution.

26. I am thoroughly convinced that the terrorist attacks of 11 September were an important turning point, which has generated, at global level, the need for sharing, promoting and protecting democratic values and cross-cultural understanding. The Council of Europe has the necessary tools to be an active player in this area and I understand, under the impetus of the Parliamentary Assembly and the Secretary General, the Committee of Ministers is prepared to launch adequate new programmes. On the Assembly side, we should also be prepared to further strengthen the dialogue with non-member countries, in particular, those Muslim countries bordering the Mediterranean. The work, since 1991, of the Council of Europe's Centre for Global Interdependence and Solidarity, the "North-South Centre" in Lisbon, should be valued and highlighted in this context.

27. Several countries enjoy Observer Status with the Council of Europe and several parliaments with the Parliamentary Assembly, and others would be interested in obtaining this status, which, no doubt, permits the intensification of political dialogue: however, the recent adoption by the Parliamentary Assembly of Resolution 1253 (2001), Recommendation 1522 (2001) and Order 574 (2001) on the "Abolition of the death penalty in Council of Europe Observer States" has clearly established the limits for granting such status.

28. Beside the organs of the Council of Europe, the Committee of Ministers and the Parliamentary Assembly, the European Court of Human Rights set up under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) is one of the major assets of our Organisation. The international enforcement mechanism established in the ECHR allows to everyone within the vicinity of a member State to enjoy a level of protection of the fundamental rights and freedoms unique in the whole world. Furthermore, the Congress of Local and Regional Authorities (CLRAE) plays its indispensable role in promoting local democracy structures and trans-frontier co-operation networks as prerequisites to stability and confidence building throughout Europe.

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29. The existence of specialised bodies within the Council of Europe, such as the Council of Europe Development Bank, the office of the Commissioner for Human Rights, the European Commission for Democracy through Law, ("Venice Commission"), the European Commission against Racism and Intolerance (ECRI), the European Committee for the Prevention of Torture (CPT) and the Group of States against Corruption (GRECO), all designed to promote the values of democracy, human rights, social cohesion, non-discrimination, the fight against corruption as well as racism and inhuman or degrading treatment, give added weight to the work of our Organisation.

30. As an example, the Venice Commission, through its active role in transition towards democracy in Eastern Europe, has gained international notoriety. The Assembly has excellent working relations with the Venice Commission and can consult it on legal opinion in difficult matters. Very recently, following Recommendation 1264 (01) of the Assembly on the 'Code of Good Practice in Electoral Matters', the Venice Commission set up a working group which includes representatives of the Assembly. Thus, intensified co-operation will begin in the area of election observation, which has become a major activity over the last decade.

IV. Some suggestions for future co-operation of the European institutions

31. The following is an incomplete and not exhaustive list of ideas, which ought to be discussed further, possibly reformulated and enriched by members' contributions.

- a. The Council of Europe is one of the pillars of a Europe based on the universal values of human rights, the rule of law and democracy. Its founding principles and its *raison d'être* are constantly being challenged. In the interest of maintaining its standards of democracy, human rights and the rule of law throughout the continent, there are assets of the Council of Europe which, whilst always open to review, should be considered as standard-setting and should be recognised in Europe's institutional architecture. These are the European Convention on Human Rights and the European Court of Human Rights in Strasbourg.
- b. The Parliamentary Assembly of the Council of Europe, similarly remains the only inter-parliamentary assembly exclusive to Europe and which will soon be representative of every European national parliament. In this respect, the Assembly is the true 'democratic dimension' of Europe. We should consider how this asset of the Council of Europe – its Parliamentary Assembly – could be applied to the enlarging European Union. For example, the Conference of European Affairs Committees of the Parliaments of EU and Candidate Countries (COSAC) could well profit from contributions by the members of the Parliamentary Assembly of the Council of Europe (PACE).
- c. All European institutions are experiencing an increased need for renewal and adaptation. The political and social landscape has profoundly changed, but working methods still remain the same.

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- d. All European institutions are experiencing an increased need for enhanced co-operation, based on effectiveness, mutual respect and the recognition of competencies, added values and limits. There cannot be room for overlapping, duplication of efforts or even competition. In this context, the idea of concentric circles sharing the same centre should be further developed.
- e. Co-operation must take place beyond the mere expression of common values and principles. Co-operation, networking and co-ordination between the Council of Europe and the EU and other political institutions, such as the OSCE must take place at a practical level and must be visible. Co-operation should focus on very specific projects responding to specific needs of a member State or a group of member States.
- f. Another Council of Europe asset is the comparatively recent and increasingly effective procedure for monitoring the obligations and commitments entered into by new member States upon accession. The detailed scrutiny by the Parliamentary Assembly, the Committee of Ministers and the CLRAE of their progress to meet Council of Europe standards of democracy, respect of human rights and the rule of law represents an invaluable source of information and reference on the countries concerned. This large monitoring practice by the Council of Europe is, of course, shared by the fifteen EU member States and used by the EP, the EU Council and the EU Commission in their assessment of developments in candidate States. It would be gratifying for the Council of Europe, and instructive for public opinion, if this “political complementarity” would be officially recognised.
- g. The Council of Europe has recently gained very valuable field experience. It is certainly good food for thought that there exists good practice between the aforementioned organisations when it comes to concrete work, in particular in conflict areas.
- h. A proposal for a Third Summit of Heads of States and Governments is under consideration in the Committee of Ministers. The Assembly which initiated the First Summit in Vienna (1993) and strongly supported the Second Summit in Strasbourg (1997) should also support this proposal. A Third Summit would be very timely in 2003 as the Organisation will be finalising its enlargement. The Summit would give new political impetus at the highest level for the future of the Organisation.

Doc. 9483

Reporting committee: Political Affairs Committee

Reference to committee: Doc. 8639, Reference 2481, 03.04.00; Doc. 9241, Reference 2656, 28.09.01

Draft resolution and draft recommendation unanimously adopted by the committee on 28 May 2002

Members of the committee: Jakic (Chairman), Baumel (Vice-Chairman), Feric-Vac (Vice-Chairperson), Spindelegger (Vice-Chairman), Aliyev (alternate : Seyidov), Andican, Arzilli, Atkinson, Azzolini, Bakoyianni (alternate : Liapis), Bársony (alternate : Eörsi), Behrendt (alternate : Lörcher), Berceanu, Bergqvist, Bianco (alternate : de Zulueta), Björck, Blaauw, Blankenborg, Bühler, Cekuolis (alternate : Olekas), Clerfayt, Daly, Diaz de Mera, Dreyfus-Schmidt, Durrieu, Frey, Glesener, Gligoroski, Gönül, Gross, Henry, Hornhues, Hovhannisyán, Hrebenciuc, Iwinski, Judd, Karpov, Kautto, Klich, Koçi, Lloyd, Loutfi, Margelov (alternate: Popov), Martinez-Casan, Medeiros Ferreira, Mignon, Mota Amaral, Mutman, Naudi Mora, Neguta, Nemcova, Oliynyk, Paegle, Pangalos, Pourgourides, Prentice, Prisacaru, de Puig, Ragnarsdottir, Ranieri, Rogozin, Schloten, Severinsen, Stepová, Surjan, Timmermans (alternate : van der Linden), Toshev, Udovenko, Vakilov, Vella, Voog, Weiss (alternate : Svec), Wielowieyski, Wohlwend, Wurm, Yarygina (alternate : Nazarov), Zacchera (alternate : Malgieri), Ziuganov (alternate : Slutsky), Zhvania.

N.B. The names of the members who took part in the meeting are printed in italics

Secretaries of the committee: Mr Perin, Mr Chevtchenko, Mrs Entzminger.

THE EUROPEAN CONVENTION

Brussels, 18 July 2002

THE SECRETARIAT

Working Group II

Working document 09

Working group II " Incorporation of the Charter/accession to the ECHR"**From: António Vitorino, President****To: Working Group II**

**Subject : Possible drafting adjustments of Article 51 (2) and of Article 52 (2) Charter;
the question of "replication" in the Charter**

I. Possible drafting adjustment of Article 51 (2) of the Charter

1. Following a request made by members of the Group at the meeting of 12 July, a possible wording of the drafting adjustment in Article 51 § 2 of the Charter, as envisaged by the Group in the hypothesis of incorporation of the Charter into the Treaties according to option f), could for example read as follows:

"This Charter [*or*: this Title / Chapter]¹ does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by other provisions of the present Treaty or by the Treaty on the European Union or the Treaty establishing the European Community."

2. It should be noted that the question of such a drafting adjustment would arise only in the hypothesis of option f) (i.e., insertion of the body of the Charter articles into a new basic Treaty or into the Treaty on the European Union). Conversely, under options a) to e), the Charter would technically remain a separate instrument apart from "the Treaties" (although,

¹ If the possible new Title or Chapter of the TEU or a new basic Treaty containing the articles of the Charter were to receive the heading "The Charter of Fundamental Rights of the European Union", it would then appear possible to maintain the reference to "this Charter" in the general provisions of the Charter; in the alternative, one could refer to "this Title" or "this Chapter".

under some of these options, it would have legal rank equal to the Treaties); consequently, there would be no ambiguity as to the meaning of the referral in current Article 51 § 2 *from* the Charter *to* the Treaties.

3. Furthermore, it should be kept in mind that the concrete drafting adjustment to be made would obviously depend on the decision on the legal personality and on the Treaty structure envisaged by the Convention. Thus:
 - In the event of the creation of one simple legal personality of the Union, the words "for the Community or" could be deleted.
 - In the event that the Convention opted for incorporation of the articles of the Charter into the Treaty on the European Union, rather than for a new basic Treaty, the words "the Treaty on the European Union" would be deleted since the term "the present Treaty" would refer to the TEU.
 - The reference to the "Treaty on European Union" or the "Treaty establishing the European Community" could need further adjustment in the event of the current structure and/or title of these Treaties being modified in the course of their simplification.

II. The question of "replication" in the Charter

4. As explained in section 4 of document CONV 116/02, in order to draw up a full catalogue of the fundamental rights of the Union, the Charter, in a number of its articles, simply restates rights already expressly enshrined in the EC Treaty, often, however, in the interests of readability, shortening the wording as compared with the corresponding articles of the Treaty.

These relate to rights to freedom of movement, almost all the rights in the "citizenship" chapter of the Charter (right to vote, access to documents, right of petition, etc.) and the clauses relating to non-discrimination on grounds of nationality and equality between the sexes². Since the previous Convention had no mandate to modify the Treaties, but only to draft a Charter which could be added to them, it formulated a referral clause (Article 52(2) of the Charter³) to make it clear that, with regard to those rights, the legal situation as defined in the Treaties was unaffected by the Charter. That clause also made it possible to avoid the repetition, in each Charter article in question, of formulae to the effect that these rights are exercised under the conditions and within the limits provided for in the corresponding article of the Treaty and of secondary legislation⁴.

The Group should now examine more closely how this situation of "replication" of rights could be dealt with in the event of possible incorporation by the Charter into the Treaties. For purposes of such analysis, it appears appropriate to distinguish between legal aspects and in particular questions of legal certainty, on the one hand, and questions of legibility and presentation of fundamental rights, on the other hand.

5. As concerns legal aspects, and in particular concerns of legal certainty, it seems in principle that, if one of the options a) to e) were chosen, the referral clause of Article 52 § 2 of the Charter, as it stands, would clarify in a satisfactory manner that the conditions and limits for the exercise of the rights in the Charter which result from the Treaties are governed by those Treaties, and that the Charter does not alter the regime of those rights. The decisive

² Article 15 (2) Charter, corresponding to Articles 39, 43 and 49 et seq. EC Treaty (on freedom of movement for workers, freedom of establishment and freedom to provide services); Article 21(2) Charter, corresponding to Article 12 EC Treaty (on discrimination on the grounds of nationality); Article 23 Charter, corresponding to Articles 2, 3 (2) and 141 (3) and (4) EC Treaty (on equality between the sexes); Articles 39, 40, 41(3) and (4), 42 – 46 Charter, corresponding to Articles 18 to 21, 190 (1), 194, 195, 288 EC Treaty (on the rights of EU citizens).

³ Article 52(2) reads as follows: "Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties."

⁴ On this point, see also the Explanations of the Praesidium (cited in footnote 1 on page 3) relating to this Article ("Paragraph 2 specifies that where a right results from the Treaties it is subject to the conditions and limits laid down by them. The Charter does not alter the system of rights conferred by the Treaties.")

point, again, is that the Charter would technically remain a separate instrument. There would thus be no ambiguity about Article 52 (2) Charter as a clause of referral *from* the Charter *to* the Treaties; whether or not the Charter would have equal legal value as the Treaties does not matter for this purpose⁵.

6. Conversely, if the Convention were to prefer option f), i.e. incorporation of the Charter articles themselves into the Treaties, a need for a drafting adjustment of Article 52 (2) similarly as discussed above in the context of Article 51 (2) - would arise in order to clarify the term "Treaties". The precise wording of such a drafting adjustment would essentially depend on the future Treaty structure (which goes beyond the mandate of this Group) and on the question which place the fundamental rights currently enshrined in the EC Treaty, and in particular the citizenship rights (see below, para. 8 and 9), should find in that Treaty structure. It is therefore difficult to anticipate the correct formula at this stage. However, the Group could usefully express itself on the *principle* of preserving a referral clause in Article 52 (2) - albeit slightly reworded - even under that option. Some have taken the view that Article 52 (2) Charter could simply be deleted in that hypothesis. However, it seems important, in the interest of legal certainty, to keep the referral in order to make it clear that more detailed provisions to be found elsewhere in Treaty law, for example on citizenship or on freedom of movement of workers, concretise and limit those rights, and that existing case law thereon remains fully valid.
7. Turning to considerations of legibility and presentation of fundamental rights in the Treaty framework, it has been argued that the replications between articles on the same rights both in the Charter and in the Treaties could appear confusing for the citizens, and that such replications should therefore be eliminated.

⁵ This point is demonstrated by referrals made from one article to another in the EC Treaty: For example, although Article 21 and Articles 194, 195 EC Treaty on the right to petition or to apply to the Ombudsman are of equal rank, it is clear that Article 21 EC Treaty is merely a referral and that the legal content of the right is defined by the latter Articles.

8. In this context, it should, however, first be observed that the issue appears to arise only in relation to a limited number of rights, i.e. essentially those linked to the citizenship of the Union; in other contexts such as equality between the sexes and freedom of movement for workers and the self-employed, co-existence of the very succinct Charter text and the more detailed text in the current Treaties seems perfectly appropriate and conducive to better comprehension by the citizens. As to fundamental rights flowing from EU citizenship, they were rightly included in the Charter in order to ensure their full visibility. On the other hand, the current articles on citizenship in the EC Treaty could not simply be deleted because they contain, in addition to the statement of the rights, important legal bases permitting to regulate them. These elements taken together would militate for accepting in principle the co-existence of articles on citizenship in both the Charter and the EC Treaty.
9. However, if the Convention were to favour incorporation of the body of the Articles of the Charter into a new basic Treaty (option f), it would face another question, which while going beyond the remit of this Working Group should not be ignored by it: Such a new basic Treaty would undoubtedly have to contain the most fundamental provisions on EU citizenship, including not only the citizens' rights which have been repeated in the Charter, although sometimes with shortened formulae, but also the definition of citizenship (current Article 17 EC Treaty) and perhaps a provision about its future development (current Article 22 EC Treaty). Combining these provisions with the Charter articles on citizenship going into the new Treaty pursuant to option f would require to define the respective places in that Treaty of these provisions, and thus possibly entail some complement or adjustment of the Charter chapter on Citizens' rights. Conversely, under the other options, there would then be a legally relevant chapter on citizenship in the EC Treaty or possibly in a new basic Treaty, whilst the articles "replicating" the citizens' rights in the Charter (existing as a technically separate instrument) would merely serve as a restatement enhancing the visibility of those rights.

How should the "replication" arising from the fact that some articles of the Charter repeat rights already enshrined in the EC Treaty be dealt with?

THE EUROPEAN CONVENTION
THE SECRETARIAT

Brussels, 22 July 2002

Working group II

Working document 10...

Working group II “Incorporation of the Charter/accession to the ECHR”

Working document by Mr. Alexander Arabadjiev

How should the “replication” arising from the fact that some articles of the Charter repeat rights already enshrined in the EC Treaty be dealt with?

The following remarks are based on the assumption that the Convention is to prefer option f), i.e. incorporation of the Charter articles themselves into the Treaties or, which seems to be more appropriate, into a new basic Treaty. The ensuing question as to the ‘fate’ of current Article 52(2) Charter is not, however, just a matter of its drafting (or technical) adjustment. The possible readjustment of the (new) Treaty around the Charter and the latter’s impact on existing Treaty rights give rise not only to the need of technical revision of the Charter’s horizontal clauses but, possibly, of existing Treaty provisions too.

Undoubtedly, purely technical amendments would be needed if one of the options a) to e) were chosen which, on the other hand, would mean that the regime of existing rights as governed by the Treaties will remain unaltered.

It is clear that Article 52(2) was intended to deal with a situation arising from the fact that the Charter, in its attempt to draw up a full catalogue of the fundamental rights of the EU, included also rights already expressly enshrined in the EC Treaty¹. But it apparently has an additional implicit purpose which is in line with the purpose of Article 51(2) since the drafting of the Charter and its promulgation as a separate document presupposed its *cohabitation* with the existing Treaties. Thus the real (and specific) normative contents of its referral effect is actually to determine the scope of already existing rights and to ensure that the Charter, when restating such rights, does not confer “new” rights² and is not intended to extend the scope of the existing rights.

¹ Article 52 of the Charter as a whole serves as a general limitation clause. Its paragraph 2 has this function with respect to the rights already enshrined in the Treaties.

² In which sense the second sentence of the Explanations of the Praesidium relating to this Article (paragraph) should be read.

If the Charter is to form part of the constitutional structure of the EU, the issue of the relationship between the Charter, on the one hand, and the Treaty provisions, on the other, will arise. So far human rights provisions have existed and operated in a particular context of Community law. The future status of an incorporated Charter may have the effect of putting existing Treaty rights in a subservient position.³

If, therefore, the incorporation option leads to an alteration of the regime of existing rights, preserving Article 52(2) with a view of its legal effect (to determine the scope of certain rights) and not only of its wording is disputable

This provision may be preserved as such provided the existing system, i.e. so far the scope of the rights is concerned, is retained. In this respect the possibility of an asymmetrical situation resulting from the existence of different scope and levels of protection and separate contexts in which the norms operate must also⁴ be explored. The consideration based on the requirement of legal certainty is an important one but it may prove not entirely valid in the light of possible evolution of case law in the event of incorporation of the Charter

Notwithstanding these considerations on the legal aspects it may be maintained that replications between articles on the same rights both in the Charter and in the Treaties are not in themselves inadmissible. And that their elimination should not, therefore, be regarded as a purpose in itself.

Finally, it would be quite in accordance with the approach employed by a number of Constitutions to have (into the "Bill of Rights" part of a new basic Treaty) a definition of EU citizenship even though that may possibly entail some complement and/or adjustment of the Charter chapter. A complement or adjustment of the Charter to that effect would not be equivalent to its revision (reopening).

³ Judgements of 30 January 2002, T-54/99, and of 3 May 2002, T-177/01 seem to illustrate a tendency according to which Charter provisions prevail over Treaty provisions.

⁴ On the other hand, the issue of "replications" is being dealt with on the assumption that Charter provisions fully correspond to existing Treaty rights which is disputed by some observers.

THE EUROPEAN CONVENTION
THE SECRETARIAT

Brussels, 23 July 2002

Working group II

Working document 11

Working group II “Incorporation of the Charter/accession to the ECHR”

Working document by Mr. Janusz TRZCINSKI

1. The following is an attempt to address the questions formulated in Convention document of June 18, 2002 (Conv.116/02) concerning the incorporation of the Charter into the Treaties and the accession of the Union/Community to the European Convention of Human Rights (ECHR). At this point I wish to focus on responding to the first question.

2. Ad preliminary

I am in favor of incorporating the Charter into a new basic Treaty. It would be the optimum solution if the final document was the one and only document binding on Union members, replacing the present Treaties on the European Union and on the European Community. The present situation of a multitude of treaties does not facilitate comprehension of the organization and operation of the European structures, so knowledge about them has become a kind of “secret knowledge”.

Ad 1. The incorporation of the Charter into the new Treaty should be implemented in accordance with option (f). Thus, the Charter would become a chapter (title) of the new Treaty. That kind of regulation would be clear, transparent and more readily understandable, thus bringing Union law closer to its citizens with regard to the crucial issue of protection of fundamental rights. That would also enhance identification of the average citizen of united Europe with the goals of integration.

The position presented above I base on the conviction that the Charter is, because of the character of its contents, a normative act. The analysis of each of the articles of the Charter ascertains me that they fulfil the rigours for the legal norms applied in the theory of law-making. I therefore reject the view that the Charter is a document - declaration, an act of a programmatic character. The Charter will become legally binding if it is included as a part of the future Treaty.

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The question whether the Union is prepared for guaranteeing to the citizens of the member states that all the rights contained in the Charter are respected is another matter.

Ad 2. A logical consequence of adopting option (f) would be deletion of article 6(2) of the TEU, since full incorporation of the Charter would make it redundant to invoke the Convention or the constitutional traditions of the member states in the sphere of fundamental rights. The Charter as part of the Treaty would account for the sources of legal inspiration mentioned in article 6 (2) and would strengthen the protection of fundamental rights. The regulations enclosed in the art. 6 (2) of the TEU that refer to the ECHR and the constitutional traditions will be replaced by the art. 52 of the Charter, in particular its paragraph 3, and by the art. 53 of the Charter. In other words, the functions of the art. 6 (2) of the TEU will be taken over by the art. 52 and 53 of the Charter, and also, to some extent, the relevant provisions of the introductory part of the Charter having them transferred to the introductory part of the Constitutional Treaty.

Ad 3. The preamble to the Charter should become – after appropriate editorial changes – part of the Preamble to the Treaty because of the contained in it universal system of values and references to the basic documents on the protection of the rights and freedoms of the individual.

Ad 4. Incorporation of the Charter would necessitate a review of those provisions of the Treaties that deal with rights guaranteed by the Charter, and their adaptation to the new construction. In accordance with the suggestion contained in the question, ensuring the substantive and editorial cohesiveness of the new Treaty should be tackled in the future, after resolving the basic preliminary issues.

Ad 5. As regards interpretation of the new Treaty in its entirety, it would be enough to retain (after appropriate re-editing) the clause contained in article 52 (2) of the Charter, which would eliminate the need for numerous repetitions of that clause.

Ad 6. (a) The suggestion contained in the question to eliminate the reference in article 46 of the TEU to action of institutions should be accepted, since it corresponds to the established case-law of the Court of Justice.

(b) The issue taken up in the question goes beyond the basic problem of incorporation of the Charter. However, in line with the spirit of the whole reform, it would be desirable to extend the jurisdiction of the Court of Justice to subject matter related to justice and home affairs.

(c) It is probably too early at this point to introduce direct constitutional appeals to the Court of Justice with regard to fundamental rights. First, an assessment should be made of the experiences in this regard of the member states and the possibilities incorporated in the community appeals system (article 230-4 of TEC) and the institution of preliminary rulings (article 234 of TEC).

THE EUROPEAN CONVENTION

Brussels, 25 July 2002

THE SECRETARIAT

Working Group II

Working document 12

Working group II " Incorporation of the Charter/accession to the ECHR"

Working document by René van der Linden

Subject: The relationship between the Charter and the ECHR

- The question whether and how to incorporate the Charter in the Treaties is primarily for the EU to decide. The impact of each of the existing options on the legal status of the Charter have been very well set out in document CONV 116/02.
- However, when examining those options, one should also take into account their possible implications on the relationship between the Charter and the European Convention on Human Rights, an aspect which was given high importance by the Convention which drafted the Charter and gave rise to lengthy discussions within that body, given the sensitivity and the complexity of the matter. What was at stake here was nothing less than coherence and legal certainty in the protection of fundamental rights across Europe.
- In this context, it should be recalled that the solutions found by that Convention – in close cooperation with the Council of Europe's observers – are based on Articles 52 § 3 and 53 of the Charter and on a reference to the case-law of the European Court of Human Rights in the Preamble of the Charter. These solutions have been considered satisfactory by all parties concerned, including the Council of Europe Observers at the Convention and the Parliamentary Assembly of the Council of Europe.

- The importance of these references to the ECHR and the Strasbourg case-law for the proper interpretation of the Charter was recently stressed by the President of the ECJ, Mr Rodríguez Iglesias, in his address at the opening of the judicial year of the Strasbourg Court. Therefore, whatever solution for a possible incorporation of the Charter is chosen, we should ensure that these references are preserved (or at least adequately replaced).
- I know that this Convention is also called upon to look into the question of a possible accession of the EC/EU to the ECHR and that in the event of this accession taking place, much of the reasons for keeping these references may at first sight seem to become obsolete. However, while I do think, like the President of the ECJ and many others, that accession is a necessary complement to the Charter, I am personally not entirely convinced at this stage that accession would make references to the ECHR in the Charter superfluous, since Article 52 § 3 of the Charter also defines the proper *content* of many of the rights included in the Charter.¹ After all, several national Constitutions of States Parties to the ECHR also make a special reference to the ECHR.
- In any event, accession has not been decided yet and even if this Convention were to advocate this solution, it is not for it to decide and to amend the Treaties accordingly; so it should not be envisaged to drop the references to the ECHR and its case-law before accession has been duly decided.
- On the question of Article 6 § 2 TEU, it is clear that we need a reference to the ECHR in the Treaties for as long as the Charter (including its references to the ECHR) is not incorporated and/or as long as accession has not yet taken place. One should not forget that Article 6 § 2 TEU has turned out to be the basis on which the ECJ has followed the ECHR and the Strasbourg case-law in an exemplary way, thereby making a substantial contribution to legal certainty and coherence in this important area.²

¹ See the wording of Article 52 § 3: “... the *meaning and scope* of those rights shall be the same as those laid down by the said Convention”

² “... even though the Convention is not formally applied as a constituent element of Community law, being instead merely taken into account as a source of inspiration for the purposes of identifying general principles, the case-law of the Court of Justice clearly shows that it applies the Convention as if its provisions formed an integral part of Community law” (Mr Rodríguez Iglesias, President of the ECJ, Strasbourg, 31 January 2002, translation).

THE EUROPEAN CONVENTION

Brussels, 4 September 2002

THE SECRETARIAT

Working Group II

Working document 14

Working group II "Incorporation of the Charter/accession to the ECHR"

Subject : Note by Neil MacCormick "Clarifying Horizontal Articles"

Following the discussion on the morning of 22 July, I attach suggested modifications of Charter Articles 51.1 and 2, and 52.2.

I believe that adoption of these amendments would meet the principal points of difficulty raised by Baroness Scotland in relation to the 'horizontal' provisions of the Charter, and the relationship of the Charter to the rest of the constitution-treaty if it were incorporated therein, as in my opinion it ought to be.

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Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof *only* in accordance with *the (two words deleted)* powers *conferred on the bodies and institutions of the Union by or under other Chapters of this constitution-treaty*.

2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the *(one word deleted) other Chapters of this constitution-treaty*.

52 Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

2. Rights recognised by this Charter *(thirteen words deleted) with a view to affirming the fundamental character of rights for which more detailed provision is made in another chapters of this constitution-treaty shall be exercised under the conditions and within the limits laid down in the relevant chapter. (fourteen words deleted)*

3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

Neil MacCormick

1 September 2002

THE EUROPEAN CONVENTION
THE SECRETARIAT

Brussels, 12 September 2002

Working Group II

Working document 15

Working group II "Incorporation of the Charter/accession to the ECHR"

Document by Mr. Ingvar Svensson and Mrs. Lena Hjelm-Wallén

Subject: Proposals for Accession of the EU to the European Convention on Human Rights

Intervention in favour of an accession of the EC/EU to the ECHR.

(1 enclosure)

This paper - presented as a **working document** to the members of Working Group 2 - deals with one of the two main issues with which our working group is entrusted, i.e. the accession of the European Communities/European Union to the European Convention on Human Rights (ECHR)¹.

* * * * *

An accession of the EC/EU to the ECHR has been advocated for over 20 years. The proposal is endorsed i. a. by the European Parliament, the European Commission, the Parliamentary Assembly of the Council of Europe, most member States of the European Union and of the Council of Europe, by the "Comité des Sages" (in its human rights agenda for the European Union for the year 2000) as well as by members of national parliaments, numerous other politicians, lawyers in member states and human rights NGO:s. The purpose of accession is not to confer general competence on the

European Union in the field of human rights, but merely to commit the EU to the human rights standards to which its member States are bound and to submit EU institutions to the same external scrutiny by the Strasbourg Court as all national authorities. An accession, as such, would not affect the current distribution of competencies between the Union and its member States.

The fundamental political and legal arguments in favour of accession remain:

- Accession would strengthen the protection of European citizens who are presently denied the right to bring applications against the institutions of the European Union before the Strasbourg Court.
- It is essential to avoid a situation in which there are alternative, competing and conflicting systems of human rights protection within the European Union and in greater Europe.
- Dual protection systems would weaken the overall protection offered and undermine legal certainty in the human rights field in Europe. Divergent catalogues would be applied by the European Court of Human Rights and the Court of Justice, each acting within its own context. The risk of divergent praxis is not just theoretical. It has already occurred and will continue to pose problems².
- Acts by some EU bodies remain outside any effective judicial control³ and yet the Strasbourg Court will continue to hold member states responsible⁴.
- The credibility of the Community in the eyes of third countries would be considerably enhanced if we were prepared to arrange for an independent body to subject respect for human rights to a critical review.
- Accession would have the advantage of enabling the Community institutions to play a full role in proceedings before the European Court of Human Rights that concern Community law.

¹ The question of the Union's legal personality is under consideration in Working group 3. This paper remains neutral on that particular issue even though the present contribution alternately uses the expressions European Community (EC) or the European Union (EU).

² Reference can be made to the question whether a person's right to respect for his or her home (Article 8 of the ECHR) covers also business premises, the precise scope of the right to remain silent and not to contribute to incriminating oneself (Article 6 of the ECHR) or to the judgments given with respect to the prohibition to disseminate in Ireland information regarding abortions lawfully carried out in the United Kingdom (Art 10 ECHR). Such differences of approach can be explained by the simple fact that one court has primarily the responsibility to ensure the efficient operation of the internal market, while the other is charged with protecting fundamental rights.

³ The Luxemburg Court is not competent to review the operational activities of Europol or other bodies set up by conventions adopted under Title VI of the EU Treaty.

⁴ See for instance *Cantoni v. France* (1996) or *T.I v. UK* (appl. 43844; 7 March 2000). NB also the pending case of *Senator Lines* (Appl. 56672/00).

- Accession would prevent the creation of new dividing lines on the European continent. The human rights acquis of the Council of Europe and the common standards defended by the member States of the Council of Europe (44 member States) and of the European Union are the same. An accession is not in contradiction with the right of the EU and its member states to offer higher levels of human rights protection in certain areas. On the other hand, a dual system of rights poses a risk not only to the fundamental principle of universality of human rights but also the inherent danger of the re-emergence of a "Europe à deux vitesses" in an area - common human rights standards - where such divisions must not exist.

- Special arrangements between the two Courts have been discussed but is not a valid option for a future with unknown developments. Accession therefore remains the most effective way to ensure the necessary coherence between the ECHR and Community law - provided that it is regulated in a manner consistent with existing Community competence.

* * *

Many of the legal and technical problems of an accession have been considered and can be overcome⁵ but in the light of hesitations expressed against accession, the following issues seem to require particular comments, in some cases further exploration:

1. Lacking competence.

In its opinion 2/94, the ECJ stated that according to the then existing Community law the Community lacked competence to accede to the ECHR. This is till the case but in the preparations for the Nice Intergovernmental Conference Finland, supported by several other EU partners, took the initiative⁶ to propose a modification to article 303 of the Treaty on the European Community which would allow for the EC to accede to the ECHR. The proposal was and remains a quite simple amendment to article 303 as follows: "The Community shall establish all appropriate forms of cooperation with the Council of Europe. The Community shall have the competence to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November, 1950".

It is suggested that the working group makes a recommendation to this effect in its report to the plenary.

2. Threat to the Community legal order.

The most frequent argument against accession is that it would threaten the autonomy of the Community legal order. The answer to that argument is the following: Community law as such is not opposed to the integration of the European Community into a treaty-based judicial mechanism.

⁵ See in this respect report by a working group of the Steering Committee on Human Rights of the Council of Europe (CDDH), doc GT-DH-EU (2002), approved by the CDDH at its 53rd meeting and subsequently approved by the Committee of Ministers at its meeting on 11 July 2002.

⁶ See doc no. CONFER 4775/00). Alternatively the accession should be made by the European Union if and when it gains legal personality.

The EC is already Party to Council of Europe "partial agreements" and conventions⁷. The European Union could make a general declaration of competence similar to the one made in respect of the UN Convention on the Law of the Sea⁸. The EC has agreed to submit the Community legal order to the compulsory dispute resolution mechanism of the WTO. Prominent representatives of EU institutions agree that there are other international conventions to which the European Union may well have reason to accede in the future. In this context one could also note that the EU urges third states to accept the Rome Statute of the International Criminal Court. Therefore, in the central sphere of human rights one cannot continue to argue that the Community legal order should remain exempt from external control.

It is suggested that these arguments be retained in the report of the working group concerning the issue of accession.

3. Uncertainty regarding ensuing obligations.

Yet another argument is that it is not quite clear what the accession entails as far as obligations for the European Union are concerned. As a starting point, it should be noted that the scope of EU accession would be limited to areas in respect of which the Union already has competence under the EU treaties.

For the sake of legal certainty, it could be stipulated in the accession treaty that the Convention and its protocols will be binding upon the European Union only in those areas in which it is competent. Such a treaty could also contain a provision enabling the ECJ to be consulted by the European Court of Human Rights in matters where questions of competence arise. As mentioned above the European Union could therefore make a general declaration of competence similar to the one made in respect of the UN Convention on the Law of the Sea. Alternatively, the EC/EU could also deal with this particular question in the form of an appropriately phrased reservation.

⁷ Per 20 January 2002 – the EC was a party to 7 Conventions of the Council of Europe, mainly in the medical/pharmaceutical and animal protection fields: ETS 26, 33, 39, 84, 87, 104,123 as well as to Partial Agreements such as the European Pharmacopea and EURIMAGES . In addition, other CoE conventions have been drafted or modified to allow for EC accession if such was deemed appropriate.

⁸ This suggestion was made by Mr Petite, Director General of the Legal Service of the Commission, during his hearing before the Working Party, working document no. 13 of 2 August 2002, page 52.

It is suggested that also these arguments be retained in the report of the working group concerning the issue of accession.

4. An uneven application of the ECHR.

Reference has also been made to the fact that an "uneven application" of the Convention might result from the fact that the current members of the European Union have not ratified all ECHR protocols equally and that individual member States have made various reservations to the ECHR and its protocols. Regarding the ECHR protocols, the actual differences in ratification between the current EU members are not that great. All current EU member States have ratified Protocols Nos. 1 and 6 to the ECHR. Protocols Nos. 4 and 7 have been ratified by 12 and 9 EU member States respectively. Protocols No. 12 and 13 have only been opened for signature in 2000 and 2002 respectively and are therefore not yet largely ratified. A more detailed information is given in the attached tables. In this context, attention must also be paid and solutions found to such issues as the right of derogation and the "margin of appreciation" currently ensured to States Parties to the ECHR through the Convention and by the caselaw of the Court in Strasbourg.

It is suggested that also these arguments be retained in the report of the working group.

5. Requirements regarding remedies.

Attention has been directed to Art 13 of the ECHR which obliges parties to the convention to provide everyone - whose rights and freedoms as set forth in the Convention have been violated - with an effective remedy before a national authority. This is an area which requires attention. There may be a need for improvements in judicial protection within the EU. In a recent case, the ECJ has confirmed that it is possible to envisage a system of judicial review of legality of Community measures of general application different from that established by the founding Treaty. But the Court held that it is for the Member states, if necessary, to reform the system currently in force⁹.

6. An accession would be too complicated from a treaty point of view.

Some argue that an accession is also too complicated and cumbersome from the point of view of treaty law and that an amending Protocol to the ECHR must be ratified by all Council of Europe member States. The Council of Europe has suggested that instead of concluding an amending protocol between the current States Parties to the ECHR, it could be envisaged to prepare an accession treaty between all States Parties to the ECHR and the EC/EU. Such a procedure is already used within the European Union for the admission of new member States. Article 49 paragraph 2 of the EU Treaty provides that the conditions of admission and the adjustments to the

⁹ See in this respect: *Unión de Pequeños Agricultores v. Council*, case C-50/00P, § 45.

EU Treaties “shall be the subject of an agreement between the member States and the applicant State”.

It is suggested that this solution is also retained among the recommendations from the working group.

Enclosure.

The protocols, like the Convention itself, guarantee minimum standards which largely coincide with universal standards laid down in the International Covenant on Civil and Political Rights, to which all EU member States are Parties. Several rights guaranteed by the ECHR protocols have directly influenced the wording of corresponding articles contained in the EU Charter of Fundamental Rights.

An accession to the ECHR protocols could be gradual, starting with the Convention and Protocols No. 1 and 6, which have been ratified by all EU member States. As in the case of the Convention itself, the EU would accede to the protocols only to the extent of its existing competencies. The legal situation of member States which have not ratified a particular protocol would therefore remain unaffected in so far as their national law and practice are concerned.

In this context one should also observe reservations made by EU member States with respect to individual provisions of the Convention and its protocols concerning areas which are currently not within EU competence, such as administrative judicial procedure (Austria, Finland), legal aid (Ireland) or the legal status of members of the national armed forces (France, Portugal and Spain). However, these reservations would continue to apply with respect to national law and practice even if the EC/EU were to ratify the Convention without any reservations. Even if EU competencies were to extend, at a later stage, to areas such as armed forces, the EU would only be bound with respect to armed forces that would be under EU command and control. National armed forces would continue to be governed by national regulations, and these States' obligations under the ECHR in this respect would continue to be circumscribed by the reservations made. It would therefore seem appropriate to limit reservations by the EC/EU in the event of accession to matters specific to the EC/EU¹⁰.

¹⁰ This was the position taken by the Commission back in 1979, see the Memorandum on the accession of the European Communities to the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted on 4 April 1979, EC Bulletin Supplement 2/79, § 29.

CHARTS OF SIGNATURES AND RATIFICATIONS OF THE E.C.H.R. ⁽¹¹⁾
AND OF ITS PROTOCOLS ⁽¹²⁾

(Status as of 27 August 2002)

I. States members of the European Union :

	ECHR	Prot. 1	Prot. 4	Prot. 6	Prot. 7	Prot. 12	Prot. 13
STATES :							
I. <u>Austri</u> <u>a</u>	R	R	R	R	R	S	S
Belgium	R	R	R	R	-	S	S
Denmark	R	R	R	R	R	-	S
Finland	R	R	R	R	R	S	S
France	R	R	R	R	R	-	S
Germany	R	R	R	R	S	S	S
Greece	R	R	-	R	R	S	S
Ireland	R	R	R	R	R	S	R

¹¹ Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5).

¹² Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 9)
 Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto (ETS No. 46)

Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty (ETS No. 114)

Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 117)

Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 177)

Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms on the abolition of the death penalty in all circumstances (ETS No. 187)

Italy	R	R	R	R	R	S	S
Luxembourg	R	R	R	R	R	S	S
Netherlands	R	R	R	R	S	S	S
Portugal	R	R	R	R	S	S	S
Spain	R	R	S	R	S	-	S
Sweden	R	R	R	R	R	-	S
United Kingdom	R	R	S	R	-	-	S

II. States candidates to the European Union membership:

	ECHR	Prot. 1	Prot. 4	Prot. 6	Prot. 7	Prot. 12	Prot. 13
STATES :							
II. <u>Bulgaria</u>	R	R	R	R	R	-	-
Cyprus	R	R	R	R	R	R	S
Czech Republic	R	R	R	R	R	S	S
Estonia	R	R	R	R	R	S	S
Hungary	R	R	R	R	R	S	S
Latvia	R	R	R	R	R	S	S
Lithuania	R	R	R	R	R	-	S
Malta	R	R	R	R	-	-	R
Poland	R	R	R	R	S	-	S
Romania	R	R	R	R	R	S	S
Slovakia	R	R	R	R	R	S	S
Slovenia	R	R	R	R	R	S	S
Turkey	R	R	S	-	S	S	-

(R = Ratification ; S = Signature; - = No action)

THE EUROPEAN CONVENTION

Brussels, 13 September 2002

THE SECRETARIAT

Working Group II

Working document 16

Working group II "Incorporation of the Charter/accession to the ECHR"

**Subject : Note by Baroness Scotland of Asthal: "The search for the "missing horizontal"
in the Charter of Rights – an interim report on progress"**

I. Introduction

1. My paper on the "missing" horizontal article in the Charter of Rights¹ discussed the problem concerning the meaning and scope of provisions in the Charter which are based neither on the Treaties nor on the ECHR. Since then our Working Group has had the benefit of the opinion of M. Piris², Director-General of the Council Legal Service, that the existing horizontal articles in the Charter are insufficient. I have also studied Professor Mac Cormick's paper³ which contains helpful proposals for dealing with some (but not all) of the problem. My paper, for discussion, reports further progress. It is intended to help find a positive way to give the Charter greater legal status without losing or changing the wording of any of the substantive Charter articles.

¹ Working document 4 - Brussels, 9 July 2002

² Working document 13 – Brussels, 5 September 2002, (p 23-27)

³ Working document 14 – Brussels, 4 September 2002

The problem

2. Charter Article 52 does not deal with all the rights in the Charter. 52(2) tells us about rights which are based on the Community Treaties or the Treaty on European Union; and 52(3) tells us about rights corresponding to provisions in the ECHR. But there is no 52(4) to tell us how to interpret Charter provisions which do not fall into either of those categories.

What legal meaning and scope should be given to those provisions in a legally binding Charter by our citizens, or the Court?

3. Amongst the horizontal articles, the only available guide to the interpretation of such provisions appears to be Charter Article 51. But that article deals with the scope of the provisions of the Charter as a whole and the general exclusion of any new powers or tasks for the Community or the Union. It would leave many ambiguities and unresolved questions were the Charter to be incorporated within the Treaties. For example, does Article 51 mean that Charter provisions based neither on the Community Treaties or ECHR are to be interpreted as having no legal effect?

4. My earlier paper gave examples of Charter provisions which appear to fall into this uncertain category. I offered some practical illustrations⁴ of why the absence of a horizontal article to deal with them could be a serious difficulty. The problem is essentially one of ambiguity and the absence of legal certainty. And the more status the Charter is given, the more important it is to be clear about what such provisions actually mean. We should not open Europe to the accusation that it is misleading its citizens. And national Governments will expect to be clear about the obligations a legally incorporated Charter entails for them. I believe that our Group should address such issues directly in its Report to the Convention plenary – and make appropriate recommendations.

⁴ My paper listed Article 3 (right to integrity), 9 (right to marry), 10 (freedom of thought, conscience and religion), 13 (freedom of the arts), 14 (right to education), 19 (Protection in the event of removal, expulsion or extradition), 21 (non-discrimination), 24 (rights of the child), 25 (rights of the elderly), 26 (integration of the persons with disability), 28 (right of collective bargaining and action), 29 (right of access to placement services), 30 (protection in the event of unjustified dismissal), 31 (fair and just working conditions), 32 (child labour), 33 (family and professional life), 50 (right not to be tried or punished twice in criminal proceedings for the same criminal offence).

A. Clues

5. I do not claim to have discovered a simple, single answer to the problem. However, our Working Group discussions have pointed us towards three concepts which are already within the Charter and which seem to be important clues towards an acceptable solution. Indeed, I think that it is common ground that these three concepts formed part of the approach which enabled a consensus on the Charter to be reached within the original Convention. They are:

- A. existing Community law on the constitutional traditions common to the Members States which is referred to in the Charter Preamble⁵ and in the Commentary⁶
- B. the concept of "principles" which also appears in the Charter Preamble⁷, in Charter Article 51(1) – "observe the principles" – and in several of the substantive Charter articles⁸ and commentaries⁹
- C. the references to subsidiarity in the Charter Preamble¹⁰, Article 51(1) and the related references to "national law and practices" in the texts of some of the articles themselves¹¹.

6. In the present Charter text these three important concepts are not dealt with in the same way as those provisions of the Charter which correspond to provisions of the ECHR or the Union and Community treaties (dealt with by Charter Articles 52(2) and 52(3)). In particular, it is for the most part not clear which concept applies to which Charter article. There is the possibility that some Charter articles do not benefit from A, B or C, or from the

⁵ "This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States (...)"

⁶ E.g. Articles 14, 17, 20, 49.

⁷ "The Union therefore recognises the rights, freedoms and principles set out hereafter"

⁸ Articles 23, [41], 49.

⁹ Articles [1], 3, 14, 20, 23, 26, 34(1), 35, [36], 37, 38, [41], 47, 49, 50.

¹⁰ "This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights (...)"

¹¹ Article 9 (right to marry), 10(2) (right to conscientious objection), 14 (right to education), 16 (freedom to conduct a business), 27 (workers' right to information and consultation), 28 (right of collective

existing provisions in Charter article 52. Is such uncertainty tolerable in a Charter which has legal status beyond that of a solemn declaration?

II. Way forward?

7. I believe that the “missing horizontal” (notionally 52(4)) should address itself to all the Charter provisions not covered by 52(2) and 52(3). Following the logic of the Charter itself (as discussed above) the “missing horizontal” should contain three elements. First, regarding the constitutional traditions, the new horizontal provision could usefully confirm that, in the cases where the remaining Charter provisions are indeed part of the constitutional traditions of all the Member States, they enjoy the status of general principles of law which the Community must respect¹². I would go further and say that, even where a Charter provision does not have that status, it should be regarded, by virtue of its inclusion in the Charter, as an aspiration for the Union.

8. It might also be possible to connect this latter point with the Charter concept of “principles” so that the aspirational character of all such Charter articles is suitably clarified and confirmed. But special provision concerning “principles” would be desirable even if no such connection is made. We should avoid the possibility of confusion between, on the one hand, the meaning of “principles” as in Article 6(2) of the Union Treaty and, on the other hand, the “principles” referred to in Charter Article 51 which are to be observed by the institutions and bodies of the Union within the strict limits of their competences.

9. As regards subsidiarity, it should not be necessary to duplicate the general reference to the topic which is made in Charter Article 51. However, I believe that there may be a special need to reflect the fact that some Charter provisions refer in particular to national

bargaining and action), 30 (protection in the event of unjustified dismissal), 34 (social security), 35 (health care), 36 (access to services of general economic interest).

¹² C.f. ECJ, Judgment of 18/05/1982, AM & S / Commission (155/79); ECJ, Judgment of 14/05/1974, Nold KG / Commission (4/73); ECJ, Judgment of 17/12/1970, Internationale Handelsgesellschaft mbH / Einfuhr- und Vorratsstelle für Getreide und Futtermittel (11/70)

law and practice. The new horizontal provision could require full regard to be given to such references.

10. I believe that it should be possible to draft an extension to Charter Article 52, to cover the matters I have proposed, with economy and precision.

11. Finally, I would strongly support the expert opinion put forward to our Group by M. Piris that the interests of legal certainty and security also require clarification of precisely which Charter provisions are referred to by Charter Articles 52(2) and 52(3). M. Piris suggested that the Commentary issued by the Praesidium to the original Convention was helpful to us in that regard. He also suggested that it should make clear that the restriction on new (or modified) tasks or powers in Article 51 applies also to Article 52 (and the other horizontal articles). I believe that our Group should consider these points with a view to making a recommendation on this matter as well.

Summary

12. There is currently a gap in Charter Article 52. This gap could prejudice a favourable decision on incorporating the substantive articles of the Charter in their current form. I believe we can build on the work of our predecessors to fill that gap in a positive way.

THE EUROPEAN CONVENTION

Brussels, 16 September 2002

THE SECRETARIAT

Working Group II

Working document 17

Working group II "Incorporation of the Charter/accession to the ECHR"

Subject: Enforceability of the Charter of Fundamental Rights and improvement of the individual's right to legal redress

Working Document by Professor Jürgen Meyer, Delegate of the German Bundestag to the Constitutional Convention of the European Union

Proposal: The second half of Article 230 (4) EC be amended to read as follows:

Any natural or legal person may, under the same conditions, institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct **or** individual concern to the former.

Grounds:

Make it clear that the Charter is enforceable

A Charter which, although binding as part of community law, cannot be enforced by the individual, or only under onerous conditions, will not be accepted by the citizens. The Convention must therefore clearly answer citizens' questions about the procedure by means of which they can they directly enforce their Charter of Fundamental Rights.

The best way of ensuring the strictly binding nature of the individual rights set out in the Charter, and in particular the right to effective judicial redress set out under Article 47, is a modification to the current system for obtaining individual legal redress. The proposal put forward here allows the citizens to bring a claim for breach of their (fundamental) rights before the European Court, directly and by their own decision.

A provision should be inserted into the text of the Charter, into Article 47 for example, which makes reference to such a remedy:

“Under the conditions set forth in Article 230(4) EC, every person shall have the right to bring a claim due to a breach of the rights and freedoms recognised in this Charter.”

Make it easier to bring direct claims before the European Court

There are two situations, in particular, where the individual should not find himself in a position where he can obtain legal address only after a specific measure directed against him has been taken. Challenges to a Community decision should be admissible,

1) if a decision taken is of direct concern to him, i.e. the legal measure subject to the challenge directly affects his legal position and there is no margin for discretion regarding an implementation measure that may be required,

or

2) if a decision taken is of individual concern to him, i.e. the legal measure subject to the challenge affects him due to certain personal characteristics or special circumstances and therefore individualises him in a way similar to a decision addressed to a specific person.

Both situations in which a citizen may find himself, should be seen as independent from one another. *Each* one requires that it be possible to determine legality without further delay. The proposed amendment therefore changes the two requirements of Article 230(4) EC, which until now had to be applied cumulatively, with the result that they now represent alternative options.

Remove the deficiencies in the existing system for obtaining legal redress

One aim of the proposed reform is to close the gaps which are present in the existing system for obtaining legal redress. In practice, the two options for seeking legal address – i.e. direct claims and the preliminary decision-making procedure – have, in certain cases, failed to provide effective legal protection for the citizens.

Until recently, the expectation was that the European Court might change its established practice with respect to the admissibility of direct claims by private individuals. In its judgement dated 25th July 2002, however, it stated that on the basis of the wording of Article 230 EC, further easing of the conditions for an individual claim was not possible. Express reference was made to the possibility of a change in primary legislation.¹

The proposed amendment reliably ensures that all claims which were admissible under existing law, would still be so after the amendment. The procedural *acquis communautaire* remains fully intact.

The additional workload for the courts is not a convincing objection

It is true that this amendment will probably increase the workload of the European courts. However, in a community based on constitutional rights, this must not prevent the implementation of a change in the system for obtaining legal redress that is considered to be expedient. Rather, the Court of First Instance attached to the European Court of Justice must be provided with the necessary institutional and human resources to enable it to guarantee effective legal protection for the entire duration of the proceedings. The reform of the judicature by the Nice Treaty has brought about improved conditions in this respect (Art. 225, 225a EC).

¹ Judgement of the European Court dated 25th July 2002, Rs. C-50/00 P, Unión de Pequeños Agricultores/Rat, not yet published in the official law reports, marginal note no. 40 et seq.

THE EUROPEAN CONVENTION

Brussels, 16 September 2002

THE SECRETARIAT

Working Group II

Working document 18

Working group II "Incorporation of the Charter/accession to the ECHR"

Working document by Mr Esko Helle, supported by Mr Vytenis Andriukaitis and Mr Neil MacCormick.

Subject: Accession by the European Union to the European Convention on Human Rights

1 Introduction

1. Along the lines of the Laeken Declaration, the Convention is expected to consider the question whether the European Union¹ should accede to the European Convention on Human Rights (hereafter "ECHR"). Technically, the question is whether the new basic treaty should contain a specific power-conferring provision (legal basis) authorising the accession by the Union to the ECHR. For the moment, the Union's founding Treaties do not contain such a legal basis and, the Court of Justice has held, the Union has no competence to accede to the ECHR.²
2. By now, it is clear that an accession to the ECHR by the Union would not be an alternative to the granting of a legal status to the EU Charter of Fundamental Rights. These two initiatives pursue the same objective – the protection of human/fundamental rights – but with different means and functions and, hence, are to be regarded as complementary.³

¹ The use of the term "Union" hereafter is in no way intended to prejudge the question whether it was the Union or the Community that acceded to the ECHR – a question that depends on, *inter alia*, whether the Union will be attributed single legal personality.

² See Opinion 2/94 [1996] ECR I-1759.

³ See CONV 116/02 p. 17 and the references therein.

3. The arguments for the accession by the Union to the European Convention are so well known that they hardly need to be repeated in detail. Suffice it to recall that the Union is taking over more and more legislative and other functions from the Member States who are all Contracting Parties to the ECHR concluded in 1950. In order to maintain the significance of the ECHR, it is therefore indispensable, from the point of view of the citizen in particular, that the Union accedes to the Convention.
4. The accession has however been purported to involve certain problems which concern, on the one hand, the position of the Union legal order and, on the other, the relationship between the Union and the Member States. These are, in particular, the effects of the accession upon the autonomy of Union law; the distribution of competence between the Union and the Member States; and the differences in the degree to which the Member States have signed up to the Protocols of the ECHR and/or made reservations to the Convention.
5. The purpose of this initiative is to express our support for the accession by the Union to the ECHR and to propose a text of a new legal basis to that effect. We will also briefly seek to show why we consider that the above mentioned problems relating to accession are more apparent than real – or, at least, not insuperable.

2. The Autonomy of Union Law

6. The claim that the Union's accession to the ECHR would adversely affect the autonomy of Union law is mainly based on the argument that, under the ECHR, the European Court of Justice would lose its monopoly to rule on the validity and interpretation of Union law. The Court of Justice would, the argument is, also lose its role as the sole arbiter in disputes amongst the Member States and between the Member States and the institutions.
7. We do not find these arguments convincing. In the first place, the relationship between the Court of Human Rights and the courts of the Contracting Parties to the ECHR may not be described as a hierarchical one: the Human Rights Court has no power to rule on the validity or interpretation of the laws of the Contracting Parties but can only establish violations of the Convention.⁴ In any case, the European Court of Justice has acknowledged that the Union's competence in the field of international relations necessarily entails the power to submit to the decisions of a court which is created or designated by such an agreement as regards the interpretation and application of its provisions.⁵ The European Court of Human Rights would by no means be the only international judicial body the decisions of which are binding on the Union and its institutions including the Court of Justice.⁶ In fact, the Human Rights Court, too, already now increasingly often rules, directly or indirectly, on acts of the Union. However, in the present situation where the Union is not party to the ECHR, there is a risk that the Union's institutions are not in a position to defend their actions before the Court, and it is the Member States that are being held responsible for acts or omissions on which they had little if any influence.⁷

⁴ Cf., *ibid.*, p. 20.

⁵ Opinion 1/91 [1991] I-6079, para. 40.

⁶ Currently such bodies exist under e.g. the WTO Agreement and the UN Convention on the Law of the Sea.

⁷ See CONV 116/02 p. 21 and the cases mentioned therein, and also the intervention of Michel Petite, WG II, WD 13, p. 51-52.

3. The Distribution of Competence between the Union and the Member States

8. It has been argued that accession by the Union to the ECHR would give rise to a shift of competence from the Member States to the Union in the field of fundamental human rights, in particular, as a result of the positive obligations deriving from the European Convention.
9. Again, we do not share this view. First, the obligations under the ECHR are predominantly *obligations to respect* the rights contained in the Convention and, thus, by nature entail restrictions on the exercise of competence by the Contracting Parties rather than positive obligations requiring them to take certain measures. Thus, in the event of accession to the Convention by the Union too, the status as a Contracting Party does not automatically imply any general competence in the field of fundamental human rights.
10. While it is true that complying with the obligations laid down by the ECHR may in *some circumstances* require positive action and, by implication, the requisite competence, the latter is inextricably linked to the substantive competence possessed by the entity in question. Human rights can be described as "horizontal" provisions that do not easily fit in the traditional division of competence according to the specific policy area. They are rights and principles that have to be taken account of in any field of law by the legislator as well as by the courts and administration. It is therefore clear that any positive obligations that might derive from the ECHR would only become relevant in cases where the Union already had the competence to act under some substantive provision of the Treaty. This means that the respective obligations of the Union and the Member States to exercise competence pursuant to the ECHR do not imply any zero-sum game in respect of the division of competence. In other words, both the Union and the Member States would be under an obligation to carry out the necessary measures under the Convention within their respective spheres of competence. The logic is analogous to that in Article 51.1., second sentence, of the EU Charter of Fundamental Rights.⁸
11. Furthermore, the European Union has already committed itself to respecting human rights – and the ECHR, in particular – as general principles of Union law. It is therefore plausible to suggest that accession to the ECHR would not entail any new obligations for the Union but only modify the nature of that commitment. This is, for the reasons stated above, equally true with the claim that the accession might change the distribution of competence between the Union and the Member States. An express provision to that effect might even be included in the legal basis conferring competence upon the Union to accede to the ECHR, along the lines of Article 51.2 of the EU Charter of Fundamental Rights.⁹

⁸ "They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers."

⁹ Art. 51.2. "This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties."

4. The Legal Basis for the Accession of the European Union to the ECHR

12. In the light of the above considerations, we propose that the following provision would be included, at an appropriate location, in the new basic treaty:

Article ?

The Union shall seek to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950¹⁰, in accordance with the procedures set out in [the current Article 300 EC]¹¹. Accession to the Convention shall in no way modify the powers and tasks of the Union as defined by this Treaty.

5. Questions to be Addressed in Negotiations on Accession

13. There are also other legal questions which relate to the accession by the Union to the ECHR. These do not however pertain to the reform of the EU Treaties but to the amendment of the ECHR to cater for the Union's accession¹², and may therefore only be solved in the eventual negotiations on the accession. At that stage there, of course, needs to be a consensus among the Member States on the choice of various options that are available. Such questions include:
- to which Protocols of the Convention the Union should accede to and whether it should make reservations to the Convention or the Protocols;
 - the modalities of accession, e.g., whether the accession should be carried out by an amending protocol or an accession treaty;
 - the modalities of participation by the Union in the decision-making structures of the Convention, e.g., the representation of the EU in the Committee of Ministers, status and participation in the European Court of Human Rights of an EU judge;
 - the standing of the Union in proceedings before the European Court of Human Rights; the more specific technical implications for the procedure in the European Court of Justice

¹⁰ Another option to be considered would be the Union should be given competence to accede, in general, to international agreements for the protection and promotion of human rights, as proposed by Mr. Jacob Söderman, European Ombudsman in CONV 221/02 CONTRIB 76.

¹¹ A specific procedure reflecting the paramount importance and particular nature of the commitment to protect human rights should be added to Art. 300 EC. Another option would be to lay down the procedure in the provision authorising the accession.

¹² Since the ECHR is currently only open to accession by States, it is clear that the Convention would have to be amended upon the accession by the Union. See especially the Activity Report by the Working Group on the Legal and Technical Issues of a Possible EC/EU Accession to the European Convention on Human Rights, doc. GT-DH-EU (2002) 012, approved by the Steering Committee for Human Rights (CDDH) of the Council of Europe.

LA CONVENTION EUROPÉENNE
LE SECRÉTARIAT

Bruxelles, le 27 septembre 2002

Working Group II

Working document 20

Groupe de travail II "Intégration de la Charte/adhésion à la CEDH"

du :	Secrétariat
au :	Groupe de travail II
Objet:	Le système des voies de recours judiciaires

Document de travail de M. Ben Fayot

Par le présent document de travail, M. Ben Fayot souhaite attirer l'attention des membres du groupe de travail sur la note ci-jointe rédigée par Sir Francis Jacobs, Avocat général à la Cour de justice des Communautés européennes.

NOTE FOR THE WORKING GROUP ON THE CHARTER/ECHR

Necessary changes to the system of judicial remedies

F.G. Jacobs ¹

I have been invited to consider what changes in the system of judicial remedies are necessary if there is agreement in the Convention on giving some form of effect to the Charter of Fundamental Rights and on acceding to the European Convention on Human Rights

Such changes are necessary, first, because some of the features of the existing system are likely to prove incompatible with fundamental rights contained in the Charter and the ECHR: in particular, the right of access to a court and the right to an effective remedy. From a legal point of view it is clearly undesirable for there to be conflicts between the fundamental rights recognised or referred to in the treaty and the provisions on remedies contained in another part thereof. From a political point of view the Union could be accused of hypocrisy or double standards.

Secondly, the fundamental rights so recognised or referred to risk remaining an empty shell if there is no system of judicial remedies which guarantees the effective protection of those rights. In the absence of rules guaranteeing effective remedies a decision to give some form of effect to the Charter and accede to the ECHR might be regarded as mere window-dressing exercises.

Moreover it will be widely accepted that there is a close link between the effective protection of fundamental rights and the legitimacy of the European Union.

¹. Advocate General, Court of Justice of the European Communities. The views expressed in this note are my own.

The Working Group recognised that it could not examine some of the issues concerning judicial remedies at an earlier stage since the Court of Justice had decided in the *UPA* case² to re-examine its restrictive case-law on the standing of individuals challenging the legality of measures of general application, i.e. regulations and directives. In its judgment in that case however the Court of Justice decided essentially not to depart from the existing case-law and stated that, whilst a different system of remedies could indeed be envisaged, such a change would require treaty amendment and thus go beyond its jurisdiction. That statement can perhaps be read as an invitation for the Convention to consider changes in the system of remedies.

As a preliminary point I would note that it has been assumed in some quarters that a decision to give some form of effect to the Charter should be accompanied by the introduction of a special new remedy to enable an individual to bring an alleged infringement directly before the Court of Justice. This would however be both unnecessary and inappropriate. Issues of fundamental rights already arise in connection with the application of the ordinary remedies, often in combination with other issues (e.g. equal treatment, proportionality, etc.), and can and should continue to be dealt with in principle within the habitual procedural framework.

The existing system of remedies is however not adequate in three other crucial respects. At this stage the three issues can be identified very briefly.

1. Standing of individuals to challenge general measures

As has been widely recognised, standing for individuals needs to be enlarged so as to enable them to challenge general measures which affect their rights or interests.

The formulation in Article 230 EC, which requires that the measure challenged should be of direct **and individual** concern to the applicant, has proved too restrictive. It means in practice that the legality of a regulation affecting the rights or interests of individuals cannot

². Case C-50/00 P *Unión de Pequeños Agricultores v Council*, judgment of 25 July 2002.

be challenged by those individuals merely because it is a general measure. The current state of the law is essentially based on the assumption that individuals can obtain a reference to the Court of Justice from a national court on the validity of a general measure. That however is a circuitous and uncertain route, which can also result in a denial of justice where for example there is no national measure to challenge in the national court, or where the national court fails to make a satisfactory reference to the Court of Justice. A further consequence is that, the greater the number of persons affected by a measure of the Community institutions, the less likely it is that effective judicial review will be available.

Doubts about the appropriateness of the law as it stands had long been expressed by the Court of Justice itself ³, by several members of the Court in their extra-judicial writing and by many scholars ⁴.

The Court of Justice decided in the above-mentioned *UPA* case to re-examine the case-law in plenary formation. Although I took the view, in my Opinion as Advocate General, that the necessary change could be made by the Court itself revising its case-law, the Court felt that such an important change would require treaty amendment ⁵.

In May of this year the Court of First Instance, relying in part on the Charter, showed itself willing, in the *Jégo-Quéré* case ⁶, to depart from the existing case-law and to facilitate challenges to general measures. That was particularly significant since that Court is the court most concerned by a possible change, as the court of first resort for individual applicants. Its decision seems to refute what was previously seen as the strongest argument against enlarging access to the Community Courts, namely the risk of overload – the "floodgates" argument.

³. See the *Report of the Court of Justice on Certain Aspects of the Application of the Treaty on European Union*, May 1995, paragraph 20.

⁴. For references, see the Opinion of 21 March 2002 in Case C-50/00 P *Unión de Pequeños Agricultores v Council*, notes 5 and 6.

⁵. A summary of the main arguments is contained in my Opinion, an extract from which is annexed to this note.

⁶. Case T-177/01 *Jégo-Quéré*, judgment of the Court of First Instance of 3 May 2002.

It may be concluded that both Community Courts have now acknowledged the appropriateness or even the need for treaty amendment on this point.

2. Extension of the scope of judicial review to measures taken by all institutions and bodies of the Union

The Treaty allows challenges by individuals only to measures taken by the Institutions. The Charter is however (rightly) addressed to the "institutions and bodies" of the Union. It seems clear therefore that an action must be available to individuals against measures adopted by **all** institutions and bodies of the Union (Europol etc.).

3. Extension of the scope of judicial review to measures across the whole range of Union activities

Under the current system the Community Courts' jurisdiction is severely limited or even excluded as regards the Union's activities in certain fields. In particular the limitations under Article 68 EC and under Title VI of the Treaty on European Union – areas where the need for an effective protection of fundamental rights is of special importance – raise serious questions about the compatibility of the current state of the law with the Charter and the ECHR. It will therefore be important to ensure that the Community Courts have jurisdiction to review all measures across the whole range of Union activities. Since those measures will in any event be subject to review by the European Court of Human Rights in the event of accession to the ECHR, any argument for excluding them from review by the Community Courts seems to have little force.

Extract from the Opinion in UPA

(paragraphs 100-103)

Conclusion

100 The case-law on the standing of individuals to bring proceedings before the Court of Justice (now before the Court of First Instance) has, over the years, given rise to a large volume of discussion, much of it very critical. It cannot be denied that the limited admissibility of actions by individuals is widely regarded as one of the least satisfactory aspects of the Community legal system.¹ It is not merely the restriction on access which is criticised; it is also the complexity and apparent inconsistency which have resulted from attempts by the Court to allow access where the traditional approach would lead to a manifest 'denial of justice'. Thus, one of the fullest and most authoritative recent studies refers to 'the blot on the landscape of Community law which the case-law on admissibility has become'.² While there may be doubts about the degree of criticism that can be levelled at the case-law, it is surely indisputable that access to the Court is one area above all where it is essential that the law itself should be clear, coherent and readily understandable.

101 In this Opinion I have argued that the Court should Ā rather than envisage, on the basis of *Greenpeace*, a further limited exception to its restrictive case-law on standing Ā instead re-consider that case-law and adopt a more satisfactory interpretation of the concept of individual concern.

1 See above note 5.

2 A. Arnall, 'Private applicants and the action for annulment since *Codorniu*', cited in note 6, at p. 52.

102 It may be helpful to summarise the reasons for that view, as follows:

- (1) The Court's fundamental assumption that the possibility for an individual applicant to trigger a reference for a preliminary ruling provides full and effective judicial protection against general measures is open to serious objections:
 - under the preliminary ruling procedure the applicant has no right to decide whether a reference is made, which measures are referred for review or what grounds of invalidity are raised and thus no right of access to the Court of Justice; on the other hand, the national court cannot itself grant the desired remedy to declare the general measure in issue invalid;
 - there may be a denial of justice in cases where it is difficult or impossible for an applicant to challenge a general measure indirectly (e.g. where there are no challengeable implementing measures or where the applicant would have to break the law in order to be able to challenge ensuing sanctions);
 - legal certainty pleads in favour of allowing a general measure to be reviewed as soon as possible and not only after implementing measures have been adopted;
 - indirect challenges to general measures through references on validity under Article 234 EC present a number of procedural disadvantages in comparison to direct challenges under Article 230 EC before the Court of First Instance as regards for example the participation of the institution(s) which adopted the measure, the delays and costs involved, the award of interim measures or the possibility of third party intervention.
- (2) Those objections cannot be overcome by granting standing by way of exception in those cases where an applicant has under national law no way of triggering a reference for a preliminary ruling on the validity of the contested measure. Such an approach
 - has no basis in the wording of the Treaty;

- would inevitably oblige the Community Courts to interpret and apply rules of national law, a task for which they are neither well prepared nor even competent;
 - would lead to inequality between operators from different Member States and to a further loss of legal certainty.
- (3) Nor can those objections be overcome by postulating an obligation for the legal orders of the Member States to ensure that references on the validity of general Community measures are available in their legal systems. Such an approach would
- leave unresolved most of the problems of the current situation such as the absence of remedy as a matter of right, unnecessary delays and costs for the applicant or the award of interim measures;
 - be difficult to monitor and enforce; and
 - require far-reaching interference with national procedural autonomy.
- (4) The only satisfactory solution is therefore to recognise that **an applicant is individually concerned by a Community measure where the measure has, or is liable to have, a substantial adverse effect on his interests**. That solution has the following advantages:
- it resolves all the problems set out above: applicants are granted a true right of direct access to a court which can grant a remedy, cases of possible denial of justice are avoided, and judicial protection is improved in various ways;
 - it also removes the anomaly under the current case-law that the greater the number of persons affected the less likely it is that effective judicial review is available;
 - the increasingly complex and unpredictable rules on standing are replaced by a much simpler test which would shift the emphasis in cases before the Community Courts from purely formal questions of admissibility to questions of substance;

- such a re-interpretation is in line with the general tendency of the case-law to extend the scope of judicial protection in response to the growth of powers of the Community institutions (*ERTA*, *Les Verts*, *Chernobyl*);
- (5) The objections to enlarging standing are unconvincing. In particular:
- the wording of Article 230 EC does not preclude it;
 - to insulate potentially unlawful measures from judicial scrutiny cannot be justified on grounds of administrative or legislative efficiency: protection of the legislative process must be achieved through appropriate substantive standards of review;
 - the fears of over-loading the Court of First Instance seem exaggerated since the time-limit in Article 230(5) EC and the requirement of direct concern will prevent an insuperable increase of the case-load; there are procedural means to deal with a more limited increase of cases.
- (6) The chief objection may be that the case-law has stood for many years. There are however a number of reasons why the time is now ripe for change. In particular:
- the case-law in many borderline cases is not stable, and has been in any event relaxed in recent years, with the result that decisions on admissibility have become increasingly complex and unpredictable;
 - the case-law is increasingly out of line with more liberal developments in the laws of the Member States;
 - the establishment of the Court of First Instance, and the progressive transfer to that Court of all actions brought by individuals, make it increasingly appropriate to enlarge the standing of individuals to challenge general measures;

- the Court's case-law on the principle of effective judicial protection in the national courts makes it increasingly difficult to justify narrow restrictions on standing before the Community Courts.

103 For all of those reasons I conclude that an individual should be regarded as individually concerned within the meaning of the fourth paragraph of Article 230 EC by a Community measure where, by reason of his particular circumstances, the measure has, or is liable to have, a substantial adverse effect on his interests.

LA CONVENTION EUROPÉENNE
LE SECRÉTARIAT

Brussels, 1 Octobre 2002

Working Group II

Working document 21

"Working group II "Incorporation of the Charter/ accession to the ECHR"

du :	The Secretariat
au :	Working Group II
Objet:	The question of effective judicial remedies and access of individuals to the European Court of Justice

The members of the Group will find attached WD 021 from Mr. António Vitorino, Chairman of the Working Group.

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I. Introduction

1. One remaining subject for examination by the Working Group is the question whether the current system of judicial remedies of individuals against acts of the institutions needs to be reformed in the light of the fundamental right to effective judicial protection as recognised by case-law of the Court of Justice and restated in Article 47 of the Charter¹. As explained in doc. CONV 116/02, this issue has been subject to controversial debate among legal scholars and practitioners for quite some time independently of the Charter, although the drafting of the Charter has revived the discussion. CONV 116/02 also recalls the arguments of those who advocate liberalising the conditions of direct access of individuals to the Court of Justice (as currently laid down in Article 230 § 4 TEC), as well as of those arguing that the Community possesses, in principle, a complete system of remedies which provides effective judicial protection, according to circumstances, either through direct action in accordance with Article 230 § 4 TEC or through action in national courts which may - or even must - make a preliminary reference to the Court of Justice under Article 234 TEC.
2. Doc. CONV 116/02 further mentions a particular case which, under the current system of remedies, has meanwhile widely been recognised as problematic against the background of the fundamental right of effective judicial protection. That is the case of a "self-executing" Community regulation which imposes a directly applicable prohibition without the need for a national implementing act, thus forcing an individual wishing to assert his or her rights first to violate Community law and to appeal against the sanction which might be applied by national authorities against such a violation.² In its recent judgment "*Jégo-Quéré*"³ concerning precisely such a case, the Court of First Instance, departing from the previous "*Plaumann*" case-law of the Court of Justice⁴, which it deemed too restrictive, admitted an action by an

¹ See point 3 of the Group's mandate (doc. CONV 72/02) and developed in further detail in document CONV 116 (Section II 6, especially (c), pp. 15 et seq.).

² It should be noted that the same situation may occur in Member States' laws. While according to some legal systems, individuals submitted to a prohibition by national laws or regulations are obliged to incur a sanction in order to seize a judge, other legal systems have devised alternative techniques permitting individuals to obtain a "preventive" judicial injunction or statement in order to protect their rights against the law or regulation in cause.

³ Judgment of 3 May 2002, T-177/01, *Jégo-Quéré v. Commission*.

⁴ Line of cases developed since the case *Plaumann*, Case 25/62, ECR 197, explained in doc 116/02, page 15 Footnote 2.

individual against a Community regulation, invoking the right to seize a judge. However, the Court of Justice, in its judgment of 25 July 2002 "*Union de Pequeños Agricultores*"⁵, confirmed its interpretation of Article 230 § 4 TEC and made it clear that, while it is possible to envisage a system of judicial review of the legality of Community measures of general application different from that established by the Treaty, it is for the Member States, if necessary, in accordance with Article 48 TEU, to reform the system currently in force.

3. Another issue examined in doc. CONV 116/02⁶ which should be recalled without however needing further in-depth analysis in this paper, relates to the jurisdiction of the Court in the fields of Justice and Home affairs. While this issue goes beyond questions of fundamental rights and will therefore be treated in more detail in the newly constituted Working Group X, this group should take note of expert authority presented to it⁷, expressing concern about the current restrictions of jurisdiction of the Court in this area which is particularly sensitive to fundamental rights, including not least the risk that, whether or not the Union acceded to the ECHR, Union law and acts of the institutions in this area are exposed to appeal before the Strasbourg Court where the Court of Justice is prevented from exercising efficient control. The group may therefore wish to make a general comment, from a fundamental rights perspective, with regard to this issue.

II. Options for possible further action

4. On the basis of the above, the purpose of this paper is to present three main options for possible further action on Treaty level.

Option A: A special remedy based on alleged violations of fundamental rights ("Verfassungsbeschwerde"; "recurso de amparo")

⁵ Case C-50/00 P, *Union de Pequeños Agricultores*.

⁶ Doc. CONV 116/02, Section II 6 (b), pp. 14 et seq.

⁷ See the hearings of Judge Skouris (WD 19) and of Judge Fischbach on 17 September 2002; hearing of Mr. Schoo of 23 July 2002 (WD 13); WD 20 of Mr. Ben Fayot presenting a note by Advocate-General Francis Jacobs on this issue. See also WD 06 of Mrs. Paciotti.

5. This option, which has been proposed for quite some time and was mentioned in the report of the Court of Justice of May 1995 (prior to the Intergovernmental Conference leading to the Treaty of Amsterdam), would consist of the introduction of a new special action enabling individuals to challenge Community acts, including those of general application (i.e. of legislative or "regulatory" character), directly in the Court of Justice; the causes of action would however be limited to alleged violations of the applicants' fundamental rights. Models for such an action are to be found in the law of certain Member States such as Germany and Spain.
6. Advocates of that model argue that it would allow to leave intact the "normal" system of direct actions as established by Article 230 § 4 TEC focusing on individual acts of administrative character, and to add a special remedy of truly constitutional character. Critics however doubt notably whether it would be possible or convincing to distinguish alleged violations of fundamental rights from other violations of law serving as causes of action under Article 230 TEC. They point to experience in Germany suggesting that it is possible in almost all cases to express an alleged illegality also in terms of a fundamental rights violation, given the large scope of a number of fundamental rights in modern constitutional law (e.g., freedom of occupation or to conduct a business, property, respect for private life...). According to these critics, the relationship between such a special "constitutional" action and the ordinary system of remedies in Article 230 § 4 TEC could be difficult to establish, especially if the "constitutional" action were to be introduced directly before the Court of Justice and not before the Court of First Instance.⁸
7. For the sake of completeness, it should be recalled that possible accession to the European Convention on Human Rights would give individuals an additional judicial remedy based on fundamental rights, although by an external jurisdiction, against acts of the Union.

Option B: Amendment to Article 230 § 4 TEC:

8. A second option would be to amend the current wording of Article 230 § 4 TEC, in order to alleviate the rigidity currently resulting from the condition of "individual concern" in Article

⁸ For these considerations, see also the points made by Judge Skouris at the hearing on 17 September 2002, WD N° 19.

230 § 4 TEC where an applicant wishes to challenge "self-executing" Community acts of general application.⁹

9. Several possibilities of wording have been proposed or could be conceived to that effect, as described below. One criterion for their appreciation by the group could be in how far they would in practice open up access to the Court of First Instance and therefore lead to a shift in the current division of tasks between the Community jurisdiction and national courts (according to which in most cases *national* courts, acting as "judges of Community law", scrutinise the legality of Community acts and, in case of doubt, are empowered or even obliged to make preliminary references under Article 234 TEC to the Court of Justice, whereas direct access to the Community Courts under Article 230 § 4 TEC is narrowly circumscribed). It should be stressed that valid arguments have been put forward both in favour of a stronger centralisation of judicial protection against Community acts at the level of the Community courts, and in favour of maintaining, in principle, the current division of work. Furthermore, some argue that enlarging too much the right of action under Article 230 § 4 TEC could open legislative acts to challenge by a vast number of individuals, whereas the law of several Member States protects legislation from such challenges and other Member States have established a *special* constitutional remedy ("Verfassungsbeschwerde", "recurso de amparo") covering legislative acts.¹⁰
10. a) A suggestion made by a Convention member is to convert the conditions of "direct" and "individual" concern in Article 230 § 4 TEC into *alternative* criteria (i.e. "direct *or* individual concern")¹¹. A very similar result would be achieved by simple deletion of the words "...and individual..." in Article 230 § 4 TEC as proposed by another Convention Member¹². It appears

⁹ For proposals or arguments in that direction, see WD N° 17 by Jürgen Meyer; CONV 45/02 CONTRIB 25 by Hannes Farnleitner; Judge Skouris at the hearing on 17 September (WD N° 19); note from Advocate General Jacobs (see WD N° 20 of Mr. Fayot).

¹⁰ An issue which would require careful consideration in case of a possible enlargement of direct access to the Court under Article 230 § 4 against acts of general application, but also in case of a possible "Verfassungsbeschwerde", would be how such enlarged direct remedies would relate to the case law on the Court of Justice according to which those who "without any doubt" could have challenged an act under Article 230 § 4 TEC but did not do so, can no longer invoke implicitly its illegality (Article 241) in further proceedings, see Case 92/78, Simmenthal, 1979 ECR 777, C-188/92, Textilwerke Deggendorf, 1994 ECR 833.

¹¹ Working document N° 17 by Jürgen Meyer.

¹² Doc. CONV 45/02 CONTRIB 25 by Hannes Farnleitner.

that this solution could lead to a rather significant opening-up of direct access of individuals to the Court of First Instance and thus to a shift in the present division of tasks.

11. b) Alternatively, one could think of an amendment leaving the basic structure of Article 230 § 4 TEC unchanged while adding language opening-up access exceptionally in cases of Community acts of general application where is no act of implementation against which the applicant could adequately seek judicial protection on national level. The test proposed by the Court of First Instance in the *Jégo-Quéré* judgment seems to be formulated with that intention¹³; yet it may be asked whether the limits proposed are sufficiently precise to provide guidance for the practice of the Court. A stricter and more objective formula would consist of adding, at the end of current Article 230 § 4 TEC, the words "or against an act of general application which is of direct concern to the applicant without calling for a measure of implementation" (...*"contre un acte de portée générale qui la concernent directement sans comporter une mesure d'exécution"*). In a similar vein, one could provide for direct actions against an act of general application which are of direct concern to the applicant "where there is no [adequate] remedy before a national court or tribunal".¹⁴
12. The aim of the latter formulae would be to preserve the global division of work between courts on European and on national level, and to remedy only such exceptional situations where currently there is no protection on either level.

Option C: Enshrining an obligation of Member States to provide for effective rights of action before their courts

¹³ According to that test, an individual could seise the Court also (i.e., besides the case of individual acts) against a Community measure of general application "*that concerns him (i.e. the applicant) directly if the measure in question affects his legal position, in a manner which is both definite and immediate, by restricting his rights or by imposing obligations on him*".

¹⁴ It should be born in mind that this formula could oblige the Community Courts to interpret, to a certain extent, national procedural law in particular cases (see the critical remark by Judge Skouris at the hearing of 17 September WD N° 19). It has also been observed that the Court already appreciates national procedural law, for example when judging whether a body qualifies as court or tribunal within the meaning of Article 234 or whether an action for compensation under Article 235 TEC might be barred because national rights of action *providing an effective means of protection* have not been exhausted, see Case 175/84, Krohn v. Commission, 1986 ECR 753.

13. Under this option, the rights of direct action of individuals before the European Courts would not be enlarged. Instead, the new constitutional treaty could contain a provision on the obligation of Member States to provide for remedies by their courts ensuring effective judicial protection for the rights guaranteed by Union law. A proposal in that sense is notably included in the contribution tabled by the European Ombudsman, Mr. Söderman.¹⁵ Such a provision would merely codify existing case law of the European Court of Justice¹⁶. However, an express provision in the constitutional Treaty, thus enshrining the obligation of Member States to contribute to a complete system of judicial remedies in the European Union, would underline the Member States' responsibility in this area, while respecting the principle of procedural autonomy, and facilitate such reforms to the national procedural systems as may prove necessary. One could therefore hope that both a liberal interpretation by the Court of Article 230 § 4 TEC and evolutions in the national procedural systems may over time help eliminate existing lacunae in judicial protection against Community acts. It has also been argued that such a solution would best correspond to the principle of subsidiarity. On the other hand, it must be understood that such a Treaty provision might not necessarily permit to provide effective judicial protection in each individual case where a lacuna becomes manifest.

¹⁵ See doc. CONV 221/02, Article "b", paragraph 2, of the Chapter on "Remedies". Attention is also drawn to the proposal made in this document to introduce a new action by the Ombudsman before the Court of Justice. This proposal is not analysed in detail here since it does not concern the right of individuals to judicial protection discussed in this paper.

¹⁶ See judgment of 25 July 2002, pts. 41, 42: "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. In that context, in accordance with the principle of sincere cooperation laid down in Article 5 of the Treaty, national courts are required, so far as possible, to interpret and apply national procedural rules governing the exercise of rights of action in a way that enables natural and legal persons to challenge before the courts the legality of any decision or other national measure relative to the application to them of a Community act of general application, by pleading the invalidity of such an act." See also CFI, Case 172/98, Salamander etc. / Council and Parliament, pt. 74: "Pursuant to the principle of genuine cooperation set out in Article 5 of the Treaty, Member States must help to ensure that the system of legal remedies and procedures established by the EC Treaty and designed to permit the Community judicature to review the lawfulness of acts of the Community institutions is comprehensive."

LA CONVENTION EUROPÉENNE
LE SECRÉTARIAT

Bruxelles, 3 octobre 2002

Working Group II

Working document 22

Groupe de travail II "Intégration de la Charte/adhésion à la CEDH"

du : Secretariat

au : Groupe de travail II

Objet: "Projet de constitution de l'Union européenne"

Les Membres du Groupe de travail trouveront ci-joint WD 022 présenté par Mme Elena Paciotti, par lequel elle transmet aux Membres du Groupe un projet de Constitution de l'Union basé sur les résolutions du Parlement européen. Le Titre I contient ses suggestions d'adaptations techniques au texte de la Charte, nécessaires pour son intégration dans un texte constitutionnel.

PROJET DE CONSTITUTION DE L'UNION EUROPENNE

Une proposition basée sur les résolutions du Parlement européen

PRESENTATION

Ce document représente une tentative de traduire en texte cohérent les délibérations du Parlement européen en matière de Constitution de l'Union européenne et de réforme des Traités.

En synthèse, en suivant les indications qui résultent des résolutions successives adoptées par le Parlement européen, nous avons essayé d'intégrer dans un texte unique les normes à caractère constitutionnel contenues dans les Traités en vigueur, en y apportant les innovations souhaitées par le Parlement.

Ce document veut représenter la première partie d'un nouveau traité de l'Union - la Constitution de l'Union européenne - dont la deuxième partie devrait se composer de toutes les autres normes, coordonnées de la même façon dans un texte unique consolidé des Traités en vigueur.

Ce texte contient beaucoup d'éléments nouveaux : la Charte des droits fondamentaux est incorporée dans le texte de la Constitution ; la distinction entre Communauté et Union disparaît ; le système institutionnel est simplifié et clarifié ; les procédures de révision de la Constitution et du Traité sont différenciées.

Nous avons cependant dû renoncer à toute autre proposition innovatrice utile à la rédaction d'un texte constitutionnel autonome, en l'absence de résolutions appropriées du Parlement européen.

Il ne s'agit donc pas de la proposition d'une personne ni d'un groupe politique, mais d'un exercice technique de traduction en pratique de propositions qui ont déjà été votées avec une très large majorité par le Parlement européen.

Le résultat peut constituer un instrument utile pour rendre plus spécifique et concrète la discussion en cours sur une future Constitution de l'Union européenne et peut ainsi contribuer aux travaux de la Convention sur l'avenir de l'Europe.

Ce projet voit le jour avec une initiative d'Elena Paciotti, députée au Parlement européen et présidente de la Fondazione Basso, qui a coordonnée les travaux. Le texte a été rédigé par Federico Petrangeli, de l'Université de Milan, et Valentina Bazzocchi, de l'Université de Bologne. Le texte a été discuté par les membres de l'Observatoire sur l'Europe de la Fondazione Basso, qui ont fait des suggestions et donné des impulsions. La version française a été éditée par Ludovica Zagrebelsky.

N.B.:

Le point de départ de ce travail est le texte consolidé des Traités modifiés à la lumière du Traité de Nice : sont indiquées en note les références ponctuelles. Le caractère italique gras met en évidence les modifications proposées par le Parlement européen : les résolutions en question sont indiquées en note avec la date d'adoption, le titre et le nom du rapporteur. Le caractère italique met en évidence les modifications introduites par les auteurs pour des raisons de coordination.

octobre 2002

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RAPPELANT l'importance historique de la fin de la séparation du continent européen et la nécessité de créer des bases solides pour la construction de l'Europe de l'avenir, ***dans une perspective de développement de type fédéral²***

SOULIGNANT que l'appartenance à l'Union européenne est fondée sur des valeurs communes aux peuples qui la composent, inscrits dans la Charte des droits fondamentaux de l'Union³

DESIREUX de renforcer la solidarité entre ces peuples dans le respect de leurs diversités, de leur histoire, de leur culture, de leur langue et de leurs structures institutionnelles et politiques⁴,

¹ Le préambule est tiré des préambules des TCE et TUE, en éliminant les parties qui, dans leur substance, sont déjà présentes dans le préambule de la Charte

² Ajout tiré de l'alinéa 1 du "Projet Herman" de 1994 (Résolution du Parlement européen sur la fondation de l'Union européenne avec en annexe le "Projet de Constitution de l'Union européenne" du 10 février 1994)

³ Nouvelle écriture de l'alinéa 2 du Préambule du "projet Herman" de 1994 en ajoutant une référence à la Charte des droits fondamentaux.

⁴ Nouvelle écriture de l'alinéa 3 du Préambule du "projet Herman" de 1994.

DESIREUX de garantir aux citoyens et à ceux qui résident dans l'Union européenne de meilleures conditions de vie et un rôle actif dans le développement économique et social⁵

DETERMINE à promouvoir le progrès économique et social de leurs peuples, ***et à renforcer le modèle social européen⁶***, compte tenu du principe du développement durable dans le cadre de l'achèvement du marché intérieur, et du renforcement de la cohésion et de la protection de l'environnement

RESOLUS à renforcer leurs économies ainsi qu'à en assurer la convergence, et à établir une union économique et monétaire, comportant une monnaie unique et stable,

RESOLUS à mettre en œuvre une politique étrangère et de sécurité commune prévoyant *la définition et la mise en œuvre progressive⁷* d'une politique de défense commune, renforçant ainsi l'identité de l'Europe et son indépendance afin de promouvoir la paix, la sécurité et le progrès en Europe et dans le monde,

RESOLUS à faciliter la libre circulation des personnes, tout en assurant la sûreté et la sécurité de leurs peuples, en établissant un espace de liberté, de sécurité et de justice,

LES ETATS MEMBRES ET LES PEUPLES DE L'UNION EUROPEENNE ADOPTENT LA CONSTITUTION ET LE TRAITÉ SUIVANTS⁸ :

A. CONSTITUTION DE L'UNION

⁵ Nouvelle écriture de l'alinéa 5 du Préambule du "projet Herman" de 1994.

⁶ Ajouté conformément à 16.05.2002, Délimitation des compétences entre l'Union européenne et les Etats membres (Lamassoure), par.8.

⁷ On dépasse le caractère simplement éventuel de la définition de la politique de défense.

⁸ Cette formulation est tirée des résolutions du Parlement européen qui affirment la double légitimité de l'Union, en tant qu'union d'Etats et en tant qu'union de peuples ; 07.02.2002, Relations PE/parlements nationaux dans la construction européenne (Napolitano), par. 18 et 25.10.2001, Réforme du Conseil (Poos) par. 2. Comme il a été indiqué dans la présentation, ce travail ne se rapporte qu'à la partie constitutionnelle.

TITRE I

LA CHARTE DES DROITS FONDAMENTAUX DE L'UNION⁹

PRÉAMBULE

Les peuples de l'Europe, en établissant entre eux une union sans cesse plus étroite, ont décidé de partager un avenir pacifique fondé sur des valeurs communes.

Consciente de son patrimoine spirituel et moral, l'Union se fonde sur les valeurs indivisibles et universelles de dignité humaine, de liberté, d'égalité et de solidarité ; elle repose sur le principe de la démocratie et de l'Etat de droit. Elle place la personne au cœur de son action en instituant la citoyenneté de l'Union et en créant un espace de liberté, de sécurité et de justice.

L'Union contribue à la préservation et au développement de ces valeurs communes dans le respect de la diversité des cultures et des traditions des peuples de l'Europe, ainsi que de l'identité nationale des Etats membres et de l'organisation de leurs pouvoirs publics au niveau national, régional et local ; elle cherche à promouvoir un développement équilibré et durable et assure la libre circulation des personnes, des biens, des services et des capitaux, ainsi que la liberté d'établissement.

A cette fin, il est nécessaire, en les rendant plus visibles dans une Charte, de renforcer la protection des droits fondamentaux à la lumière de l'évolution de la société, du progrès social et des développements scientifiques et technologiques.

La présente Charte réaffirme, dans le respect des compétences et des tâches *de l'Union*¹⁰, ainsi que du principe de subsidiarité, les droits qui résultent notamment des traditions constitutionnelles et des obligations internationales communes aux Etats membres, *de cette Constitution et du Traité*, de la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, des Chartes sociales adoptées par la Communauté et par le Conseil de l'Europe, ainsi que de la jurisprudence de la Cour de justice des [Communautés européennes]¹¹ et de la Cour européenne des droits de l'homme.

La jouissance de ces droits entraîne des responsabilités et des devoirs tant à l'égard d'autrui qu'à l'égard de la communauté humaine et des générations futures.

En conséquence, l'Union reconnaît les droits, les libertés et les principes énoncés ci-après.

CHAPITRE I - DIGNITÉ

⁹ 31.05.2001, Traité de Nice et futur de l'Union (Mendez de Vigo - Seguro) par.9.

¹⁰ Les parties en italique sont modifiées en fonction de la nouvelle structure de la constitution

¹¹ Dans ce texte on emploie la dénomination Cour de justice.

Article 1. Dignité humaine

La dignité humaine est inviolable. Elle doit être respectée et protégée.

Article 2. Droit à la vie

1. Toute personne a droit à la vie.
2. Nul ne peut être condamné à la peine de mort, ni exécuté.

Article 3. Droit à l'intégrité de la personne

1. Toute personne a droit à son intégrité physique et mentale.
2. Dans le cadre de la médecine et de la biologie, doivent notamment être respectés :
 - le consentement libre et éclairé de la personne concernée, selon les modalités définies par la loi,
 - l'interdiction des pratiques eugéniques, notamment celles qui ont pour but la sélection des personnes,
 - l'interdiction de faire du corps humain et de ses parties, en tant que tels, une source de profit,
 - l'interdiction du clonage reproductif des être humains.

Article 4. Interdiction de la torture et des peines ou traitements inhumains ou dégradants

Nul ne peut être soumis à la torture, ni à des peines ou traitements inhumains ou dégradants.

Article 5. Interdiction de l'esclavage et du travail forcé

1. Nul ne peut être tenu en esclavage ni en servitude.
2. Nul ne peut être astreint à accomplir un travail forcé ou obligatoire.
3. La traite des être humains est interdite.

CHAPITRE II - LIBERTÉS**Article 6. Droit à la liberté et à la sûreté**

Toute personne a droit à la liberté et à la sûreté.

Article 7. Respect de la vie privée et familiale

Toute personne a droit au respect de sa vie privée et familiale, de son domicile et de ses communications.

Article 8. Protection des données à caractère personnel

1. Toute personne a droit à la protection des données à caractère personnel la concernant.
2. Ces données doivent être traitées loyalement, à des fins déterminées et sur la base du consentement de la personne concernée ou en vertu d'un autre fondement légitime prévu par la loi. Toute personne a le droit d'accéder aux données collectées la concernant et d'en obtenir la rectification.
3. Le respect de ces règles est soumis au contrôle d'une autorité indépendante.

Article 9. Droit de se marier et de fonder une famille

Le droit de se marier et le droit de fonder une famille sont garantis selon les lois nationales qui en régissent l'exercice.

Article 10. Liberté de pensée, de conscience et de religion

1. Toute personne a droit à la liberté de pensée, de conscience et de religion. Ce droit implique la liberté de changer de religion ou de conviction, ainsi que la liberté de manifester sa religion ou sa conviction individuellement ou collectivement, en public ou en privé, par le culte, l'enseignement, les pratiques et l'accomplissement des rites.
2. Le droit à l'objection de conscience est reconnu selon les lois nationales qui en régissent l'exercice.

Article 11. Liberté d'expression et d'information

1. Toute personne a droit à la liberté d'expression. Ce droit comprend la liberté d'opinion et la liberté de recevoir ou de communiquer des informations ou des idées sans qu'il puisse y avoir ingérence d'autorités publiques et sans considération de frontières.

2. La liberté des médias et leur pluralisme sont respectés.

Article 12. Liberté de réunion et d'association

1. Toute personne a droit à la liberté de réunion pacifique et à la liberté d'association à tous les niveaux, notamment dans les domaines politique, syndical et civique, ce qui implique le droit de toute personne de fonder avec d'autres syndicats et de s'y affilier pour la défense de ses intérêts.

2. Les partis politiques au niveau de l'union contribuent à l'expression de la volonté politique des citoyens de l'union.

Article 13. Liberté des arts et des sciences

Les arts et la recherche scientifique sont libres. La liberté académique est respectée.

Article 14. Droit à l'éducation

1. Toute personne a droit à l'éducation, ainsi qu'à l'accès à la formation professionnelle et continue.

2. Ce droit comporte la faculté de suivre gratuitement l'enseignement obligatoire.

3. La liberté de créer des établissements d'enseignement dans le respect des principes démocratiques, ainsi que le droit des parents d'assurer l'éducation et l'enseignement de leurs enfants conformément à leurs convictions religieuses, philosophiques et pédagogiques, sont respectées selon les lois nationales qui en régissent l'exercice.

Article 15. Liberté professionnelle et droit de travailler

1. Toute personne a le droit de travailler et d'exercer une profession librement choisie ou acceptée.

2. Tout citoyen ou toute citoyenne de l'union a la liberté de chercher un emploi, de travailler, de s'établir ou de fournir des services dans tout Etat membre.

3. Les ressortissants des pays tiers qui sont autorisés à travailler sur le territoire des Etats membres ont droit à des conditions de travail équivalentes à celles dont bénéficient les citoyens ou citoyennes de l'union.

Article 16. Liberté d'entreprise

La liberté d'entreprise est reconnue conformément au droit communautaire et aux législations et pratiques nationales.

Article 17. Droit de propriété

1. Toute personne a le droit de jouir de la propriété des biens qu'elle a acquis légalement, de les utiliser, d'en disposer et de les léguer. Nul ne peut être privé de sa propriété, si ce n'est pour cause d'utilité publique, dans les cas et conditions prévus par une loi et moyennant en temps utile une juste indemnité pour sa perte. L'usage des biens peut être réglementé par la loi dans la mesure nécessaire à l'intérêt général.
2. La propriété intellectuelle est protégée.

Article 18. Droit d'asile

Le droit d'asile est garanti dans le respect des règles de la convention de Genève du 28 juillet 1951 et du protocole du 31 janvier 1976 relatifs au statut des réfugiés et conformément au *Traité*.

Article 19. Protection en cas d'éloignement, d'expulsion et d'extradition

1. Les expulsions collectives sont interdites
2. Nul ne peut être éloigné, expulsé ou extradé vers un Etat où il existe un risque sérieux qu'il soit soumis à la peine de mort, à la torture ou à d'autres peines ou traitements inhumains ou dégradants.

CHAPITRE III - ÉGALITÉ

Article 20. Egalité en droit

Toutes les personnes sont égales en droit.

Article 21. Non-discrimination

1. Est interdite toute discrimination fondée notamment sur le sexe, la race, la couleur, les origines ethniques ou sociales, les caractéristiques génétiques, la langue, la religion ou les convictions, les opinions politiques ou toute autre opinion, l'appartenance à une minorité nationale, la fortune, la naissance, un handicap, l'âge ou l'orientation sexuelle.
2. Dans le domaine de l'application de la *Constitution et du Traité*, et sans préjudice des dispositions particulières *du Traité* toute discrimination fondée sur la nationalité est interdite.

Article 22. Diversité culturelle, religieuse et linguistique

L'Union respecte la diversité culturelle, religieuse et linguistique.

Article 23. Égalité entre hommes et femmes

L'égalité entre les hommes et les femmes doit être assurée dans tous les domaines, y compris en matière d'emploi, de travail et de rémunération.

Le principe de l'égalité n'empêche pas le maintien ou l'adoption de mesures prévoyant des avantages spécifiques en faveur du sexe sous-représenté.

Article 24. Droits de l'enfant

1. Les enfants ont droit à la protection et aux soins nécessaires à leur bien-être. Ils peuvent exprimer leur opinion librement. Celle-ci est prise en considération pour les sujets qui les concernent, en fonction de leur âge et de leur maturité.
2. Dans tous les actes relatifs aux enfants, qu'ils soient accomplis par des autorités publiques ou des institutions privées, l'intérêt supérieur de l'enfant doit être une considération primordiale.
3. Tout enfant a le droit d'entretenir régulièrement des relations personnelles et des contacts directs avec ses deux parents, sauf si cela est contraire à son intérêt.

Article 25. Droits des personnes âgées

L'Union reconnaît et respecte le droit des personnes âgées à mener une vie digne et indépendante et à participer à la vie sociale et culturelle.

Article 26. Intégration des personnes handicapées

L'Union reconnaît et respecte le droit des personnes handicapées à bénéficier de mesures visant à assurer leur autonomie, leur intégration sociale et professionnelle et leur participation à la vie de la communauté.

CHAPITRE IV - SOLIDARITÉ

Article 27. Droit à l'information et à la consultation des travailleurs au sein de l'entreprise

Les travailleurs ou leurs représentants doivent se voir garantir, aux niveaux appropriés, une information et une consultation en temps utile, dans les cas et conditions prévus par le droit de l'Union et les législations et pratiques nationales.

Article 28. Droit de négociation et d'actions collectives

Les travailleurs et les employeurs, ou leurs organisations respectives, ont, conformément au droit de l'Union et aux législations et pratiques nationales, le droit de négocier et de conclure des conventions collectives aux niveaux appropriés et de recourir, en cas de conflits d'intérêts, à des actions collectives pour la défense de leurs intérêts, y compris la grève.

Article 29. Droit d'accès aux services de placement

Toute personne a le droit d'accéder à un service gratuit de placement.

Article 30. Protection en cas de licenciement injustifié

Tout travailleur a droit à une protection contre tout licenciement injustifié, conformément au droit de l'Union et aux législations et pratiques nationales.

Article 31. Conditions de travail justes et équitables

1. Tout travailleur a droit à des conditions de travail qui respectent sa santé, sa sécurité et sa dignité.
2. Tout travailleur a droit à une limitation de la durée maximale du travail et à des périodes de repos journalier et hebdomadaire, ainsi qu'à une période annuelle de congés payés.

Articles 32. Interdiction du travail des enfants et protection des jeunes au travail

Le travail des enfants est interdit. L'âge minimal d'admission au travail ne peut être inférieur à l'âge auquel cesse la période de scolarité obligatoire, sans préjudice des règles plus favorables aux jeunes et sauf dérogations limitées.

Les jeunes admis au travail doivent bénéficier de conditions de travail adaptées à leur âge et être protégés contre l'exploitation économique ou contre tout travail susceptible de nuire à leur sécurité, à leur santé, à leur développement physique, mental, moral ou social ou de compromettre leur éducation.

Article 33. Vie familiale et professionnelle

1. La protection de la famille est assurée sur le plan juridique, économique et social.
2. Afin de pouvoir concilier vie familiale et vie professionnelle, toute personne a le droit d'être protégée contre tout licenciement pour un motif lié à la maternité, ainsi que le droit à un congé de maternité payé et à un congé parental à la suite de la naissance ou de l'adoption d'un enfant.

Article 34. Sécurité sociale et aide sociale

1. L'Union reconnaît et respecte le droit d'accès aux prestations de sécurité sociale et aux services sociaux assurant une protection dans des cas tels que la maternité, la maladie, les accidents du travail, la dépendance ou la vieillesse, ainsi qu'en cas de perte d'emploi, selon les modalités établies par le droit communautaire et les législations et pratiques nationales.
2. Toute personne qui réside et se déplace légalement à l'intérieur de l'Union a droit aux prestations de sécurité sociale et aux avantages sociaux, conformément au droit communautaire et aux législations et pratiques nationales.
3. Afin de lutter contre l'exclusion sociale et la pauvreté, l'Union reconnaît et respecte le droit à une aide sociale et à une aide au logement destinées à assurer une existence digne à tous ceux qui ne disposent pas de ressources suffisantes, selon les modalités établies par le droit communautaire et les législations et pratiques nationales.

Article 35. Protection de la santé

Toute personne a le droit d'accéder à la prévention en matière de santé et de bénéficier de soins médicaux dans les conditions établies par les législations et pratiques nationales. Un niveau élevé de protection de la santé humaine est assuré dans la définition et la mise en œuvre de toutes les politiques et actions de l'Union.

Article 36. Accès aux services d'intérêt économique général

L'Union reconnaît et respecte l'accès aux services d'intérêt économique général tel qu'il est prévu par les législations et pratiques nationales, *conformément à la Constitution et au Traité*, afin de promouvoir la cohésion sociale et territoriale de l'Union.

Article 37. Protection de l'environnement

Un niveau élevé de protection de l'environnement et l'amélioration de sa qualité doivent être intégrés dans les politiques de l'Union et assurés conformément au principe du développement durable.

Article 38. Protection des consommateurs

Un niveau élevé de protection des consommateurs est assuré dans les politiques de l'Union.

CHAPITRE V - CITOYENNETE**Article 39. Droit de vote et d'éligibilité aux élections du Parlement européen**

1. Tout citoyen ou toute citoyenne de l'Union a le droit de vote et d'éligibilité aux élections au Parlement européen dans l'Etat membre où il ou elle réside, dans les mêmes conditions que les ressortissants de cet Etat.
2. Les membres du Parlement européen sont élus au suffrage universel direct, libre et secret.

Article 40. Droit de vote et d'éligibilité aux élections municipales

Tout citoyen ou toute citoyenne de l'Union a le droit de vote et d'éligibilité aux élections municipales dans l'Etat membre où il ou elle réside, dans les mêmes conditions que les ressortissants de cet Etat.

Article 41. Droit à une bonne administration

1. Toute personne a le droit de voir ses affaires traitées impartialement, équitablement et dans un délai raisonnable par les institutions et organes de l'Union.
2. Ce droit comporte notamment :
 - _ le droit de toute personne d'être entendue avant qu'une mesure individuelle qui l'affecterait défavorablement ne soit prise à son encontre ;
 - le droit d'accès de toute personne au dossier qui la concerne, dans le respect des intérêts légitimes de la confidentialité et du secret professionnel et des affaires ;
 - l'obligation pour l'administration de motiver ses décisions.
3. Toute personne a droit à la réparation par la Communauté des dommages causés par les institutions, ou par leurs agents dans l'exercice de leurs fonctions, conformément aux principes généraux communs aux droits des Etats membres.
4. Toute personne peut s'adresser aux institutions de l'Union dans une des langues *du Traité* et doit recevoir une réponse dans la même langue.

Article 42. Droit d'accès aux documents

Tout citoyen ou toute citoyenne de l'Union ou toute personne physique ou morale résidant ou ayant son siège statutaire dans un Etat membre a un droit d'accès aux documents du Parlement européen, du Conseil et de la commission.

Article 43. Médiateur

Tout citoyen ou toute citoyenne de l'Union ou toute personne physique ou morale résidant ou ayant son siège statutaire dans un Etat membre a le droit de saisir le médiateur de l'union de cas de mauvaise administration dans l'action des institutions ou organes de l'Union, à l'exclusion de la Cour de justice et du Tribunal de première instance dans l'exercice de leurs fonctions juridictionnelles.

Article 44. Droit de pétition

Tout citoyen ou toute citoyenne de l'Union ou toute personne physique ou morale résidant ou ayant son siège statutaire dans un Etat membre a le droit de pétition devant le Parlement européen.

Article 45. Liberté de circulation et de séjour

1. Tout citoyen ou toute citoyenne de l'Union a le droit de circuler et de séjourner librement sur le territoire des Etats membres.
2. La liberté de circulation et de séjour peut être accordée, conformément à *la Constitution et au Traité*, aux ressortissants de pays tiers résidant légalement sur le territoire d'un Etat membre.

Article 46. Protection diplomatique et consulaire

Tout citoyen de l'union bénéficie, sur le territoire d'un pays tiers où l'Etat membre dont il est ressortissant n'est pas représenté, de la protection des autorités diplomatiques et consulaires de tout Etat membre dans les mêmes conditions que les nationaux de cet Etat.

CHAPITRE VI - JUSTICE**Article 47. Droit à un recours effectif et à accéder à un tribunal impartial**

Toute personne dont les droits et libertés garantis par le droit de l'Union ont été violés a droit à un recours effectif devant un tribunal dans le respect des conditions prévues au présent article.

Toute personne a droit à ce que sa cause soit entendue équitablement, publiquement et dans un délai raisonnable par un tribunal indépendant et impartial, établi préalablement par la loi. Toute personne a la possibilité de se faire conseiller, défendre et représenter.

Une aide juridictionnelle est accordée à ceux qui ne disposent pas de ressources suffisantes, dans la mesure où cette aide serait nécessaire pour assurer l'effectivité de l'accès à la justice.

Article 48. Présomption d'innocence et droits de la défense

1. Tout accusé est présumé innocent jusqu'à ce que sa culpabilité ait été légalement établie.
2. Le respect des droits de la défense est garanti à tout accusé.

Article 49. Principe de légalité et de proportionnalité des délits et des peines

1. Nul ne peut être condamné pour une action ou une omission qui, au moment où elle a été commise, ne constituait pas une infraction d'après le droit national ou le droit international. De même, il n'est infligé aucune peine plus forte que celle qui était applicable au moment où l'infraction a été commise.

Si, postérieurement à cette infraction, la loi prévoit une peine plus légère, celle-ci doit être appliquée.

2. Le présent article ne porte pas atteinte au jugement et à la punition d'une personne coupable d'une action ou d'une omission qui, au moment où elle a été commise, était criminelle d'après les principes généraux reconnus par l'ensemble des nations.

3. L'intensité des peines ne doit pas être disproportionnée par rapport à l'infraction.

Article 50. Droit à ne pas être jugé ou puni pénalement deux fois pour une même infraction

Nul ne peut être poursuivi ou puni pénalement en raison d'une infraction pour laquelle il a déjà été acquitté ou condamné dans l'Union par un jugement pénal définitif conformément à la loi.

CHAPITRE 7 - DISPOSITIONS GENERALES**Article 51. Champ d'application**

1. Les dispositions *du présent Titre* s'adressent aux institutions et organes de l'Union dans le respect du principe de subsidiarité, ainsi qu'aux Etats membres uniquement lorsqu'ils mettent en œuvre le droit de l'Union. En conséquence, ils respectent les droits, observent les principes et promeuvent l'application, conformément à leurs compétences respectives.

2. *Le présent Titre* ne crée aucune compétence ni aucune tâche nouvelles pour l'Union et ne modifie pas les compétences et tâches définies *par la Constitution*.

Article 52. Portée des droits garantis

1. Toute limitation de l'exercice des droits et libertés reconnus par la présente charte doit être prévue par la loi et respecter le contenu essentiel desdits droits et libertés. Dans le respect du principe de proportionnalité, des limitations ne peuvent être apportées que si elles sont nécessaires et répondent effectivement à des objectifs d'intérêt général reconnus par l'Union ou au besoin de protection des droits et libertés d'autrui.

2. Les droits reconnus *aux articles 8, 15 alinéas 2 et 3, 18, 21 alinéa 2, 22, 23 alinéa 2, 35, 37, 38, 39, 40, 41 alinéa 3 et 4, 42, 43, 44, 45 et 46* s'exercent dans les conditions et limites définies *par le Traité*¹².

3. Dans la mesure où *le présent Titre* contient des droits correspondant à des droits garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, leur sens et leur portée sont les mêmes que ceux que leur confère ladite convention. Cette disposition ne fait pas obstacle à ce que le droit de l'Union accorde une protection plus étendue.

Article 53. Niveau de protection

Aucune disposition *du présent Titre* ne doit être interprétée comme limitant ou portant atteinte aux droits de l'homme et libertés fondamentales reconnus, dans leur champ d'application respectif, par le droit de l'Union, le droit international et les conventions internationales auxquelles sont parties l'Union ou tous les Etats membres, et notamment la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, ainsi que par les constitutions des Etats membres.

Article 54. Interdiction de l'abus de droit

Aucune des dispositions *du présent Titre* ne doit être interprétée comme impliquant un droit quelconque de se livrer à une activité ou d'accomplir un acte visant à la destruction des droits ou libertés reconnus *au présent Titre* ou à des limitations plus amples des droits et libertés que celles qui sont prévues *par le présent Titre*.

¹²Nouvelle formulation à la suite de l'insertion la Charte dans la Constitution (en tenant compte des explications relatives au texte de la Charte, CHARTE 4471/00 CONVENT 48)

TITRE II

PRINCIPES FONDAMENTAUX ET OBJECTIFS DE L'UNION

Article 55. L'Union européenne¹³

- 1. L'Union européenne est composée des Etats membres et de leurs citoyens. Tout pouvoir de l'Union provient émane de ces derniers.*
- 2. L'Union respecte l'identité historique, culturelle et linguistique des Etats membres, ainsi que leur structure constitutionnelle. Elle exerce ses pouvoirs et ses compétences sur base des principes de subsidiarité et proportionnalité et de transparence¹⁴.*
- 3. L'Union a la personnalité juridique et se donne les moyens nécessaires pour poursuivre ses objectifs et mettre en œuvre ses politiques.*
- 4. Le droit de l'Union, conforme à la Constitution, prévaut sur le droit des Etats membres.*

Article 56. Les principes de l'Union

- 1. L'Union se base sur les principes de liberté, démocratie, respect des droits de l'homme et des libertés fondamentales et de l'Etat de droit, principes qui sont communs aux Etats membres et qui sont exprimés au Titre I¹⁵.*
- 2. L'Union fait siens les principes de la Charte des Nations Unies, promeut le maintien de la paix, le développement et le renforcement de la démocratie et de l'Etat de droit, le respect et la tutelle des droits de l'homme en Europe et dans le monde, participe aux organisations internationales qui poursuivent cet objectif.¹⁶*

Article 57. Les objectifs de l'Union¹⁷

1. L'Union se donne pour objectifs :

¹³ Remaniement de l'art. 1 du projet Herman de 1994

¹⁴ Intégration du principe de transparence prévu à l'article 1 TUE.

¹⁵ Art 6.1 TUE en ajoutant la référence à la Charte des droits fondamentaux.

¹⁶ Nouvelle écriture de l'article 11 TUE tel que modifié par 17.04.2001, avis sur la répartition des compétences entre l'Union européenne et les Etats membres (Newton Dunn), conclusions par. 6 a) et par 31.05.2001, Traité de Nice et futur de l'Union (Mendez de Vigo, Seguro), par. 15b).

¹⁷ Art. 2 TUE, avec les ajouts tirés de l'art. 2 TCE, de l'art. 11 TUE et de l'art. 29 TUE

- a) de promouvoir le progrès économique et social, un haut degré de compétitivité et de convergence des résultats économiques, et un niveau d'emploi et de protection sociale élevés, et de parvenir à un développement équilibré et durable, notamment par la création d'un espace sans frontières intérieures, par le renforcement de la cohésion économique et sociale et par l'établissement d'une union économique et monétaire *avec* une monnaie unique,
- b) de garantir un niveau élevé de protection de l'environnement et l'amélioration de la qualité de ce dernier, l'amélioration du niveau et de la qualité de la vie,
- c) d'affirmer son identité sur la scène internationale *à travers la recherche des finalités et l'affirmation des principes de l'article précédent ; de défendre* les valeurs communes, les intérêts fondamentaux, l'indépendance et l'intégrité de l'Union ; renforcer la sécurité de l'Union sous toutes ses formes ; promouvoir la coopération internationale ;
- d) de renforcer la protection des droits et des intérêts des ressortissants de ses Etats membres ; de maintenir et de développer l'Union en tant qu'espace de liberté, de sécurité et de justice au sein duquel est assurée la libre circulation des personnes avec un niveau élevé de sécurité au travers de la prévention et de la lutte contre la criminalité, le racisme et la xénophobie.

Article 58. Citoyenneté de l'Union¹⁸

1. Il est institué une citoyenneté de l'Union. Est citoyen de l'Union toute personne ayant la nationalité d'un Etat membre. La citoyenneté de l'Union *complète* la citoyenneté nationale et ne la remplace pas.

2. *Les citoyens de l'Union participent à sa vie politique dans les formes prévues par la Constitution et par le Traité ; ils jouissent des droits et sont sujets aux devoirs prévus par le système juridique de l'Union.*

Article 59. Coopération loyale et solidarité¹⁹

1. Les Etats membres adoptent toutes les mesures générales et particulières propres à assurer l'exécution des obligations découlant *de la Constitution et du Traité* ou résultant des actes des institutions de l'Union. Ils facilitent à celle-ci l'accomplissement de sa mission.

¹⁸ Art 17 TCE intégré avec l'art. 3 du "projet Spinelli" de 1984 (Résolution du Parlement européen sur le projet de Traité instituant l'Union européenne du 14 février 1984).

¹⁹ Fusion des art 10 et 49 TCE.

2. Les Etats agissent dans un esprit de loyauté et de solidarité réciproque et s'abstiennent de toutes mesures susceptibles de mettre en péril la réalisation des buts *de la Constitution et du Traité* ou contraires aux intérêts de l'Union.

TITRE III

POLITIQUES ET COMPETENCES DE L'UNION

Article 60. Les politiques de l'Union²⁰

1. Aux fins de l'article 57, a) et b), l'action de l'Union européenne comporte

- a) un marché intérieur caractérisé par l'abolition entre les Etats membre des obstacles à la libre circulation des marchandises, des personnes, des services et des capitaux ;
- b) l'interdiction, entre les Etats membres, des droits de douane et de *toute* restriction à l'entrée et à la sortie des marchandises ;
- c) une politique commerciale commune ;
- d) une politique commune dans les secteurs de l'agriculture et de la pêche ;
- e) une politique commune dans le domaine des transports ;
- f) un régime assurant que la concurrence n'est pas faussée dans le marché intérieur;
- g) le rapprochement des législations nationales dans la mesure nécessaire au fonctionnement du marché *intérieur*²¹ ;
- h) la promotion d'une coordination entre les politiques de l'emploi des Etats membres en vue de renforcer leur efficacité par l'élaboration d'un stratégie coordonnée pour l'emploi ;
- i) une politique dans le domaine social comprenant un Fonds social européen ;
- j) le renforcement de la cohésion économique et sociale ;
- k) une politique dans le secteur de l'environnement ;
- l) le renforcement de la compétitivité de l'industrie communautaire ;
- m) la promotion de la recherche et du développement technologique ;

²⁰ Nouvelle écriture de l'article 3 TCE et des articles 2,12 et 29 TUE avec des ajouts dérivant des articles 61, 62 et 63 TCE.

²¹ On substitue "marché commun" avec "marché intérieur"

- n) l'encouragement à l'établissement et au développement de réseaux transeuropéens ;
- o) une contribution à la réalisation d'un niveau élevé de protection de la santé ;
- p) une contribution à une éducation et à une formation de qualité ainsi qu'à l'épanouissement des cultures des Etats membres ;
- q) une politique dans le domaine de la coopération au développement ;
- r) l'association des pays et territoires d'outre-mer, en vue d'accroître les échanges et de poursuivre en commun l'effort de développement économique et social ;
- s) une contribution au renforcement de la protection des consommateurs ;
- t) des mesure dans le domaine de l'énergie, de la protection civile et du tourisme ;

2. Aux fins de l'article 57, c), l'action de l'Union européenne comporte :

- a) la mise en œuvre d'une politique étrangère et de sécurité commune par la définition de principes et d'orientations communs, la décision de stratégies communes, l'adoption d'actions et de positions communes, la coopération systématique entre les Etats membres pour la conduite de leur politique ;
- b) *la définition progressive d'une politique de sécurité et de défense commune renforcée par une coopération dans le secteur des armements, incluant les missions humanitaires et de secours, les activités de maintien de la paix et les missions d'unités de combat dans la gestion des crises, y compris les mesures tendant au rétablissement de la paix*²².

3. Aux fins de l'article 57, d), l'action de l'Union européenne comporte :

- a) des mesure concernant l'accès et la circulation des personnes ;
- b) des mesures en matière de politique de l'immigration et dans les secteurs des contrôles aux frontières extérieures, de l'asile et de la sauvegarde des droits des citoyens des pays tiers ;
- c) des mesures dans les secteurs de la coopération judiciaire en matière civile et pénale et dans le secteur de la coopération administrative, y compris la reconnaissance des décisions judiciaires et extrajudiciaires ;
- d) des mesures pour la prévention et la répression de la criminalité, organisée ou autre, en particulier le terrorisme, la traite des être humains et les crimes contre les mineurs, le trafic de drogue et d'armes, la corruption et la fraude ;
- e) *la promotion d'une coopération plus étroite entre autorités judiciaires, forces de police, autorités douanières des pays membres, au travers, aussi, d'agences comme Eurojust et Europol* ;²³
- f) le rapprochement, si nécessaire, des normes des Etats membres en matière pénale ;

²² Art. 17 TUE tel que modifié par l'art. 1 du Traité de Nice ; on élimine le caractère simplement éventuel de la définition progressive de la défense commune.

²³ Nouvelle écriture des articles 30 et 31 TUE tels que modifiées par l'art. 27 E du Traité de Nice.

g) la protection des droits des personnes au niveau de l'Union, aussi à travers des autorités spéciales indépendantes instituées par le Traité, comme le Garant européen pour la protection des données personnelles ;²⁴

4. L'action de la Communauté européenne aux fins du présent article tend à éliminer les inégalités, aussi bien qu'à promouvoir la parité entre hommes et femmes.

5. Les exigences de la protection de l'environnement doivent être intégrées dans la définition et la mise en œuvre des politiques et action visées dans le présent article, en particulier afin de promouvoir le développement durable.²⁵

Article 61. Le système de répartition des compétences²⁶.

1. L'Union agit dans les limites des compétences qui lui sont conférées et des objectifs qui lui sont assignés par la *Constitution*.²⁷

2. Dans les matière de compétence exclusive de l'Union elle est seule à pouvoir adopter des règles législatives. Dans ces matières les Etats membres peuvent intervenir uniquement si autorisés par l'Union et dans les limites de cette autorisation, selon les modalités établies par le Traité²⁸.

Article 62. Subsidiarité et proportionnalité.²⁹

1. Dans les domaines qui ne relèvent pas de sa compétence exclusive, l'Union n'intervient, conformément au principe de subsidiarité, que si et dans la mesure où les objectifs de l'action envisagée ne peuvent pas être réalisés de manière suffisante par les Etats membres et peuvent donc, en raison des dimensions ou des effets de l'action envisagée, être mieux réalisés au niveau communautaire.

2. Dans les matières qui ne relèvent pas de sa compétence exclusive, l'intervention de l'Union n'est légitime que si elle remplit au moins un des trois critères suivants :

²⁴ Art. 8 de la Constitution et art. 286 TCE.

²⁵ Art. 6 TCE.

²⁶ Nouvel article ; 16.05.2002, Délimitation des compétences entre l'Union européenne et les Etats membres (Lamassoure), par. 19 et suivants.

²⁷ Art 5 TCE.

²⁸ L'hypothèse d'une "autorisation" de l'Union pour les Etats membres pour l'exercice de compétences propres de l'Union se retrouve dans 16.05.2002, Délimitation des compétences entre l'Union européenne et les Etats membres (Lamassoure), par.22, où on n'indique cependant pas les modalités selon lesquelles celle-ci serait accordée.

²⁹ Art 5 TCE modifié d'après la résolution Lamassoure (point g du considérant)

- a) l'espace de l'action prévue dépasse les limites d'un Etat membre et l'action comporterait des risques d'effets contraires, en termes de distorsion et déséquilibre pour un ou plusieurs Etats, si elle n'était pas gérée au niveau communautaire ;*
- b) l'action prévue au niveau communautaire, par rapport aux actions semblables qui seraient mises en œuvre séparément par chaque Etat membre, présente un avantage de synergie tangible en termes d'efficacité et d'économie d'échelle ;*
- c) l'action prévue répond à une exigence de solidarité ou de cohésion qui, à la lumière des différences de développement, ne peut être assumée de façon satisfaisante dans le cadre de chaque Etat membre.*

3. L'action de l'union n'excède pas ce qui est nécessaire pour atteindre les objectifs *de la Constitution.*

4. *Chacune des institutions assure, dans l'exercice de ses compétences, le respect des principes de subsidiarité et de proportionnalité, selon les dispositions et procédures prévues par le Traité*³⁰.

Article 63. Les compétences exclusives de l'Union³¹

1. L'Union dispose d'une compétence exclusive dans les matières suivantes :

- a) le marché intérieur, y compris les libertés de circulation des personnes, des biens, des services et des capitaux et les services financiers ;*
- b) la politique de la concurrence ;*
- c) les politiques structurelles et de cohésion ;*
- d) le renforcement et le développement de l'espace commun de liberté, sécurité et justice ;*
- e) la politique douanière ;*
- f) la définition et la mise en œuvre de la politique extérieure et de défense commune ;*
- g) les relations économiques extérieures ;*
- h) les accords d'association ;*
- i) le financement du budget de l'Union ;*
- j) pour les pays qui adhèrent à la monnaie commune, la politique monétaire.*

³⁰ Le paragraphe 4 est tiré du Protocole sur l'application des principes de subsidiarité et de proportionnalité, auquel nous renvoyons.

³¹ 16.05.2002, Délimitation des compétences entre l'Union et les Etats membres (Lamassoure) par 22,23 et 24 (Pour la définition des compétences de l'Union, dans ce Titre, nous reproduisons le texte de la résolution, qui demanderait lui-même des ajustements et des précisions).

Article 64. Les compétences communes de l'Union et des Etats membres³²

1. Dans les matières suivantes à compétence commune, l'Union dégage les orientations, les principes généraux et les objectifs, y compris, si nécessaire, les règles communes et les standards minimum :

- a) la promotion de l'égalité entre hommes et femmes ;*
 - b) la politique sociale et de l'emploi ;*
 - c) la politique d'immigration et les autres politiques liées à la libre circulation des personnes ;*
 - d) la protection des consommateurs ;*
 - e) l'environnement ;*
 - f) la politique agricole et la pêche ;*
 - g) les transports ;*
 - h) les réseaux transeuropéens ;*
 - i) la recherche et le développement technologique ;*
 - j) l'énergie ;*
 - k) la fiscalité liée au marché unique ;*
 - l) la politique étrangère ;*
 - m) la politique de défense et de sécurité, intérieure et extérieure, dans leur dimension transnationale ;*
 - n) la coopération au développement ;*
 - o) l'association des pays et territoires d'outre-mer ;*
- 2. Dans ces matières la norme communautaire a comme but une discipline uniforme uniquement là où, en l'absence de celle-ci, l'égalité des droits ou la concurrence risqueraient d'être compromises. Les Etats membres gardent leur capacité de légiférer lorsque l'Union n'a pas encore exercé ses pouvoirs.*
- 3. Dans les matières suivantes à compétence commune, l'Union agit exclusivement pour compléter l'action des Etats membres, qui gardent donc la compétence de droit commun :*
- a) l'éducation, la formation professionnelle et la jeunesse ;*
 - b) la protection civile ;*
 - c) la culture ;*
 - d) les moyens d'information ;*

³² 16.05.2002, Délimitation des compétences entre l'Union et les Etats membres (Lamassoure), par. 25, 26, 27, 28, 29, 30, 31, 32, 33, 34.

- e) le sport ;
- f) la santé ;
- g) l'industrie ;
- h) le tourisme ;
- i) les contrats civiles et commerciaux ;

4. Dans les matières suivantes à compétence partagée, l'Union coordonne les politiques nationales selon les procédures prévues par le Traité³³

- a) les politiques budgétaires et fiscales dans le cadre de l'Union économique et monétaire ;
- b) les politiques de l'emploi.

Article 65. Les compétences des Etats membres.³⁴

Les Etats membres sont compétents pour toutes les matières qui ne sont pas mentionnées dans la Constitution et dans le Traité.

Article 66. Autres interventions de l'Union³⁵

Si une action de l'Union apparaît nécessaire pour réaliser un des objectifs mentionnés dans la Constitution, sans que celle-ci ait prévu les pouvoirs d'action requis à cet effet, le Conseil **et le Parlement, en utilisant la procédure prévue à l'art 98** prennent les dispositions appropriées. **La Cour des Comptes informe le Conseil, la Commission et le Parlement européen des conséquences du transfert de compétences sur le budget de l'Union.**

³³ 16.05.2002, Délimitation des compétences entre l'Union et les Etats membres (Lamassoure), par 30-31 on prévoit d'établir de nouvelles formes de coordination et de les indiquer dans le traité (on ne dit pas lesquelles). Dans le Traité il faudrait prévoir, avec la prudence nécessaire, une référence à la méthode ouverte de coordination, telle que définie dans les conclusions du Conseil de Lisbonne. 4.10.2001, Renforcement de la coordination des politiques économiques dans l'espace de l'euro (Bérès), par. 2 ; 29.11.2001, Gouvernance européenne (Kaufmann), par. 37 ; 16.05.2002, délimitation des compétences entre l'union et les Etats membres (Lamassoure), par. 33.

³⁴ 16.05.2002 Délimitation des compétences entre l'Union et les Etats membres (Lamassoure), par. 21 et art. 308 TCE avec les modifications suggérées par la résolution même.

³⁵ Cet article reprend l'art. 308 TCE, avec les modifications proposées par 16.05.2002, Délimitations des compétences entre l'Union et les Etats membres (Lamassoure), par.35.

TITRE IV

ORGANISATION INSTITUTIONNELLE

CHAPITRE I DISPOSITIONS GENERALES

Article 67. Le conseil européen³⁶

Le Conseil européen donne à l'Union les impulsions nécessaires à son développement et en définit les orientations politiques générales.

Le Conseil européen réunit les chefs d'Etat ou de gouvernement des Etats membres ainsi que le président de la Commission. Ceux-ci sont assistés par les ministres chargés des affaires étrangères des Etats membres et par un membre de la Commission. Le Conseil européen se réunit au moins deux fois par an, sous la présidence du chef d'Etat ou de gouvernement de l'Etat membre qui exerce la présidence du Conseil.

Le Conseil européen présente au Parlement européen un rapport à la suite de chacune de ses réunions, ainsi qu'un rapport écrit annuel concernant les progrès réalisés par l'Union.

Article 68. Les institutions³⁷

L'exécution des tâches de l'Union est assurée par les institutions suivantes :

- le Parlement européen
- le Conseil
- la Commission
- la Cour de Justice
- la Cour des Comptes

Dans l'exécution de *leurs*³⁸ tâches le Conseil et la Commission sont assistés par un Comité économique et social et par un Comité des régions, qui ont des fonctions consultatives.

³⁶ Art.4 TUE.

³⁷ Version consolidée de l'art.5TUE et de l'art. 7 TUE.

³⁸ On enlève ainsi la limitation selon laquelle le CES et le CdR ne valent que pour la Communauté 29.11.2001, Résolution sur le processus constitutionnel et le futur de l'Union (Leinen, Méndez de Vigo),

Article 69. Principe d'attribution des pouvoirs³⁹

Le Parlement européen, le Conseil, la Commission, la Cour de Justice et la Cour des Comptes exercent leurs attributions dans les conditions et aux fins prévus *par la Constitution et par le Traité*.

Article 70. Le système européen des banques centrales et la Banque centrale européenne⁴⁰

Il est institué, selon les procédures prévues *par le Traité*, un Système européen de banques centrales (ci-après dénommée SEBC) et une Banque centrale européenne (ci-après dénommée BCE), qui agissent dans les limites des pouvoirs qui leur sont conférés *par la Constitution, par le Traité* et par le statut du SEBC et de la BCE annexé à celui-ci.

Article 71. La Banque européenne d'investissement⁴¹

Il est institué une Banque européenne pour les investissements, qui agit dans les limites des attributions qui lui sont conférées *par le Traité* et par le statut *annexé à celui-ci*.

CHAPITRE II. LE PARLEMENT EUROPEEN**Article 72. Composition⁴²**

1. Le Parlement européen est composé de représentants des peuples des Etats réunis dans l'Union. Les représentants sont élus au suffrage universel direct pour une période de cinq ans.
2. Le Parlement européen élabore, *d'après la procédure de l'art.98⁴³*, un projet en vue de permettre l'élection au suffrage universel direct selon une procédure uniforme dans tous les Etats membres qui le composent ou conformément à des principes communs à tous les Etats membres. *Le projet peut*

par. 3 b) et f) ; 31.05.2001, Résolution sur le Traité de Nice et le futur de l'Union européenne (Méndez de Vigo, Seguro), par.17.

³⁹ Version consolidée de l'art. 5 TUE et de l'art. 7 TCE dernière phrase.

⁴⁰ Nouvelle écriture de l'art. 8 TCE

⁴¹ Art.9 TCE

⁴² Version consolidée de parties sélectionnées des articles 189, 190 et 197 TCE.

*prévoir qu'un certain pourcentage de sièges soit répartie, selon le système proportionnel, dans le cadre d'une circonscription européenne unique*⁴⁴.

Le nombre des représentants élus dans chaque Etat membre *est établi par le Traité* et doit assurer une représentation appropriée des peuples des Etats réunis dans l'Union. Le nombre des membres du Parlement européen ne dépasse pas sept cent⁴⁵.

3. Le statut et les conditions générales pour l'exercice des fonctions des membres du Parlement européen sont établis par acte législatif approuvé par le Parlement à la majorité des membres qui le composent⁴⁶.

4. Le Parlement européen établit à la majorité des membres qui le composent son propre règlement intérieur et décide de l'endroit où il siège et organise ses réunions⁴⁷.

Article 73. Fonctions⁴⁸

1. Le Parlement européen participe au processus conduisant à l'adoption des actes communautaires, en exerçant ses attributions *d'après la procédure de l'art.98*⁴⁹, ainsi qu'en rendant des avis conformes ou en donnant des avis consultatifs.

2. Le Parlement européen peut, à la majorité de ses membres, demander à la Commission de soumettre toute proposition appropriée sur les questions qui lui paraissent nécessiter l'élaboration d'un acte communautaire pour la mise en œuvre *de la Constitution*.

3. Le Parlement européen exprime un *avis contraignant sur les principaux aspects et sur les choix fondamentaux en matière de* politique étrangère et de sécurité de l'Union et est informé régulièrement par la Présidence et par la Commission de ses développements⁵⁰.

⁴³ 29.11.2002, Processus constitutionnel et futur de l'UE (Lainent Mendiez de Vivo), par. 4 c) ; 31.05.2001, Traité de Nice et futur de l'Union européenne (Mendez de Vigo, Seguro), par. 29 et 30.

⁴⁴ 13.04.2002, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par.6 ; 15.07.1998, Procédure électorale pour l'élection du Parlement européen (Anastassopoulos), par. 3 et 4.

⁴⁵ 13.04.2000, CIG : Adapter les institutions à l'élargissement (Dimitrakopoulos, Leinen), par. 5.2 ; 31.05.2001 Traité de Nice et futur de l'Union européenne (Mendez de Vigo, Seguro), par. 15.

⁴⁶ 31.05.2001, Traité de Nice et futur de l'union européenne (Mendez de Vigo, Seguro), par. 26.

⁴⁷ 31.05.2001, Traité de Nice et futur de l'Union européenne (Mendez de Vigo, Seguro), par.26 ; 13.04.2000, Adapter les institutions à l'élargissement. (Dimitrakopoulos, Leinen), par. 9.

⁴⁸ Art. 192 TCE.

⁴⁹ 07.02.2002 Rapports PE/Parlements nationaux (Napolitano) par. 5 ; 29.11.2001 Processus constitutionnel et futur de l'UE (Leinen, Mendez de vigo), par.4 c) ; 31.05.2001, Traité de Nice et futur de l'UE (Mendez de Vigo, Seguro), par. 29 et 30.

⁵⁰ Art. 21.1 tel que modifié d'après 10.04.2002, Résolution sur la situation actuelle de la politique européenne de sécurité et de défense (Brok), par. 26.

4. Le Parlement européen en séance publique procède à l'examen de la relation générale annuelle sur les progrès de l'Union⁵¹. Le Parlement européen peut formuler des interrogations ou exprimer des recommandations au Conseil européen, au Conseil ou à la Commission⁵²

Article 74. Motion de censure⁵³

Le parlement européen, saisi d'une motion de censure sur la gestion de la Commission, ne peut se prononcer sur cette motion que trois jours au moins après son dépôt et par un scrutin public.

Si la motion de censure est adoptée à la majorité des deux tiers des voix exprimées et à la majorité des membres qui composent le Parlement européen, les membres de la commission doivent abandonner collectivement leurs fonctions. Ils continuent d'expédier les affaires courantes jusqu'à leur remplacement. Dans ce cas, le mandat des membres de la Commission nommés pour les remplacer expire à la date à laquelle aurait dû expirer le mandat des membres de la Commission obligés d'abandonner collectivement leurs fonctions.

Article 75. Votations⁵⁴

Sauf les cas où il est prévu que le Parlement européen délibère à la majorité absolue de ses membres ou les cas où il est prévu autrement, le Parlement européen délibère à la majorité absolue des voix exprimées.

Article 76. Droit de pétition au Parlement européen⁵⁵

Tout citoyen de l'Union, ainsi que toute personne physique ou morale résidant ou ayant son siège statutaire dans un Etat membre, a le droit de présenter, à titre individuel ou en association avec d'autres citoyens ou personnes, une pétition au Parlement européen sur un sujet relevant des domaines d'activités de l'Union et qui le ou la concerne directement.

Article 77. Le Médiateur européen⁵⁶

⁵¹ Nouvelle écriture de l'art. 200 TCE.

⁵² Fusion des art. 4, 21.2, 39.2 TUE.

⁵³ Art. 201 TCE

⁵⁴ Remaniement de l'art.198 TCE.

⁵⁵ Art. 194 TCE

⁵⁶ Parties sélectionnées de l'art. 195 TCE.

1. Le parlement européen nomme un Médiateur, habilité à recevoir les plaintes émanant de tout citoyen de l'Union ou de toute personne physique ou morale résidant ou ayant son siège statutaire dans un Etat membre et relatives à des cas de mauvaise administration *au sens de l'article 43*.

2. Le Médiateur est nommé après chaque élection du Parlement européen pour la durée de la législature. Son mandat est renouvelable.

Le Médiateur peut être déclaré démissionnaire par la Cour de justice, à la requête du Parlement européen, s'il ne remplit plus les conditions nécessaires à l'exercice de ses fonctions ou s'il a commis une faute grave.

3. Le médiateur exerce ses fonctions en toute indépendance. Dans l'accomplissement de ses devoirs, il ne sollicite ni accepte d'instructions d'aucun organisme. Pendant la durée de ses fonctions, le médiateur ne peut exercer aucune autre activité professionnelle, rémunérée ou non.

CHAPITRE III. LE CONSEIL

Article 78. Composition et Présidence⁵⁷

1. *Le Conseil* sauf dans les cas où il se réunit dans la composition des chefs d'Etat et de gouvernement⁵⁸ ***est composé de représentations des Etats membres nommées par leurs gouvernements respectifs. Chaque représentation est dirigé par un ministre chargé de façon spécifique et permanente des affaires de l'Union.***

2. La Présidence est exercée a tour de rôle par chaque membre du Conseil pour une durée de six mois selon l'ordre établi par le Conseil, qui délibère à l'unanimité.

3. *Le Président en charge du Conseil réfère au Parlement européen au début de la Présidence pour la présentation du programme, pendant la Présidence pour les progrès réalisés et à la fin de la présidence pour un bilan récapitulatif*⁵⁹.

⁵⁷ Art. 203 TCE, modifié d'après l'art.20 du "Projet Spinelli" de 1984 (Résolution du Parlement européen sur le projet de Traité instituant l'Union européenne du 14 février 1984)

⁵⁸ Hypothèse déjà prévue par les Traités en vigueur, par exemple art 7 TUE.

⁵⁹ 25.10.2001, Réforme du Conseil (Poos), par. 18.

4. Des réunions spéciales du Conseil, composé par les ministres des Etats membres compétents pour leurs matières respectives, sont consacrées à la politique étrangère et de sécurité commune et à la politique de défense. ⁶⁰

Article 79. Fonctions⁶¹

1. En vue d'assurer la réalisation des objets fixés par la constitution le conseil :

a) participe à la fonction législative dans le cadre de la procédure de codécision⁶²

b) assure la coordination des politiques économiques générales des Etats membres,

c) dispose d'un pouvoir de décision

2. Concernant la politique étrangère et de sécurité commune le Conseil :

a) prend les décisions nécessaires pour la définition et la mise en œuvre de la politique extérieure et de sécurité commune sur base des orientations générales définies par le Conseil européen,

b) recommande des stratégies communes au Conseil européen et les met en œuvre, notamment en arrêtant des actions communes et des positions communes.

3. Le Conseil promeut la coopération entre les Etats membres et avec les institutions de l'Union dans le cadre de la coopération judiciaire et de police en utilisant les instruments prévus par le Traité, tels que Eurojust et Europol. ⁶³

4. Lorsque le Conseil agit en tant que législateur, ses réunions sont publiques. Les délibérations, les votations, les déclarations de vote et les points du procès verbal en rapport avec l'adoption de textes législatifs sont rendus publics⁶⁴.

Article 80. Votes⁶⁵

1. Le Conseil délibère **à la majorité qualifiée** sauf les cas où il est prévu que le Conseil délibère à l'unanimité ou à la majorité simple.⁶⁶

⁶⁰ 26.09.2002 Relation sur les progrès réalisés dans la mise en œuvre de la politique étrangère et de sécurité commune (brock par 13).

⁶¹ Nouvelle écriture de l'art. 202 TCE et de l'art. 13.3 TUE

⁶² 7.02.2002, Relations PE/Parlements nationaux (Napolitano), par. 5 ; 29.11.2001, Processus constitutionnel et futur de l'Union (Leinen Mendez de Vigo), par. 4 c) ; 31.05.2001, Traité de Nice et futur de l'Union européenne (Mendez de Vigo, Seguro), par. 29 et 30.

⁶³ 29.11.2001, Processus constitutionnel et futur de l'Union (Leinen Mendez de Vigo), par. 3 f).

⁶⁴ 14.03.2002, Mise en œuvre par le Conseil et la Commission du règlement sur l'accès public aux documents (B5-10131/2002), par.20 et 21 ; 25.10.2001, Réforme du Conseil (Poos), par. 25 ; 29.11.2001, Gouvernance européenne (Kaufmann), par. 20.

2. La majorité qualifiée est atteinte avec le vote favorable de la majorité simple des Etats membres qui représentent la majorité de la population totale des Etats membres de l'Union⁶⁷.

3. Les abstentions des membres présents ou représentés n'empêchent pas l'adoption des délibérations du Conseil pour lesquelles l'unanimité est requise.

CHAPITRE IV LA COMMISSION

Article 81. Composition⁶⁸

1. La Commission est composée de membres choisis en raison de leur compétence générale et offrant toutes garanties d'indépendance.

Seuls les nationaux des Etats membres peuvent être membres de la Commission.

La composition de la Commission est prévue par le Traité.⁶⁹

2. Les membres de la Commission exercent leurs fonctions en pleine indépendance dans l'intérêt général de l'Union.

Dans l'accomplissement de leurs devoirs, ils ne sollicitent ni n'acceptent d'instructions d'aucun gouvernement ni d'aucun organisme. Ils s'abstiennent de tout acte incompatible avec le caractère de leurs fonctions. Chaque Etat membre s'engage à respecter ce caractère et à ne pas chercher à influencer les membres de la Commission dans l'exécution de leur tâche.

Article 82. Nomination⁷⁰

1. Les membres de la Commission sont nommés pour une durée de cinq ans, sauf l'éventuelle motion de censure.

⁶⁵ Art. 205 TCE.

⁶⁶ La majorité qualifiée est assumée comme procédure ordinaire, d'après : 29.11.2001, Processus constitutionnel et futur de l'UE (Leinen, Mendez de Vigo), par. 4 c) ; 31.05.2001, Traité de Nice et futur de l'UE (Mendez de Vigo, Seguro), par. 29.

⁶⁷ 13.04.2000, CIG, Adapter les institutions à l'élargissement (Dimitrakopoulos, Leinen), par. 10.1.

⁶⁸ Art. 213.1 TCE, parties sélectionnées, et art 213.2 par. 1 et 2 TCE.

⁶⁹ 13.04.2000, CIG, Adapter les institutions à l'élargissement (Dimitrakopoulos, Leinen), par 12.1 : présente deux options possibles : 1) une Commission composée de 20 commissaires et du Président, avec un système de rotation qui garantisse l'opportunité de participation aux citoyens de chaque Etat membre ; 2) un commissaire pour chaque Etat membre, le rôle du Président renforcé et l'institution d'une hiérarchie interne qui permette à la Commission de travailler de manière efficace. La question est laissée en suspens en attendant que le Parlement choisisse entre les deux solutions (le "projet Spinelli" et le "projet Herman" renvoient la composition de la Commission à une loi organique).

⁷⁰ Art. 214 TCE

Leur mandat est renouvelable.

2. Le Conseil, réuni au niveau des Chefs d'Etat et de gouvernement et avec délibération à la majorité qualifiée, désigne deux ou plusieurs candidats à la charge de Président de la Commission. Parmi ces deux candidats le parlement européen élit, à la majorité de ses membres, le Président de la Commission⁷¹.

3. Le Président de la Commission désigne, après avoir entendu le Conseil, les autres membres de la Commission.

Les membres ainsi désignés sont soumis au vote d'approbation du Parlement européen, à la majorité de ses membres.⁷²

4. Le Conseil, par délibération à la majorité qualifiée et en accord avec le Président de la Commission, désigne un candidat pour la charge de Haut Représentant pour la politique extérieure et de sécurité commune qui assure les fonctions de vice-président de la Commission et est soumis à des obligations particulières vis-à-vis du Conseil et au Parlement européen⁷³.

La désignation doit être approuvée par le Parlement européen, à la majorité de ses membres.

Article 83. Présidence⁷⁴

1. La Commission remplit sa mission dans le respect des orientations politiques définies par son Président, **qui en décide l'organisation interne pour garantir la cohérence, l'efficacité et la collégialité de son action.**

Les compétences de la Commission sont réparties entre les membres par le Président. Le Président peut modifier la répartition des compétences pendant le mandat. Les membres de la Commission exercent les fonctions qui leurs sont attribuée sous son autorité.

2. Après délibération du collège, le Président nomme un ou deux vice-présidents parmi les membres de la Commission, en plus du Haut Représentant.

⁷¹ 13.04.2000, Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 12.2.

⁷² Ceci se déduit *a contrario* comme différenciation par rapport à la procédure de nomination du vice président avec fonction de Haut Représentant. La consultation du Conseil pour la désignation des commissaires est prévue par le "projet Spinelli" au par. 25.2.

⁷³ 25.10.2001 Résolution sur les progrès réalisés dans la mise en œuvre de la politique extérieure et de sécurité commune (Brok) par. 2 et 3 ; 31.05.2001, Résolution sur le traité de Nice et le futur de l'Union européenne (Mendez de Vigo, Seguro), par. 17 ; 25.10.2001, Résolution sur la réforme du Conseil (Poos), par. 15.

⁷⁴ Version consolidé de l'art. 219.1 TCE, de l'art. 217 TCE et de l'art. 215 TCE, tel que modifié par le Traité de Nice. 30.11.2000, Résolution du Parlement européen sur la préparation du Conseil européen de Nice (B5-0884, 0886, 0891/2000), par 4 deuxième tiret.

3. Après délibération du collège, le président pose la question de confiance au Parlement. Le refus de la confiance de la majorité des députés qui composent le Parlement entraîne la démission de la Commission⁷⁵.

4. A cause de graves erreurs commises dans l'exercice de ses fonctions, chaque membre de la Commission doit démissionner sur demande du Président de la Commission.

Article 84. Fonctions⁷⁶

Aux fins d'assurer le fonctionnement et le développement de l'Union la Commission :

- a) *exerce le pouvoir d'initiative législative* et participe à la formation des actes *adoptés en codécision par le Parlement et le Conseil⁷⁷* ;
- b) veille à l'application des dispositions de la Constitution et du Traité et des dispositions adoptées par les institutions en application de la Constitution et du Traité ;
- c) formule des recommandations ou des avis sur les matières qui font l'objet du Traité, si celui-ci le prévoit expressément ou si elle l'estime nécessaire ;
- d) dispose d'un pouvoir de décision propre et exerce les compétences *nécessaires pour la mise en œuvre des actes législatifs de l'Union⁷⁸*.

Article 85. Votes⁷⁹

Les délibérations de la Commission sont acquises à la majorité de ses membres.

CHAPITRE V LA COUR DE JUSTICE

Article 86. Composition et nomination⁸⁰

⁷⁵ 13.04.2000, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 13.1.

⁷⁶ Nouvelle écriture de l'art. 211 TCE.

⁷⁷ 29.11.2001, Processus constitutionnel et futur de l'Union (Leinen Mendez de Vigo), par. 4 c) ; 31.05.2001, Traité de Nice et futur de l'UE (Mendez de Vigo, Seguro), par. 29.

⁷⁸ 13.04.2000, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 13.2.

⁷⁹ Art. 219 deuxième phrase TCE.

⁸⁰ Art. 221, 222 et 223 TCE, tels que modifiés par le Traité de Nice.

1. La Cour de justice se compose *d'un nombre impair de juges non inférieur au nombre des Etats membres et d'un nombre d'avocats généraux égal à la moitié des juges*⁸¹. Si la Cour de justice le demande, le Conseil, *statuant à la majorité qualifiée et après avis conforme du Parlement européen*, peut augmenter le nombre des avocats généraux.

L'avocat général a pour rôle de présenter publiquement, en toute impartialité et en toute indépendance, des conclusions motivées sur les affaires qui, conformément au statut de la Cour de justice, requièrent son intervention.

2. Les juges et les avocats généraux sont choisis parmi des personnalités offrant toutes garanties d'indépendance et qui réunissent les conditions requises pour l'exercice, dans leur pays respectifs, des plus hautes fonctions juridictionnelles, ou qui sont des jurisconsultes possédant des compétences notoires. Leur mandat dure *neuf années et n'est pas renouvelable*⁸². *Ils sont nommés par le Conseil à la majorité qualifiée après avis conforme du Parlement européen.*⁸³

3. Le statut de la Cour de justice est établi par un protocole *annexé au Traité*. Le conseil, statuant *à la majorité qualifiée*, sur demande de la Cour de justice et *après avis conforme* du Parlement européen, peut modifier les dispositions du statut.

4. La Cour de justice établit son règlement de procédure⁸⁴.

Article 87. Fonctions⁸⁵

La Cour de justice et le Tribunal de première instance assurent, dans le cadre de leurs compétences respectives, le respect du droit dans l'interprétation et dans l'application *de la Constitution et du Traité*.

A la Cour de justice et au Tribunal de première instance peuvent être adjointes des chambres juridictionnelles chargées d'exercer, dans certains secteurs spécifiques, des compétences juridictionnelles prévues par le Traité.

Article 88. Tribunal de première instance⁸⁶

⁸¹ 13.04.2000, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 14.

⁸² 13.04.2000, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 15.

⁸³ 29.11.2001, Processus constitutionnel et futur de l'Union (Leinen, Mendez de Vigo), par.4 i) ; 31.05.2001, Traité de Nice et futur de l'Union européenne (Mendez de Vigo, Seguro), par. 21.

⁸⁴ Les paragraphes 4 et 5 proviennent de l'art. 245 TCE modifié par 13.04.2000, CIG: Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 16.

⁸⁵ Art. 220 TCE tel que modifié par le Traité de Nice.

1. Le Tribunal de première instance se compose d'au moins un juge par Etat membre. Le nombre de juges est établi par le statut de la Cour de justice. Le statut peut prévoir que le Tribunal soit assisté par des avocats généraux.
2. Les membres du Tribunal de première instance sont choisis parmi les personnes offrant toute garantie d'indépendance et possédant la capacité requise pour l'exercice de fonctions juridictionnelles. Ils restent en charge ***pour une période de neuf années non renouvelable***⁸⁷. ***Ils sont nommés par le conseil à la majorité qualifiée après avis conforme du Parlement européen***⁸⁸.
3. Sauf disposition contraire du statut de la Cour de justice, les dispositions du *Traité* relatives à la Cour de justice sont applicables au Tribunal de première instance.
*Les compétences et les règles de procédure du Tribunal sont prévues par le Traité et par le statut de la Cour de justice*⁸⁹.

CHAPITRE VI LA COUR DES COMPTES

Article 89. Composition et nomination⁹⁰

1. La cour des comptes est composée d'un citoyen de chaque Etat membre.
2. Les membres de la Cour des comptes sont choisis parmi les personnalités qui font ou qui ont fait partie, dans leur pays respectif, des institutions de contrôle extérieur ou qui possèdent une qualification spécifique pour cette fonction. Ils doivent offrir toutes les garanties d'indépendance.
3. Les membres de la Cour des comptes sont nommés ***par le Conseil à la majorité qualifiée après avis conforme du Parlement européen***⁹¹. *Ils restent en charge six années. Leur mandat est renouvelable.*

⁸⁶ Art. 224 et 225 TCE tels que modifiés par le Traité de Nice.

⁸⁷ 13.04.2000, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 15.

⁸⁸ 29.11.2001, Processus constitutionnel et futur de l'Union (Leinen, Mendez de Vigo) par. 4 i) ; 31.05.2001, Traité de Nice et futur de l'Union européenne (Mendez de Vigo, Seguro), par. 21.

⁸⁹ Renvoi au Traité et au Statut de la Cour de justice pour les parties qui n'ont pas une relevance constitutionnelle.

⁹⁰ Art. 247.2,3 et 4 TCE.

⁹¹ 13.04.2000, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 26 et 30.5.

4. Les membres de la Cour des comptes exercent leurs fonctions en pleine indépendance, dans l'intérêt général de l'Union.

Dans l'accomplissement de leurs fonctions, ils ne sollicitent ni n'acceptent d'instructions d'aucun gouvernement ni d'aucun organisme. Ils s'abstiennent de tout acte incompatible avec le caractère de leurs fonctions.

Article 90. Fonctions⁹²

1. La cour des comptes assure le contrôle des comptes

2. *Selon les modalités fixées par le Traité⁹³*, la Cour des comptes examine les comptes de la totalité des recettes et des dépenses *de l'Union*. Elle examine également les comptes de la totalité des recettes et des dépenses de tout organisme créé par l'*Union*, dans la mesure où l'acte de fondation n'exclut pas cet examen.

Elle assiste le Parlement européen et le Conseil dans l'exercice de leur fonction de contrôle de l'exécution du budget.

CHAPITRE VII LES COMITES CONSULTATIFS

Article 91. Le Comité économique et social⁹⁴

1. Le Comité économique et social est composé, *selon les modalités fixées par le Traité⁹⁵*, des représentants des différentes catégories de la vie économique et sociale de la société civile organisée, notamment des producteurs, des agriculteurs, des transporteurs, des travailleurs, des négociants et artisans, des professions libérale et de l'intérêt général.

Le nombre des membres du Comité économique et social ne peut dépasser un tiers des membres du Parlement européen⁹⁶.

Les membres du Comité ne doivent être liés par aucun mandat impératif.

⁹² Art. 246 et 248 TCE tel que modifié par le Traité de Nice (parties en italique).

⁹³ Renvoi au Traité pour se qui n'est pas de rang constitutionnel

⁹⁴ Art. 257,258, 259 et 262 TCE tels que prévus et modifiés par le Traité de Nice. Fusion des paragraphes 1 et 2 originaires.

⁹⁵ Renvoi au Traité pour se qui n'est pas de rang constitutionnel

⁹⁶ 13.04.2000, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par.29.1.

2. Le Conseil et la Commission consultent obligatoirement le Comité dans les cas prévus *par le Traité*. Il peut être consulté par ces institutions dans tous les cas où elles le jugent opportun. Il peut prendre l'initiative d'émettre un avis dans les cas où il le juge opportun.

ARTICLE 92. Le comité des régions⁹⁷

1. Le Comité des régions est composé, *selon les modalités fixées par le Traité⁹⁸*, des représentants des collectivités régionales et locales qui sont soit titulaires d'un mandat électoral au sein d'une collectivité régionale ou locale, soit politiquement responsables devant une assemblée élue.

Le nombre des membres du Comité des Régions ne dépasse pas trois cent cinquante⁹⁹.

Les membres du Comité ne doivent être liés par aucun mandat impératif. Il s'exercent leurs fonctions en pleine indépendance, dans l'intérêt général de l'Union.

2. Le conseil ou la Commission consultent obligatoirement le Comité des Régions dans les cas prévus *par le Traité* et dans tous les autres cas où une de ces institutions le juge opportun, en particulier dans les cas concernant la coopérations transfrontalière.

CHAPITRE VIII LE SYSTEME EUROPEEN DES BANQUES CENTRALES ET LA BANQUE CENTRALE EUROPEENNE

Article 93. Lignes essentielles¹⁰⁰

Le SEBC est composé de la BCE et des banques centrales nationale.

La BCE a la personnalité juridique.

Le SEBC est dirigé par les organes de décision de la BCE, qui sont le conseil des gouverneurs et le directoire.

⁹⁷ Nouvelle écriture de l'art 263 TCE tel que modifié par le Traité de Nice.

⁹⁸ Renvoi au Traité pour la partie qui n'a pas de relief constitutionnel

⁹⁹ Art 263.2 TCE tel que modifié par le Traité de Nice

¹⁰⁰ Art. 107.1, 2 et 3 TCE.

Article 94. Le conseil des gouverneurs et le directoire¹⁰¹

1. Le conseil des gouverneurs de la BCE se compose des membres du directoire de la BCE et des gouverneurs des banques centrales nationales.

2. Le directoire se compose du président, du vice-président et de quatre autres membres.

Le président, le vice-président et les autres membres du directoire sont nommé d'un commun accord par les gouvernements des Etats membres au niveau des Chefs d'Etats et de gouvernements, sur recommandation du Conseil et après *avis conforme*¹⁰² du Parlement européen et après consultation du conseil des gouverneurs de la BCE, parmi les personnes dont l'autorité et l'expérience professionnelle dans le domaine monétaire ou bancaire sont reconnues.

Leur mandat a une durée de huit ans et n'est pas renouvelable.

Seuls les ressortissants des Etats membres peuvent être membres du directoire.

3. Dans l'exercice des pouvoirs et dans l'accomplissement des missions et des devoirs qui leur ont été conférés ni la BCE, ni une banque centrale nationale ni un membre de leurs organes de décision ne peuvent solliciter ni accepter des instructions des institutions ou organes *de l'Union*, des gouvernements des Etats membres ou de tout autre organisme¹⁰³.

Article 95. Fonctions

1. Les missions fondamentales relevant du SEBC consistent à :

- a) définir et mettre en œuvre la politique monétaire de l'Union
- b) conduire les opérations de change
- c) détenir et gérer les réserves officielles de change des Etats membre
- d) promouvoir et régler le fonctionnement des systèmes de paiement

*e) contribuer aux politiques des autorités compétentes en ce qui concerne la surveillance des autorités de crédit et de la stabilité du système financier*¹⁰⁴.

2. La BCE est seule habilitée à autoriser l'émission de billet de banque à l'intérieur de l'Union. La BCE et les banques centrales nationale peuvent émettre de tels billets. Les billets de banque émis par la BCE et les banques centrales nationales sont les seuls à avoir cours légal dans l'Union.

¹⁰¹ Art. 112 TCE

¹⁰² 13.04.2000, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 30.5.

¹⁰³ Simplification de l'article 108 TCE

¹⁰⁴ Nouvelle écriture de l'art. 3.3 du statut du SEBC

CHAPITRE IX LA BANQUE EUROPEENNE D'INVESTISSEMENT

Article 96. Lignes essentielles et fonctions¹⁰⁵

1. La Banque européenne d'investissement a la personnalité juridique.

Les membres de la Banque européenne d'investissement sont les Etats membres.

2. La Banque européenne d'investissement a pour mission de contribuer, en faisant appel aux marchés de capitaux et à ses ressources propres, au développement équilibré et sans heurt du marché commun dans l'intérêt de l'Union. A cette fin, elle facilite, par l'octroi de prêts et de garanties, sans poursuivre de but lucratif, le financement des projets cités *dans le Traité*¹⁰⁶ dans tous les secteurs de l'économie.

TITRE V

ACTES ET PROCEDURES

Article 97. Les instruments juridiques de l'Union¹⁰⁷

1. L'Union poursuit les objectifs *prévus dans le titre II* :

a) en adoptant des *actes législatifs* exprimés en règlements et directives

b) en prenant des décisions

c) en formulant des recommandations ou des avis

d) en décidant des stratégies communes

e) en adoptant des actions commune et des positions communes

f) en renforçant la coopération systématique entre Etats membres pour la conduite de leur politique.

2. Le règlement a une portée générale. Il est obligatoire dans tous ses éléments et directement applicable dans chacun des Etat membres.

¹⁰⁵ Fusion de l'art. 266 TCE, tel que modifié par le Traité de Nice, et de parties sélectionnées de l'art. 267.

¹⁰⁶ Renvoi au Traité

¹⁰⁷ Nouvelle écriture de parties sélectionnées des articles 249 TCE, 12, 13, 14 et 34 TUE. Sur ce thème une résolution du PE est en cours d'élaboration : Hiérarchie des normes/typologie des actes (Bourlanges) ; le "projet Spinelli" de 1984 (Résolution du parlement européen sur le projet de Traité instituant l'Union européenne du 14 février 1984) prévoyait deux types d'actes législatifs : les lois organiques et les lois.

La directive lie tout Etat membre destinataire quant au résultat à atteindre, tout en laissant aux instances nationale la compétence quant à la forme et aux moyens.

La décision est obligatoire dans tous ses éléments pour les destinataires désignés par celle-ci.

La recommandation et les avis ne sont pas contraignants.

Les stratégies communes sont mise en œuvre dans les secteurs dans lesquels les Etats membres ont d'importants intérêts communs. Ils fixent des objectifs, la durée et les moyens que l'Union et les Etats membres doivent fournir.

Les actions communes gèrent des situations spécifiques où une intervention opérative de l'Union est nécessaire. Elles définissent les objectifs, la portée et les moyens dont l'Union doit disposer, les conditions de mise en œuvre et, si nécessaire, la durée.

Les positions communes définissent l'approche de l'Union sur une question de nature géographique ou thématique particulière. Les Etats membres font en sorte que leur politiques nationales soient conformes aux positions communes.

Article 98. Procédure de codécision pour l'adoption des actes législatifs¹⁰⁸

1. Le Parlement européen et le Conseil exercent conjointement le pouvoir législatif, avec la participation de la Commission¹⁰⁹.

2. La Commission présente une proposition au Parlement européen et au Conseil.

3. Les propositions législatives de la commission sont mises à la disposition des gouvernements des Etats membres en temps utile pour leur permettre d'être sûrs que les Parlements nationaux peuvent les recevoir¹¹⁰.

Le conseil, statuant à la majorité qualifiée, après avis du Parlement européen :

- a) s'il approuve tous les amendements figurant dans l'avis du Parlement européen, peut arrêter l'acte proposé ainsi amendé ;
- b) si le Parlement européen ne propose aucun amendement, peut arrêter l'acte proposé ;

¹⁰⁸ Nouvelle écriture de l'article 251 TCE avec les ajouts tirés de 13.04.2000, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 31.2 ; de 29.11.2001, Processus constitutionnel et futur de l'Union (Leinen, Mendez de Vigo) par 4 c) ; de 31.05.2001, Traité de Nice et futur de l'Union européenne (Mendez de Vigo, Seguro), par. 29, qui prévoient la généralisation de la procédure de codécision.

¹⁰⁹ Nouvelle formulation de l'art. 36 du "Projet Spinelli" de 1984 (Résolution du Parlement européen sur le projet de Traité instituant l'Union européenne du 14 février 1984).

¹¹⁰ Point 2 du Protocole sur le rôle des Parlements nationaux dans l'Union européenne. Cette modification tient compte des indications contenue dans 7.02.2002, Relations Parlement européen/Parlements

c) dans les autres cas, arrête une position commune et la transmet au Parlement européen. Le Conseil informe pleinement le Parlement européen des raisons qui l'ont conduit à arrêter sa position commune. La Commission informe pleinement le Parlement européen de sa position.

Si, dans un délai de trois mois après cette transmission, le Parlement européen :

a) approuve la position commune ou ne s'est pas prononcé, l'acte concentré est réputé arrêté conformément à cette position commune ;

b) rejette, à la majorité absolue des membres qui le composent, la position commune, l'acte proposé est réputé non adopté ;

c) propose, à la majorité absolue des membres qui le composent, des amendements, le texte ainsi amendé est transmis au Conseil et à la Commission, qui émet un avis sur ces amendements.

4. Pour rendre plus aisé l'exposé des positions respectives et favoriser les accords, des représentants du Parlement européen peuvent participer aux réunions du Conseil et des représentants du Conseil peuvent participer aux réunions du Parlement européen. Les représentants du Parlement européen et du conseil ont le droit de prendre la parole¹¹¹.

5. Si, dans un délai de trois mois après réception des amendements du Parlement européen, le Conseil, statuant à la majorité qualifiée, approuve tous ces amendements, l'acte concerné est réputé arrêté sous la forme de la position commune ainsi amendée ; toutefois, le Conseil statue à l'unanimité sur les amendements ayant fait l'objet d'un avis négatif de la Commission. Si le Conseil n'approuve pas tous les amendements, le président du Conseil, en accord avec le Président du Parlement européen, convoque le comité de conciliation dans un délai de six semaines.

6. Le comité de conciliation, qui réunit les membres du Conseil ou leurs représentants et autant de représentants du Parlement européen, a pour mission d'aboutir à un accord sur un projet commun à la majorité qualifiée des membres du Conseil ou de leurs représentants et à la majorité des représentants du Parlement européen. La Commission participe aux travaux du comité de conciliation et prend toutes les initiatives nécessaires en vue de promouvoir un rapprochement des positions du Parlement européen et du Conseil. Pour s'acquitter de sa mission, le comité de conciliation examine la position commune sur la base des amendements proposés par le Parlement européen.

7. Si, dans un délai de six semaines après sa convocation, le comité de conciliation approuve un projet commun, le Parlement européen et le conseil disposent chacun d'un délai de six semaines à compter de cette approbation pour arrêter l'acte concerné conformément au projet commun, à la

nationaux dans la construction européenne (Napolitano), par. 1, qui pourtant ne proposent pas expressément la modification en question.

majorité absolue des suffrages exprimés lorsqu'il s'agit du Parlement européen et à la majorité qualifiée lorsqu'il s'agit du Conseil. En l'absence d'approbation par l'une ou l'autre des deux institutions dans le délai visé, l'acte proposé est réputé non adopté.

8. Lorsque le comité de conciliation n'approuve pas de projet commun, l'acte proposé est réputé non adopté.

9. Les délais de trois mois et de six semaines visés au présent article sont prolongés respectivement d'un mois et de deux semaines au maximum à l'initiative du Parlement européen ou du Conseil.

Article 99. Caractères et formes des actes législatifs¹¹²

Les actes législatifs de l'Union sont motivés et visent les propositions ou avis obligatoirement recueillis. Ils sont signés par le Président du Parlement européen et par le Président du Conseil, ils sont publiés au Journal Officiel de l'Union, ils entrent en vigueur à la date qu'ils fixent ou, à défaut, le vingtième jour suivant leur publication.

Article 100. Les actes d'exécution de l'Union¹¹³

Les actes d'exécution de l'Union se basent sur les actes législatifs de l'Union, et doivent en respecter les dispositions. Ils sont adoptés, sauf les compétences autonomes d'institutions et d'organes particuliers, par la Commission. Les modalités de contrôle seront établies par le Parlement européen et par le conseil, avec la procédure de codécision, dans un délai de trois mois à partir de l'entrée en vigueur de la Constitution.

TITRE VI

CONTROLE JURISDICTIONNEL

Article 101. Recours pour violation des obligations découlant de la Constitution et du Traité¹¹⁴

¹¹¹ 25.10.2001, Réforme du Conseil (Poos), par. 20.

¹¹² Art. 253 et 254 TCE.

¹¹³ 13.04.2000, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 31.2.

¹¹⁴ Art. 226, 227 et 228 TCE.

1. Si la Commission estime qu'un Etat membre a manqué à une des obligations qui lui incombent en vertu *de la Constitution et du Traité*, elle émet un avis motivé à ce sujet, après avoir mis cet Etat en mesure de présenter ses observations.

Si l'Etat en cause ne se conforme pas à cet avis dans le délai déterminé par la Commission, celle-ci peut saisir la Cour de justice.

2. Chacun des Etats membres peut saisir la cour de justice, *selon les modalités prévues par le Traité*¹¹⁵ s'il estime qu'un autre Etat membre a manqué à une de ses obligations qui lui incombent en vertu *de la Constitution et du Traité*.

3. Si la Cour de justice reconnaît qu'un Etat membre a manqué à une des obligations qui lui incombent, cet Etat est tenu de prendre les mesures que comporte l'exécution de l'arrêt de la Cour de justice.

Article 102. Recours de légitimité des actes adoptés par les institutions de l'Union¹¹⁶.

1. La Cour de justice contrôle la légalité des actes adoptés conjointement par le Parlement européen et le Conseil, de la Commission et de la BCE, autres que les recommandations et les avis, et des actes du Parlement européen destinés à produire des effets juridiques vis-à-vis des tiers.

A cet effet, la Cour est compétente pour se prononcer sur les recours pour incompétence, violation des formes substantielles, violation *de la Constitution et du Traité* ou de toute règle de droit relative à son application, ou détournement de pouvoir, formés par un Etat membre, le Conseil ou la Commission.

2. La Cour de justice est compétente, dans les mêmes conditions, pour se prononcer sur les recours formés par le Parlement européen, par la cour des comptes et par la BCE, qui tendent à la sauvegarde des prérogatives de ceux-ci.

3. Toute personne physique ou morale peut former, dans les mêmes conditions, un recours contre les décisions dont elle est le destinataire et contre les décisions qui, bien que prises sous l'apparence d'un règlement ou d'une décision adressée à une autre personne, la concernent directement *ou*¹¹⁷ individuellement.

¹¹⁵ Renvoi au traité pour se qui n'est pas de rang constitutionnel

¹¹⁶ Simplification des art. 230 et 231 TCE.

¹¹⁷ 16.03.2000, Charte des droits fondamentaux de l'Union européenne (Duff, Voggenhuber) par. 15 d) demande l'extension de l'accès à la Cour de justice pour toutes les personnes auxquelles la Charte des droits s'applique. D'ailleurs, dans l'arrêt 3.05.2002 du Tribunal de première instance, Jégo-Quéré c. Commission, le Tribunal a accueilli le recours en donnant une interprétation plus large de l'expression de l'art. 230.4 TCE ; ordonnance du Président de la Cour de justice, 12.10.2000, Federación de Confradías

Article 103. Recours en manquement¹¹⁸

1. Dans le cas où, en violation *de la Constitution et du Traité*, le Parlement européen, le Conseil ou la Commission s'abstiennent de statuer, les Etats membres et les autres institutions de l'Union peuvent saisir la Cour de justice en vue de faire constater cette violation. Ce recours n'est recevable que si l'institution en cause a été préalablement invitée à agir.

2. Toute personne physique ou morale peut saisir la Cour de justice dans les conditions fixées aux alinéas précédents pour faire grief à l'une des institutions de l'Union d'avoir manqué de lui adresser un acte autre qu'une recommandation ou un avis.

La Cour de justice est compétente, dans les mêmes conditions, pour se prononcer sur les recours formés par la BCE dans les domaines relevant de ses compétences ou intentés contre elle.

Article 104. Renvoi préjudiciel¹¹⁹

La Cour de justice est compétente pour statuer, à titre préjudiciel :

- a) sur l'interprétation *de la Constitution et du Traité*,
- b) sur la validité et l'interprétation des actes pris par les institutions *de l'Union* et par la BCE,
- c) sur l'interprétation des statuts des organismes créés *d'après la Constitution et le Traité*.¹²⁰

Lorsqu'une telle question est soulevée devant une juridiction d'un des Etats membres, cette juridiction peut, si elle estime qu'une décision sur ce point est nécessaire pour rendre son jugement, demander à la Cour de justice de statuer sur cette question.

Lorsqu'une telle question est soulevée dans une affaire pendante devant une juridiction nationale dont les décisions ne sont pas susceptibles d'un recours juridictionnel de droit interne, cette juridiction est tenue de saisir la Cour de justice.

Article 105. Statut de la Cour¹²¹

de Pescadores c. Conseil ; arrêt de la Cour de justice 25.07.2002, Unión de Pequeños Agricultores c. Conseil.

¹¹⁸ Simplification des art. 232 et 233 TCE.

¹¹⁹ Art. 234 TCE

¹²⁰ On supprime la limitation du contrôle juridictionnel aux cas prévus par les statuts, contraire au principe de légalité.

¹²¹ Fusion et simplification des articles 242, 243 et 244 TCE.

1. Le statut de la Cour est établi par un protocole séparé. le Conseil, statuant à l'unanimité sur demande de la cour de justice et après consultation de la Commission du Parlement européen, peut modifier les dispositions du statut.
2. La Cour de justice établit son propre règlement de procédure. Ce règlement est soumis à l'approbation du Conseil.
3. *Le statut de la Cour définit les pouvoirs de la Cour et les autres recours qui peuvent lui être présentés*¹²².

TITRE VII

DISPOSITIONS FINANCIERES ET BUDGETAIRES

Article 106. Budget¹²³

1. Toutes les recettes et les dépenses de l'Union, y compris celles qui se rapportent au Fonds social européen, doivent faire l'objet de prévisions pour chaque exercice budgétaire et être inscrites au budget.

Les dépenses administratives entraînées pour les institutions dans le cadre *de la politique étrangère et de sécurité commune et de la coopération judiciaire et de police en matière pénale sont à charge du budget*.¹²⁴ Les dépenses opérationnelles entraînées par la mise en œuvre desdites dispositions *sont* à la charge du budget.

Le budget doit être équilibré en recettes et en dépenses.

2. Le budget est, sans préjudice des autres recettes, intégralement financé par les ressources propres *dont le montant est fixé par le Parlement européen en codécision avec le Conseil*¹²⁵.

Le Conseil, statuant à l'unanimité sur proposition de la Commission et après *avis conforme*¹²⁶ du Parlement européen, arrête les dispositions relatives au système des ressources propres de l'Union dont il recommande l'adoption par les Etats membres, conformément à leurs règles constitutionnelles respectives.

¹²² Renvoi au Traité et au statut de la Cour pour la partie qui n'a pas de relief constitutionnel.

¹²³ Art. 268 et 269 TCE.

¹²⁴ Provient de la fusion des piliers ; 14.03.2002, Personnalité juridique de l'Union européenne (Carnero Gonzalez), par.2.

¹²⁵ 13.04.2000, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 51.4.

¹²⁶ 13.04.2000, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 30.5.

Article 107 Péréquation financière¹²⁷

Un système de péréquation financière est établi pour réduire les déséquilibres économiques excessifs entre les régions. Le Traité établit les modalités d'application de ce système.

Article 108. Discipline budgétaire¹²⁸

En vue d'assurer la discipline budgétaire, la Commission ne fait pas de proposition d'acte communautaire, ne modifie pas ses propositions et n'adopte pas de mesures d'exécution susceptibles d'avoir des incidences notables sur le budget sans donner l'assurance que cette proposition ou cette mesure peut être financée dans la limite des ressources propres de la Communauté découlant des dispositions fixées par le Conseil en vertu de l'article précédent.

La procédure budgétaire s'applique aux dépenses obligatoires et aux dépenses non obligatoires¹²⁹.

Article 109. Intérêts financiers de l'Union¹³⁰

1. La Communauté et les Etats membres combattent la fraude et toute autre activité illégale portant atteinte aux intérêts financiers de l'Union par des mesures de dissuasion et telles qu'elles permettent une protection efficace dans les Etats membres.
2. Les Etats membres prennent les mêmes mesures pour combattre la fraude portant atteinte aux intérêts de l'Union que celles qu'ils prennent pour combattre la fraude portant atteinte à leurs propres intérêts financiers.
3. Sans préjudice des autres dispositions du Traité, les Etats membres coordonnent leur action visant à protéger les intérêts financiers de l'Union contre la fraude. A cette fin ils organisent avec la Commission une collaboration étroite et régulière entre les autorités compétentes.

Article 110. Le procureur européen¹³¹

¹²⁷ Art. 73 du "projet Spinelli" de 1984, avec renvoi au Traité.

¹²⁸ Art. 270 TCE

¹²⁹ 29.11.2001, Processus constitutionnel et futur de l'Union (Leinen, Mendez de Vigo), par. 4 d) ; 13.04.2000, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 51.1.

¹³⁰ Art. 280.1 et 3 TCE.

1. Le Conseil, statuant à la majorité qualifiée sur proposition de la Commission et après avis conforme du Parlement européen, nomme pour une période de six ans, non renouvelable, un Procureur européen. le Procureur européen est chargé de rechercher, poursuivre, renvoyer devant les tribunaux les auteurs ou les complices des infractions qui portent atteinte aux intérêts financiers de l'Union et d'exercer devant les tribunaux compétents des Etats membres l'action pénale relative à ces infractions dans le cadre des règles fixées par le Traité.

2. Le Procureur européen est choisi parmi les personnalités qui offrent toutes les garanties d'indépendance.

Le Procureur européen exerce ses fonctions en pleine autonomie et ne sollicite ni accepte d'instructions des institutions de l'Union, des gouvernements des Etats membres ni d'aucun autre organisme¹³².

Le statut du Procureur européen est établi avec la procédure de codécision.

TITRE VIII

ACCORDS INTERNATIONAUX

Article 111. Conclusion d'accords avec les Etats tiers ou les organisations internationales¹³³

1. Dans les cas où les dispositions de la *Constitution* prévoient la conclusion d'accords entre l'*Union* et un ou plusieurs Etats et organisations internationales, la Commission présente des recommandations au Conseil, qui l'autorise à ouvrir les négociations nécessaires. Les négociations sont conduites par la Commission, en consultation avec des comités spéciaux désignés par le Conseil pour l'assister dans cette tâche et dans le cadre des directives que le Conseil peut lui adresser.

Dans l'exercice des compétences qui lui sont attribuées par le présent paragraphe, le Conseil statue à la majorité qualifiée, sauf dans les cas où le paragraphe 2, premier alinéa, prévoit que le Conseil statue à l'unanimité.

¹³¹ 29.11.2001, Processus constitutionnel et futur de l'Union (Leinen, Mendez de Vigo), par 3 f), et autres (13.04.2002 Dimitrakopoulos Leinen par. 24 et 25 et 31.02.2001 Mendez de Vigo, Seguro). Le texte est tiré de la proposition présentée par la Commission à la Conférence intergouvernementale de Nice.

¹³² La formulation est reproduite par analogie avec les règles des autres institutions, de la BCE au Comité des Régions.

¹³³ Nouvelle écriture de l'art. 300.1,2,6 et 7 TCE.

2. Sous réserve des compétences reconnues à la Commission dans ce domaine, la signature, et la conclusion des accords sont décidées par le Conseil, statuant à la majorité qualifiée sur proposition de la Commission, *avec l'avis conforme du Parlement européen*¹³⁴.
3. Le Conseil, la Commission ou un Etat membre peuvent demander l'avis de la Cour de justice sur la compatibilité d'un accord envisagé avec les dispositions *de la Constitution ou du Traité*. L'accord qui a fait l'objet d'un avis négatif de la Cour de justice ne peut entrer en vigueur *qu'après la révision de la Constitution ou du Traité*.
4. Les accords conclus aux conditions fixées par le présent article lient les institutions de *l'Union et les Etats membres*.
5. *Le Traité peut prévoir des procédures différentes pour les accords qui ont des objets spécifiques.*¹³⁵

Article 112. Accords d'association¹³⁶

L'Union peut conclure avec un ou plusieurs Etats ou organisations internationales des accords créant une association caractérisée par des droits et obligations réciproques, des actions en commun et des procédures particulières.

TITRE IX COOPERATION RENFORCEE

Article 113. Conditions générales¹³⁷

1. Les Etats membres qui se proposent d'instaurer entre eux une coopération renforcée peuvent recourir aux institutions, procédures et mécanismes prévus *par la Constitution et par le Traité*, à condition que la coopération envisagée :

¹³⁴ 13.04.2000, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 30.5, 42.2 et 42.3 a), b), c), d), e).

¹³⁵ Renvoi au Traité pour ce qui n'est pas de rang constitutionnel.

¹³⁶ Art. 310 TCE.

¹³⁷ Art. 43 TUE tel que modifié par le Traité de Nice et art. 43 A et 43 B tels qu'introduits par le Traité de Nice.

- a) tende à favoriser les objectifs de l'Union, à protéger et à servir ses intérêts et à renforcer son processus d'intégration et respecte les limites, les conditions et les procédures prévus par le *Traité* ;
- b) reste dans les limites des compétences de l'Union et ne concerne pas des matières qui sont de compétence exclusive de l'Union ;
- c) ne nuise ni au marché intérieur ni à la cohésion économique et sociale
- d) respecte les compétences, les droits et les obligations des Etats membres qui n'y participent pas ;
- e) soit ouverte à tous les Etats membres, conformément au point 3 du présent article.

2. *Dans le secteur de la politique étrangère et de sécurité commune* les coopérations renforcées concernent la mise en œuvre d'une action commune ou d'une position commune. Elles peuvent concerner des questions qui ont des implications militaires ou dans le secteur de la défense¹³⁸.

3. Les coopérations renforcées ne sont utilisées qu'en dernier ressort, lorsqu'il a été établi par le Conseil que les objectifs qui leur sont assignés ne peuvent être atteints, dans un délai raisonnable, en appliquant les dispositions pertinentes du *Traité*.

4. Lors de leur instauration, les coopérations renforcées sont ouvertes à tous les Etats membres. La participation à une coopération renforcée reste possible à tout moment, sous réserve de respecter la décision initiale ainsi que les décisions prises dans ce cadre. La Commission et les Etats membres qui participent à une coopération renforcée veillent à encourager la participation du plus grand nombre possible d'Etats membres.

Article 114. Mise en œuvre de la coopération renforcée¹³⁹

1. Aux fins de l'adoption des actes et des décisions nécessaires à la mise en œuvre de la coopération renforcée, les dispositions pertinentes *du Traité* s'appliquent. Toutefois, alors que tous les membres du Conseil peuvent participer aux délibérations, seuls ceux qui représentent des Etats membres participant à la coopération renforcée prennent part à l'adoption des décisions. *La majorité qualifiée dans ce cadre est celle de l'art. 80, qui ne prend en compte que les Etats membres concernés.*¹⁴⁰

L'unanimité est constituée par les membres du Conseil intéressés.

De tels actes et décisions ne font pas partie de l'acquis de l'Union.

¹³⁸ Art. 27 B introduit par le *Traité de Nice*, la référence à l'exclusion du secteur de la défense dans le cadre des coopérations renforcées, critiquée par 31.05.2001, *Traité de Nice* et futur de l'Union européenne (Mendez de Vigo, Seguro) est éliminée.

¹³⁹ Art. 44 et 45 TUE tels que modifiés par le *Traité de Nice*.

¹⁴⁰ Adaptation nécessaire pour la nouvelle modalité de calcul de la majorité qualifiée opérée dans le présent travail.

2. Les Etats membres appliquent, dans la mesure où ils sont concernés, les actes et décisions pris pour la mise en œuvre de la coopération renforcée à laquelle ils participent. De tels actes et décisions ne lient que les Etats membres qui y participent et ne sont, le cas échéant, directement applicables que dans ces Etats. Les Etats membres ne participant pas à la coopération renforcée n'entravent pas sa mise en œuvre par les Etats membres qui y participent.

3. Les dépenses résultant de la mise en œuvre d'une coopération renforcée, autres que les coûts administratifs occasionnés pour les institutions, sont à la charge des Etats membres qui y participent, à moins que le Conseil, statuant à l'unanimité de tous ses membres après *avis conforme*¹⁴¹ du Parlement européen, n'en décide autrement.

4. Le Conseil et la Commission assurent la cohérence des actions entreprises sur la base du présent titre, ainsi que la cohérence de ces actions avec les politiques de l'Union, et coopèrent à cet effet.

TITRE X DISPOSITIONS FINALES

Article 115. Adhésion à l'Union¹⁴²

1. Tout Etat européen qui respecte les principes *de la Constitution* peut demander à devenir membre de l'Union. Il adresse sa demande au Conseil, lequel se prononce à l'unanimité, après consultation de la Commission et avis conforme du Parlement européen, qui statue à la majorité absolue des membres qui le composent.

2. Les conditions de l'admission, et les adaptations éventuelles *du Traité* que cette admission entraîne en ce qui concerne les traités sur lesquels est fondée l'Union, font l'objet d'un accord entre les Etats membres et l'Etat demandeur. Ledit accord est soumis à la ratification par tous les Etats contractants, conformément à leurs règles constitutionnelles respectives.

Article 116. Suspension des droits d'un Etat membre¹⁴³

1. Sur proposition motivée d'un tiers des Etats membres, du Parlement européen ou de la Commission, le Conseil, statuant à la majorité des quatre cinquièmes de ses membres après avis conforme du Parlement européen, peut constater l'existence évidente d'un risque de violation grave

¹⁴¹ 25.10.2000, Coopération renforcée (Gil-Robles Gil Delgado), par. 13

¹⁴² Art.49 TUE

de la part d'un Etat membre d'un ou de plusieurs principes *de la Constitution* et lui adresser les recommandations appropriées. Avant de procéder à cette constatation le Conseil écoute l'Etat membre en question et, statuant selon la même procédure, peut demander à des personnalités indépendantes de présenter dans un délai raisonnable un rapport sur la situation de l'Etat membre en question.

Le Conseil vérifie régulièrement si les motifs qui l'ont conduit à cette constatation restent d'actualité.

2. Le Conseil, réuni au niveau des chefs d'Etat et de gouvernement et statuant à l'unanimité, sur proposition d'un tiers des Etats membres ou de la Commission et après avis conforme du Parlement européen, peut constater l'existence d'une violation grave et persistante par un Etat membre des principes *de la Constitution*, après avoir invité le gouvernement de l'Etat membre en question à présenter ses observations¹⁴⁴.

3. Lorsqu'une telle constatation est faite, le Conseil, statuant à la majorité qualifiée, peut décider de suspendre certains droits découlant de l'application *de la Constitution et du Traité* à l'Etat membre en question, y compris le droit de vote du représentant du gouvernement de cet Etat au Conseil. Ce faisant, le Conseil tient compte des conséquences éventuelles d'une telle suspension sur les droits et obligations des personnes physiques ou morales.

Les obligations qui incombent à l'Etat membre en question au titre *de la Constitution et du Traité* restent en tout état de cause contraignantes pour cet Etat.

4. Le Conseil, statuant à la majorité qualifiée, peut décider par la suite de modifier les mesures prises au titre du paragraphe 2 ou d'y mettre fin pour répondre à des changements de la situation qui l'a conduit à imposer ces mesures.

5. Aux fins du présent article, le Conseil statue sans tenir compte du vote du représentant du gouvernement de l'Etat membre en question ? Les abstentions des membres présents ou représentés ne font pas obstacle à l'adoption des décisions visées au paragraphe 1.

Le présent paragraphe s'applique également en cas de suspension des droits de vote conformément au paragraphe 2.

6. Aux fins du *présent article*, le Parlement européen statue à la majorité des deux tiers des voix exprimées, représentant une majorité de ses membres.

¹⁴³ Art. 7 TUE tel que modifié par le Traité de Nice.

¹⁴⁴ Le "Projet Spinelli de 1984 prévoyait à l'art. 44 que la constatation de la violation soit faite par la Cour de justice, tandis que la décision sur les mesures éventuelles à prendre reste de compétence du Conseil. Le Parlement a par ailleurs apprécié la nouvelle formulation proposée par le Traité de Nice (19.12.2000, Compte-rendu des résultats de la Conférence intergouvernementale, Tsaois).

Article 117. Procédure de révision de la Constitution¹⁴⁵

1. Le gouvernement de tout Etat membre, *le Parlement européen* ou la Commission *peuvent proposer des projets tendant à modifier la Constitution.*

Si le Conseil, *après avoir consulté*, le cas échéant, le Parlement européen et la Commission, émet un avis favorable, *les projets sont soumis à une Convention, qui se compose d'un représentant pour chaque chef d'Etat et de gouvernement, de deux représentants pour chacun des Parlements nationaux, d'un nombre de membres du Parlement européen égal à celui des représentants des chefs d'Etat de gouvernement, et de deux représentants de la Commission.*

La Convention rédige son propre règlement et élit en son sein son propre Président.

3. *Les propositions de modifications élaborées par la Convention sont approuvées à la majorité des quatre cinquièmes de ses membres par une conférence des représentants des gouvernements des Etats membres, convoquée par le Président du Conseil*¹⁴⁶.

4. *Lorsque les modifications auront été ratifiées par une majorité des Etats membres dont la population constitue les deux tiers de la population totale de l'Union, les gouvernements des Etats membres qui auront ratifié se réuniront immédiatement pour décider d'un commun accord et avec l'avis conforme du Parlement européen les procédures et la date d'entrée en vigueur des nouvelles dispositions constitutionnelles et les relations à établir dans ce domaine avec les autres Etats membres*¹⁴⁷.

Article 118. Procédure de révision du Traité¹⁴⁸

¹⁴⁵ Art. 48 TUE tel que modifié sur base de 7.02.2002, Relations PE/Parlements nationaux dans la construction européenne (Napolitano), par. 21, où on demande d'utiliser la méthode "convention" pour la révision de la Constitution. Le Parlement européen a le pouvoir de présenter des projets de révision.

¹⁴⁶ Cette solution se justifie par déduction : d'un côté on veut une Constitution, donc un système autonome, dont la vie ne peut dépendre du droit de veto d'un seul Etat membre, lorsque sa population constitue une petite minorité de toute la population de l'Union, d'un autre côté on veut une différenciation par rapport aux procédures de modification du Traité, plus simples. 16.05.2002 Délimitation des compétences entre l'Union européenne et les Etats membres (Lamassoure) par.10 ; 25.10.2000, Constitutionnalisation des Traités (Duhamel), par.9. La majorité des quatre cinquièmes est indiquée (en analogie avec celle prévue par l'art. 116.1) pour la différencier de celle des deux tiers prévue pour la révision du Traité.

¹⁴⁷ Nouvelle écriture de l'art.82.2 du "projet Spinelli" de 1984 (Résolution du Parlement européen sur le projet de Traité instituant l'Union européenne du 14 février 1984).

¹⁴⁸ Nouvelle écriture avec les modifications de l'art. 48 TUE, avec attribution au Parlement européen de la faculté de présenter des projets de révision.

1. Le gouvernement de tout Etat membre, **le Parlement européen** ou la Commission **peuvent proposer des projets tendant à modifier le Traité.**
2. Si le Conseil, **après avis conforme du Parlement européen**¹⁴⁹, et, le cas échéant, après avoir consulté la Commission, émet un avis favorable à la convocation d'une conférence des représentants des gouvernements des Etats membres, celle-ci est convoquée par le Président du Conseil pour établir, avec le vote **de la majorité des deux tiers de ses membres**, les modifications à apporter *au Traité*. Dans le cas où il s'agirait de modifications institutionnelles dans le secteur monétaire, la Banque centrale européenne est consultée.
3. Les amendements entrent en vigueur lorsqu'ils ont été ratifiés **par une majorité des Etats membres dont la population représente les deux tiers de la population totale de l'Union**¹⁵⁰.



¹⁴⁹ 13.04.2000, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 30.5.

¹⁵⁰ La majorité des deux tiers des membres du Conseil est inscrite pour la différencier de celle prévue pour la révision de la Constitution. La majorité des Etats membres dont la population représente les deux tiers de la population totale de l'Union est tirée de l'art. 82.2 du "projet Spinelli" de 1984.

THE EUROPEAN CONVENTION

THE SECRETARIAT

Brussels, 4 October 2002

Working Group II

Working document 23

Working group II "Incorporation of the Charter/ accession to the ECHR"

From: António Vitorino, President

To: Working Group II

Subject : **Compromise proposals concerning drafting adjustments in the horizontal articles**

Members of the Group will find herein compromise proposals by the Chairman for drafting adjustments in the horizontal articles of the Charter (in English and French), and accompanying explanatory notes.

Compromise proposals by the Chairman for adjustments in the horizontal articles:

In Article 51 (1):

"The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers **and respecting the limits of the powers of the Union as conferred on it by other parts of [this Treaty / the Constitutional Treaty].**"

Article 51 (2):

"This Charter does not **extend the scope of application of Union law or** establish any new power or task for the Community or the Union or modify powers and tasks defined **by the other [Chapters / parts] of [this Treaty / the Constitutional Treaty].**"

Add to Article 52:

"52(4) Insofar as the Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions."

"52 (5) The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions and bodies of the Union, and by acts of Member States only when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality."

"52 (6) Full account shall be taken of national laws and practices as specified in this Charter."

Propositions de compromis du Président pour des adaptations dans les dispositions horizontales:

Article 51 (1):

"Les dispositions de la présente Charte s'adressent aux institutions et organes de l'Union dans le respect du principe de subsidiarité, ainsi qu'aux Etats membres uniquement lorsqu'ils mettent en oeuvre le droit de l'Union. En conséquence, ils respectent les droits, observent les principes et en promeuvent l'application, conformément à leurs compétences respectives **et dans le respect des limites des compétences de l'Union telles qu'elle lui sont conférées par les autres parties du [présent traité/traité constitutionnel].**"

Article 51 (2):

La présente Charte **n'étend pas le champ d'application du droit de l'Union, ni** ne crée aucune compétence ni aucune tâche nouvelle pour la Communauté et pour l'Union et ne modifie pas les compétences et tâches définies par **les autres chapitres du [présent traité/traité constitutionnel].**

Ajouter à l'article 52:

"52(4) Dans la mesure où la présente Charte reconnaît des droits fondamentaux tels qu'ils résultent des traditions constitutionnelles communes aux Etats membres, ces droits doivent être interprétés en harmonie avec les dites traditions."

"52 (5) Les dispositions de la présente Charte qui contiennent des principes peuvent être mises en œuvre par des actes législatifs et exécutifs pris par les institutions et organes de l'Union, et par des actes des Etats membres uniquement lorsqu'ils mettent en œuvre le droit de l'Union, dans l'exercice de leurs compétences respectives. Leur invocation devant le juge n'est admise que pour l'interprétation et le contrôle de la légalité de tels actes."

"52(6) Les législations et pratiques nationales doivent être pleinement prises en compte comme précisé dans la présente Charte."

Explanatory notes:

1. The present compromise proposals aim at taking due account of concerns raised and suggestions made in the discussions of the Group and in working documents, in particular documents n° 1 by Mr. McDonagh, n°s 4 and 16 by Baroness Scotland, and n° 14 by Mr. MacCormick. They have been drafted in the spirit of respecting fully the compromise reached by the previous Convention on the content of the Charter, while achieving greater clarity of certain elements of that compromise, which according to certain members of the Group would be desirable *in the event of a Charter becoming legally binding*.
2. The proposed adjustments to Article 51 (1) and (2) are designed to reflect the outcome of the Group's discussions on the relationship between the Charter and the allocation of competences between the Union and the Member States. The words "(this Charter) *does not extend the scope of application of Union law...*" merely confirm established case law¹.
3. The suggested paragraph 4 in Article 52 serves to ensure an interpretation of the Charter which is in harmony with the common constitutional traditions; this rule of interpretation is based on current Treaty language (Article 6 § 2 TEU) and takes due account of the approach to common constitutional traditions followed by the Court of Justice, as explained by Judge Skouris at the hearing of 17 September.
4. The proposal of a new Article 52 (5) confirms the distinction between rights and principles which has been an important element - already expressed in the Preamble and in Article 51 (1) - of the final compromise of the Charter. It attempts to encapsulate, in a clear legal definition, the understanding of the concept of "principles" which has marked the work of the previous Convention on this point and been mentioned in the discussions of the Working Group by members of that Convention. Principles are different from subjective rights in that they may call for implementation through legislative or executive acts; accordingly, they become significant for the Courts when such acts are interpreted or reviewed. This is consonant both with case law of the Court of Justice² and

¹ See the judgment of the Court of Justice C-249/96 Grant, 1998 ECR I-621, at par. 45, according to which the Community fundamental rights, while their respect must be ensured, "cannot in themselves have the effect of extending the scope of the Treaty provisions beyond the competences of the Community."

² Cf. notably recent case law on the "precautionary principle" in Article 174 § 2 TEC: judgment of the CFI of 11 September 2002, T-13/99, Pfizer vs. Council, with numerous references to earlier case law; and a series of judgments on Article 33 (ex-39) on the principles of agricultural law, e.g. judgment of

with the approach of the Member States' constitutional systems to "principles" particularly in the field of social law, as developed in the previous Convention by several eminent constitutional lawyers who were members of that Convention.

In addition, the proposed clause would maintain the line followed by the previous Convention to express the character of a "right" or a "principle" of individual Charter articles as best as possible in the wording of the respective articles and to leave it, on this basis and taking into account the valuable guidance provided by the "Praesidium's Explanations", for future jurisprudence to rule on the exact attribution of articles to the two categories.

5. Proposed Article 52 § 6 refers to the various articles in the Charter which, in the spirit of subsidiarity make reference to national laws and practices.

the Court of Justice C-265/85, Van den Berg, 1987 ECR 1155: scrutiny of the principle of market stabilisation and of reasonable expectations, further references see Comm. Megret, tome 3, pp. 80 et seq.

THE EUROPEAN CONVENTION

THE SECRETARIAT

Brussels, 9 October 2002

Working Group II

Working document 24

Working group II "Incorporation of the Charter/ accession to the ECHR"

From: The Secretariat
To: Working Group II

Subject : Comments on horizontal articles of the Charter

Members of the Group will find herein comments on horizontal articles of the Charter

Comments on some of the points to be discussed by
the Working Group on Charter
at its meeting on 7 October 2002
by
VYTENIS POVILAS ANDRIUKAITIS,
Member of the Convention

Based on the premise that the substance of the Charter as a compromise reached by the previous Convention should be respected, the horizontal articles of the Charter is the main part that we need to focus our attention on.

Therefore, I congratulate President António Vitorino on an excellent drafting of the compromise proposals concerning adjustments in the horizontal articles of the Charter both accommodating the concerns of some of the members of our Working Group and reflecting the broad discussions that took place in the Working Group meetings. I support the proposals by Mr. António Vitorino.

I would also like to express my support to Prof. Jürgen Meyer's proposal laid down in Working document No. 17 on the Enforceability of the Charter of Fundamental Rights and improvement of the individual's right to legal redress. I support the proposed amendment of Article 230 (4) EC aimed at enlarging standing for individuals to enable them to challenge general measures that are of direct or individual concern to them. I share the view that the present wording of the Article which requires that the challenged measure be of direct and individual concern to the applicant is too restrictive. It is fully understood that as a consequence of such an amendment the division of work between the national and the European courts may be disturbed. However, by broadening-up direct access to the Court of First Instance, we may ensure both individuals' right of access to a court and their right to an effective remedy at the European level. Moreover, that the recent case-law of the Court of Justice and the Court of First Instance invite us to initiate necessary treaty amendments. It is an opportunity that we do have. Therefore, I welcome Prof. Jürgen Meyer's proposal and would like to invite the Working Group to take it into account.

6 October 2002

THE EUROPEAN CONVENTION
THE SECRETARIAT

Brussels, 14 October 2002

Working Group II

Working document 25

Working group II "Incorporation of the Charter/ accession to the ECHR"

From: The Secretariat
To: Working Group II

Subject : Draft final report

Members of the Group will find herewith the draft final report of the Group.

Members are kindly asked to send any reactions they may have to this draft to the Secretariat (clemens.ladenburger@consilium.eu.int) by Thursday, 17 October, 17:00 hours, at the latest.

Draft Final Report

Introduction

On the basis of its mandate (doc. CONV 72/02), the Group has, in the course of its seven meetings and having held hearings with several legal experts¹, examined two main complementary issues:

- the modalities and consequences of possible incorporation of the EU Charter of Fundamental Rights (hereinafter: "the Charter") into the Treaties (Chapter A);
- the modalities and consequences of possible accession of the Community / the Union to the European Convention on Human Rights (hereinafter: "the ECHR") (Chapter B).

In addition, the Group has discussed the specific issue of access by individuals to the Court of Justice, which, as mentioned in the Group's mandate, arises independently of the questions of incorporation of the Charter and of accession to the ECHR but has a wider link to fundamental rights (Chapter C).

Thanks to the strong sense of commitment, the willingness to engage in detailed technical discussion, and the remarkable spirit of compromise of its members, the Group has succeeded in producing a highly consensual report on both main issues.

A. On the Charter

I. Recommendations as to the form of possible incorporation of the Charter

1. General recommendation

At the outset, the Group stresses that, in accordance with its mandate, the final political decision

¹ Mr. Johann Schoo, Director, Legal Service of the Parliament, Mr. Jean-Claude Piris, Jurisconsult, Director-General of the Legal Service of the Council, and Mr. Michel Petite, Director-General of the Legal Service of the Commission, heard on 23 July (see WD N° 13 and CONV 223/02); Mr. Marc Fischbach, Judge, European Court of Human Rights, and Mr. Vassilios Skouris, Judge, European Court of Justice, heard on 17 September (see WD N° 19 and CONV 295/02). Mr. Söderman, European Ombudsman and observer to the Convention, attended the Group's meeting on 4th October and presented his contribution CONV 221/02 CONTRIB 76.

about possible incorporation of the Charter into the Treaty Framework will be reserved for the Convention Plenary. The mandate of the Group has been to prepare such a decision through examination of a series of specific questions relating to modalities and consequences of such incorporation.

Without prejudice to that final political decision, and on the basis of the common understanding reached by the Group on all key issues related to the Charter as set out below, all members of the Group either support strongly or are open to giving favourable consideration to an incorporation of the Charter *in a form which would make the Charter legally binding and give it constitutional status*. Different forms exist, in the Group's view, to achieve that result, as set out below; but in any event, a "building block" as central as fundamental rights should find its place in the Union's constitutional framework. The Group is confident that, with its report, the necessary groundwork allowing the Plenary to take its political decision on incorporation has now been done; notably, this general recommendation of the Group has been facilitated by a common understanding, reached within the Group, on certain legal and technical aspects of the Charter which are of great significance for a smooth incorporation ensuring legal certainty.

2. Recommendations as to the concrete form of incorporation

The Group is fully aware that the choice to make as to the concrete form of incorporation does not depend exclusively on considerations linked to the Charter or to fundamental rights in general, but also on the overall picture of the Treaty architecture which will emerge in future discussions of the Convention Plenary. For this reason, it would not be appropriate for this Group to restrict the Convention's further overall work by proposing only one technique for incorporation of the Charter. Rather, out of the various possibilities submitted to the Group at the outset of its work¹, the Group recommends the Plenary to consider two basic options:

- a. insertion of the text of the Charter articles at the beginning of the Constitutional Treaty, in a Title or Chapter of that Treaty; or

¹ See documents CONV 72/02 and 116/02, pp. 7-8.

- b. insertion of an appropriate reference to the Charter in one article of the Constitutional Treaty; such a reference could be combined with annexing the Charter to the Constitutional Treaty, either as a specific part of the Constitutional Treaty containing only the Charter or as a separate legal text (e.g., in form of a Protocol).

Having considered the questions coming under the Group's mandate, a large majority of the Group would prefer the first option. The second option is favoured by certain other members, some of them emphasising the need to annex the Charter to the Treaty, as a specific part of that Treaty or as a protocol. The Group as a whole underlines that both basic options can serve to make the Charter a legally binding text of constitutional status.

II. Conclusions and recommendations on certain legal and technical aspects of the Charter of importance for a smooth incorporation of the Charter into the new Treaty architecture

An important part of the Group's work has been to examine a number of legal and technical aspects of the Charter which, as has become clear during the Group's discussions, are important in the perspective of a smooth incorporation of the Charter, as a legally binding document, into the new Treaty architecture. The Group has found a common understanding on these questions, and on ensuing recommendations, as set out hereafter.

1. Respecting the content of the Charter

The basic starting point underlying the Group's conclusions on the Charter is that the content of the Charter represented a consensus reached by the previous Convention, a body which had special expertise in fundamental rights and served as model for the present Convention, and endorsed by the Nice European Council. The whole Charter - including its statements of rights and principles, its preamble and, as a crucial element, its "general provisions" - should therefore be respected by this Convention and not be re-opened by it.

Accordingly, the Group has not considered any changes to the rights and principles contained in the Charter. The Group recognises however that certain technical *drafting adjustments* in the Charter's "general provisions" are nonetheless possible and appropriate as explained below; the Group therefore proposes to the Plenary the drafting adjustments set out in the Annex to this report¹. It is important to note that these adjustments proposed by the Group do not reflect modifications of *substance*. On the contrary, they would serve to *confirm*, and render absolutely clear and legally watertight, certain key elements of the overall consensus on the Charter on which the previous Convention had already agreed. They are prompted by the new perspective of a Constitutional Treaty which has arisen in the present Convention, but also by the concern of legal certainty in the field of fundamental rights, to which the Charter is designed to contribute. Thus, all drafting adjustments proposed herein fully respect the basic premise of the Group's work, i.e. to leave intact the substance agreed by consensus within the previous Convention, and the Group urges the Plenary equally to respect this premise when considering the proposed drafting adjustments.

2. Incorporation of the Charter will not modify the allocation of competences between the Union and the Member States

The Group is able to confirm that incorporation of the Charter will in no way modify the allocation of competences between the Union and the Member States. This point, on which there was consensus already in the previous Convention, is currently reflected in Article 51 § 2 of the Charter. The fact that certain Charter rights concern areas in which the Union has little or no competence to act is not in contradiction to it, given that, although the Union's *competences* are limited, it must *respect* all fundamental rights wherever it acts and therefore avoid indirect interference also with such fundamental rights on which it would not have the competence to legislate.

However, in order to render this point clear beyond any doubt, even in the perspective of a Charter forming part of a constitutional treaty, the Group recommends the drafting adjustments to Article 51 § 1 and 2 set out in the Annex. Moreover, the Group considers it useful to confirm expressly, in Article 51 § 2, the established case law according to which the fundamental rights of the Union, while they must be respected, cannot in themselves have the effect of extending the scope of the

¹ In addition to the adjustments indicated in the annex, it should be kept in mind that, depending on the future Treaty architecture, purely drafting adjustments may become necessary to the various references, made throughout the Charter, to "the Treaties", "the Community Treaties", "the Treaty on the European Union", "Community law", etc., see doc. CONV 116/02, p. 7.

Treaty provisions beyond the competences of the Union.¹

Furthermore, the Group recalls in this context that the Charter was drafted with due regard to the principle of subsidiarity, as is clear from its Preamble, its Article 51 § 1 and from those Charter Articles which make references to national laws and practices; it seems appropriate to the Group to include a clause in the general provisions of the Charter (see Article 52 § 6 in the Annex) recalling these references. Likewise, it is in line with the principle of subsidiarity that the scope of application of the Charter is limited, in accordance with its Article 51 § 1, to the institutions and bodies of the Union, and to Member States *only* when they are implementing Union law.²

3. Full compatibility between the fundamental rights of the EC Treaty and the Charter articles which restate them

As regards the specific case of those fundamental rights which are already expressly enshrined in the EC Treaty and merely "restated" in the Charter (notably rights derived from Union citizenship)³, there was already consensus in the previous Convention on the principle that the legal situation as defined by the EC Treaty should remain unaffected by the Charter; this is presently expressed in the "referral clause" of Article 52 § 2 of the Charter⁴.

Reconfirming that point, the Group has reached consensus on the need to have, as concerns these rights, a legally "watertight" referral clause, such as presently included in Article 52 § 2 of the Charter, ensuring complete compatibility and coordination between the statements of the rights in the Charter and their more detailed regulation as currently found in the EC Treaty. The Group stresses that this clause of Article 52 § 2 will, if the Charter is to become a part of the constitutional treaty, logically need a slight drafting adjustment, so as to make it clear that the referral is made to *other parts* of Treaty law where the conditions and limits of the exercise of these rights are defined. The concrete formula of such a drafting adjustment, reflecting that principle of compatibility and coordination, cannot be given at this stage as it will depend on the exact overall Treaty architecture.

¹ See Judgment of the Court of Justice C-249/96 Grant, 1998 ECR I-621, at par. 45.

² It should be noted that, upon possible incorporation of the Charter into the Treaty, the current wording of Article 46 (d) TEU would have to be brought in line with existing case law and Article 51 of the Charter on the (limited) application of fundamental rights to acts of Member States.

³ A list of those rights is to be found in WD N° 9 of the Chairman, page 3, Fn. 2.

⁴ See also the "Explanations" (Document CHARTE 4473/00 CONVENT 49 of 11 October 2000; see in detail below, section A III 3) under Article 52 § 2: "The Charter does not alter the system of rights

Furthermore, the Group is of the view that, as regards these rights, a certain "replication" ("dédouplements") between the Charter and other parts of Treaty law will be inevitable for legal reasons and will not be harmful.

The Group signals that if, as advocated by a large majority of the Group, incorporation is achieved by the insertion of the Charter text in the first part of the Constitutional Treaty, it would then become necessary to combine, in an appropriate manner, in that Treaty the Charter articles on citizens' rights and the provisions on citizenship of the EC Treaty having constitutional importance; this should be considered as a technical operation raising no political problems.

4. Correspondence between Charter rights and rights guaranteed by the ECHR

The Group underlines and reconfirms the central importance of Article 52 § 3 of the Charter, on those Charter rights which correspond to rights guaranteed by the ECHR; it recalls that this clause was a crucial element of the overall consensus in the previous Convention.¹ On the basis of the "Explanations" on the Charter², the Group confirms its common understanding on the meaning of this provision: the rights in the Charter which correspond to ECHR rights have the same scope and meaning as laid down in the ECHR; this includes notably the detailed provisions in the ECHR which permit limitations of these rights. The second sentence of Article 52 § 3 of the Charter serves to clarify that this article does not prevent more extensive protection (i) in Union legislation and (ii) in those articles of the Charter which, although based on the ECHR, go beyond the ECHR because Union law *acquis* had already reached a higher level of protection (e.g., Article 47 on effective judicial protection, or Article 50 on the right not to be punished twice for the same offence).

5. An interpretation in harmony with common constitutional traditions

The Group stresses that the Charter has deep roots in the Member States' common constitutional traditions, which were brought together impressively in the previous Convention's work. The extensive case law on fundamental rights derived from the common constitutional traditions established by the Court of Justice and confirmed by Article 6 § 2 TEU, represents an important

conferred by the Treaties".

¹ Cf. on Article 52 § 3 of the Charter also the concurrent statements made by Judge Fischbach of the European Court of Human Rights and Judge Skouris of the European Court of Justice at the hearing on 17 September, doc. CONV 295/02.

² On the "Explanations", see in detail below, section A III 3.

source for the rights recognised by the Charter. In order to highlight these roots and in the interest of a smooth incorporation of the Charter as a legally binding document, the Group proposes to include a rule of interpretation in the general provisions (see Article 52 § 4 in the Annex). The rule is based on the wording of the current Article 6 § 2 TEU and takes due account of the approach to common constitutional traditions followed by the Court of Justice as explained by Judge Skouris at the hearing of 17 September. Under that rule, rather than following a rigid approach of "a lowest common denominator", the Charter rights concerned should be interpreted in a way offering a high standard of protection which is adequate for the law of the Union and in harmony with the common constitutional traditions.

6. The distinction between "rights" and "principles" in the Charter

The Group stresses the importance of the distinction between "rights" and "principles", which was an important element – already expressed in the Preamble and in Article 51 § 1 of the Charter - of the consensus reached by the previous Convention. In order to reconfirm that distinction while increasing legal certainty in the perspective of a legally binding Charter with constitutional status, the Group proposes an additional general provision (see Article 51 § 5 in the Annex) encapsulating, in a clear legal definition, the understanding of the concept of "principles" which marked the work of the previous Convention and has been recalled in the discussions of the Working Group by members of that Convention. According to that understanding, principles are different from subjective rights in that they may call for implementation through legislative or executive acts; accordingly, they become significant for the Courts when such acts are interpreted or reviewed. This is consistent both with case law of the Court of Justice¹ and with the approach of the Member States' constitutional systems to "principles" particularly in the field of social law.

In addition, with the proposed clause the Group reconfirms the line followed by the previous Convention to express the character ("right" or "principle") of individual Charter articles as best as possible in the wording of the respective articles and to leave it, on this basis and taking into account the valuable guidance provided by the "Praesidium's Explanations", for future jurisprudence to rule on the exact attribution of articles to the two categories.

¹ Cf. notably recent case law on the "precautionary principle" in Article 174 § 2 TEC: judgment of the CFI of 11 September 2002, T-13/99, Pfizer vs. Council, with numerous references to earlier case law; and a series of judgments on Article 33 (ex-39) on the principles of agricultural law, e.g. judgment of the Court of Justice C-265/85, Van den Berg, 1987 ECR I 1155: scrutiny of the principle of market stabilisation and of reasonable expectations, further references see Comm. Megret, tome 3, pp. 80 et seq.

III. Recommendations concerning further questions arising in the context of possible incorporation

1. Preamble of the Charter:

The Group considers the Charter Preamble as a crucial element of the overall consensus on the Charter reached by the previous Convention. The Group therefore recommends that this element should in any event be preserved in the future Constitutional Treaty framework. The Group also recalls that the Charter Preamble comprises language on the fundamental nature of the Union going well beyond the area of fundamental rights. As is the case with the Charter as a whole, the concrete form of an "incorporation of the Charter Preamble" into the Treaty framework, as recommended by the Group, will equally depend on the overall Treaty structure to be defined by the Plenary. Thus, if the Charter articles were to be inserted directly in the Constitutional Treaty, the Charter Preamble, enriched by further elements as appropriate, should in the Group's view be used as the Preamble to the Constitutional Treaty. If in turn the Charter is incorporated as a specific part of the Constitutional Treaty or as a separate binding legal text (e.g., in the form of a Protocol) within the Union's constitutional architecture, the Charter Preamble could remain attached to the text of the Charter without any changes; that would of course not preclude the Convention from using, for the drafting of the new Treaty preamble, the elements of general importance to be found in the Charter preamble.

2. Continued reference to external sources (such as currently found in Article 6 § 2 TEU):

The Group discussed whether or not, in case of incorporation of the Charter, the Constitutional Treaty should also contain a reference to the two external sources of inspiration for fundamental rights as currently made in Article 6 § 2 TEU, i.e. the ECHR and the constitutional traditions common to the Member States. Valid arguments have been advanced both for and against this.

Some members have taken the view that maintaining such a reference would be redundant and create legal confusion, given that the Charter already includes rights derived from the ECHR and the common constitutional traditions and makes references to these sources. Others have argued that such a reference in the Constitutional Treaty could serve to complete the protection offered by the Charter and clarify that Union law is open for future evolutions in ECHR and Member States' human rights law.

In any event, the Group recognises that this question is closely related to the choice of the form of incorporation which the Convention will have to make. The Group therefore refrains from making a firm recommendation on this issue; instead, it limits itself to stating that such a reference, if appropriately drafted¹, is not excluded by the prospect of a legally binding Charter, and signals the issue to the Plenary for consideration.

3. The importance of the "Explanations":

The Group stresses the importance of the "Explanations", drawn up at the instigation of the Praesidium of the previous Convention², as an important tool of interpretation ensuring a correct understanding of the Charter. It recognises that these Explanations are presently not sufficiently accessible for legal practitioners. The Group recommends therefore that, upon possible incorporation of the Charter, attention be drawn in an appropriate manner to these Explanations which, as they themselves state, have no legal value but are intended to clarify the provisions of the Charter. In particular, it would be important to publicise them more widely. To the extent that the Convention takes on board the drafting adjustments proposed by this Group, the corresponding explanations given in this report should be added to the original Explanations.

4. Procedure for future amendment of the Charter

As a consequence of possible incorporation of the Charter into the Constitutional Treaty framework, the question will arise according to which procedure the Charter can be amended in the future. However, the Group has considered that this question goes beyond its mandate since it will have to be examined by the Plenary as part of the general question of amendment procedure(s) for the various building blocks of the future Treaty framework.

¹ See doc. CONV 116/02, page 9.

² Document CHARTE 4473/00 CONVENT 49 of 11 October 2000.

B. On accession to the European Convention on Human Rights

I. General conclusions and recommendations

Just as in the case of the Charter, the Group stresses at the outset that, in accordance with the Group's mandate, the final political decision about the perspective of possible accession by the Union (i.e. by the new single legal personality as emerging from the work of Working Group III) to the ECHR will be reserved to the Convention Plenary. The mandate of the Group has been to prepare such a decision through examination of a number of specific questions relating to modalities and consequences of possible accession.

The Group furthermore stresses that the Convention is to decide only on whether to introduce into the new Treaty a constitutional authorisation *enabling* the Union to accede to the ECHR. In contrast, it would later be for the institutions of the Union, notably for the Council deciding by unanimity, to open negotiations for an accession treaty and set the concrete framework of those negotiations; during such negotiations, a range of technical questions regarding the concrete modalities of accession, of which the Group has taken due note¹, will have to be dealt with. Likewise, the decision on the appropriate timing for possible accession by the Union to the ECHR and to its various additional protocols should be left for the Council. All these questions are not of a constitutional nature and therefore not for the Convention.

Without prejudice to the final political decision by the Plenary, and on the basis of the arguments and conclusions set out below, all members of the Group either strongly support or are ready to give favourable consideration to the creation of a constitutional authorisation enabling the Union to accede to the ECHR.

The main political and legal arguments speaking in favour of accession by the Union to the ECHR, which have been recognised by the Group, are the following:

- Accession to the ECHR would give citizens the same degree of protection vis-à-vis acts of the Union as they presently enjoy vis-à-vis all the Member States. This appears to be a question of credibility, given that Member States have transferred substantial competences to the Union

¹ See notably WD N° 8, containing a study carried out within the Council of Europe on technical and legal questions of possible accession to the ECHR.

and that adherence to the ECHR has been made a condition for membership of new States in the Union.

- Accession would be the ideal tool to ensure a harmonious development of the case law of the two European Courts in human rights matters; for some, this argument has even greater force in view of a possible incorporation of the Charter into the Treaties. In this connection, mention should also be made of the problems resulting from the present non-participation of the Union in the Strasbourg judicial system in cases where the Strasbourg Court is led to rule indirectly on Union law without the Union being able to defend itself before that Court or to have a judge in the Court who would ensure the necessary expertise on Union law.
- As the Union reaffirms its own values through its Charter, its accession to the ECHR would give a strong political signal for the coherence between the Union and the "greater Europe", comprised in the Council of Europe and its pan-European human rights system.

The Group has looked in depth into the possible impact of accession to the ECHR on the principle of autonomy of Community (or Union) law including the position and authority of the European Court of Justice. It has emerged from the Group's discussion and expert hearings¹ that the principle of autonomy does not place any legal obstacle to accession by the Union to the ECHR. After accession, the Court of Justice would remain the sole supreme arbiter of questions of Union law and of the validity of Union acts; the European Court on Human Rights could not be regarded as a superior Court but rather as a specialised court exercising external control over the international law obligations of the Union resulting from accession to the ECHR. The position of the Court of Justice would be analogous to that of national constitutional or supreme courts in relation to the Strasbourg Court at present.

The Group stresses that the incorporation of the Charter into the Treaties and the Union's accession to the ECHR should not be regarded as *alternatives*, but rather as complementary steps ensuring full respect of fundamental rights by the Union: just as the existence of the Charter does not in any way diminish the benefits of extending the control of the Strasbourg Court to cover Union acts, so accession to the ECHR does not reduce the significance of the Union's own catalogue of fundamental rights. The two steps would lead to a situation analogous to that in the laws of the Member States whose Constitutions protect fundamental rights but who at the same time have subscribed to the additional external human rights check by the Strasbourg system.

¹ Cf. the concurring statements by Judges Skouris (WD N° 19) and Fischbach (CONV 295/02) as well as by Messrs. Schoo, Piris and Petite (WD N° 13).

In the light of the above, the Group therefore recommends that, if the Plenary agrees politically on the idea of accession, a legal basis should be inserted at an appropriate place in the Constitutional Treaty which would authorise the Union to accede to the ECHR. The drafting of such a legal basis could be kept very simple¹. Given the constitutional significance of possible accession, it should however also be specified that the signature and conclusion of the accession treaty require a decision by the Council by unanimity and the assent of the European Parliament; otherwise, the normal procedures for international agreements would apply.

II. Conclusions and recommendations with respect to specific questions linked to possible accession by the Union to the ECHR

1. Accession to the ECHR will not modify the division of competences between the Union and the Member States

The Group agrees on the central importance of the fact that accession by the Union to the ECHR - like incorporation of the Charter - will in no way modify the allocation of competences between the Union and the Member States. According to the Group's common understanding, the legal "scope" of the Union's accession to the ECHR would be limited to issues in respect of which the Union has competence; it would thus not lead to any extension of the Union's competences, let alone to the establishment of a general competence of the Union on fundamental rights². Accordingly, "positive" obligations of the Union to take action to comply with the ECHR would arise only to the extent to which competences of the Union permitting such action exist under the Treaty.

The Group recommends the use of certain technical devices in order to clarify with certainty that the Union's accession to the ECHR does not modify the allocation of competences. Firstly, a provision clarifying this point could be included in the possible legal basis authorising accession. Secondly, upon accession, a statement stressing the Union's limited competences in the area of fundamental rights could be included in a provision in the accession treaty and / or in an accompanying declaration made by the Union. Thirdly, a mechanism allowing the Union and a Member State to appear jointly as "co-defendants" before the Strasbourg Court could ensure that

¹ The legal base could for example state that the Union shall be authorised to accede to the ECHR.

² Existing preparatory work for accession has also proceeded upon this understanding, see the Council of Europe's study, WD N° 8, at para. 26, an understanding confirmed by Judges Skouris and Fischbach (WD N° 19; CONV 295/02) and by Mr. Petite (WD N° 13) at the respective hearings.

that Court would not make any ruling on the allocation of competences between the Union and the Member States in cases of doubt¹.

In this context, it is important to bear in mind that accession by the Union to the ECHR would not mean that the Union would become a member of the Council of Europe, nor that it would become a general political player in Strasbourg. Rather, the Union and its law would simply take part (with a "scope" limited to its competences) in the specific system of judicial human rights control established by the ECHR. Concretely, there would be a judge at the Strasbourg Court elected "with respect to" ("à titre de") the Union, who would contribute specific expertise in Union law to the Court. Furthermore, a representative of the Union would take part in the Committee of Ministers' specific task of supervising execution of judgments under Article 46 ECHR (which is important notably to ensure that the Committee is properly informed on questions of Union law such as on the system of competences), but not in the Committee's general functions outside of the ECHR.²

2. The Member States' individual positions with respect to the ECHR will be unaffected by the Union's accession

The Group underlines the importance of the principle that accession by the Union to the ECHR does not affect the positions which the Member States have taken individually with respect to the ECHR, as reflected in particular in their individual decisions on the ratification of certain additional protocols, in the reservations they have entered upon ratification of the ECHR or its additional protocols, and in their right to take derogatory measures. The Group stresses that this point can be fully taken into account, since:

- As explained above, the Convention now has to discuss the insertion in the Treaty of a legal basis permitting accession by the Union to the ECHR. If such a possible legal basis were inserted, it would then be for the Council to define, by unanimity, to which additional protocols the Union should accede and when, and which reservations the Union should enter in respect of the ECHR *in its own name*.
- The *Member States'* individual reservations made in respect of the ECHR and additional protocols, as well as their right to take derogatory measures (Article 15 ECHR), would in any

¹ The mechanism has been explained to the Group by Judge Fischbach, see summary note CONV 295/02, p. 5, and is also explained in detail in the Council of Europe's study, Working Document n° 8, at paras 57 - 62.

² This statement is without prejudice to presently existing arrangement of participation in the meetings of the Committee of Ministers by the Community without a right to vote, see WD N° 8, at para. 34.

event remain unaffected by accession since they concern the respective national law, whereas accession by the Union would have legal effect only insofar as Union law is concerned.

III. Conclusions with respect to alternative mechanisms proposed to accession to the ECHR

In the light of expert testimony¹ given to the group on the legal and practical problems with several mechanisms sometimes suggested as alternatives to accession by the Union to the ECHR, such alternative mechanisms (e.g., a special procedure of "referral" or "consultation" from the Court of Justice to the Strasbourg Court, a special recourse to the Strasbourg Court against the institutions without accession, or a "joint panel/chamber" composed of judges from both European Courts), are not recommended by the Group.

B. Access to the Court of Justice

The Group discussed the Union's current system of remedies available to individuals, notably in the light of the fundamental right to effective judicial protection.

In this context, the Group has examined the idea of establishing a special procedure before the Court of Justice for the protection of fundamental rights. As a majority of members had reservations about this idea, the Group does not recommend it to the Convention. The Group underlines however the great benefit which citizens would gain from a possible incorporation of the Charter into the Constitutional Treaty architecture, thereby making the Union's present system of remedies available for the defence of their Charter rights.

The Group wishes however to draw the Plenary's attention to a different issue, namely the question whether or not the conditions of direct access by individuals to the Court (Article 230 § 4 TEC) need reforming in the interest of ensuring effective judicial protection. On this point, the Group's discussion has shown that a certain lacuna of protection might exist, given the current condition of "individual concern" in Article 230 § 4 TEC and the case law interpreting it, in the specific case of "self-executing" Community regulations which impose directly applicable prohibitions on individuals. On the other hand, a widely shared trend emerged in the group's discussion according to which the present overall system of remedies, and the "division of work" between Community

¹ See the hearing of Mr. Schoo, Mr. Piris and Mr. Petite of 23 July 2002 (Working Document 13, pp. 14, 32 fn. 2, 50 - 51) as well as the hearing of Judge Fischbach of 17 September 2002, doc. CONV

and national courts it entails, should not be profoundly altered by a possible reform of Article 230 § 4 TEC. Some members have referred to the possibility of a provision in the Treaty on the obligation of Member States, as spelt out in recent case law¹, to provide for effective remedies for rights derived from Union law.

In any event, while the issue of Article 230 § 4 TEC certainly has a nexus with fundamental rights, it transcends the protection of those rights - as judicial protection must exist for *all* subjective rights -, and it arises quite independently of the concrete questions of the incorporation of the Charter and accession to the ECHR. The Group considers that this issue and its institutional implications must be examined together with other topics such as the limits of Court jurisdiction in Justice and Home affairs² or judicial control of subsidiarity. The Group therefore refrains from making concrete recommendations and commends the question of possible reform in Article 230 § 4 TEC, together with the valuable contributions submitted thereon³, for further examination by the Convention in an appropriate context.

295/02.

¹ Judgment of the Court of Justice of 25 July 2002, C-50/00 P, UPA, at paras 41, 42.

² In this connection, attention is drawn to expert testimony given to the Group reflecting concerns, from a perspective of protection of fundamental rights, about these limits as presently contained in Article 68 TEC and Article 35 TEU in an area as sensitive to fundamental rights as Justice and Home affairs; see the hearing of Judge Skouris (WD N° 19) and of Mr. Schoo of 23 July 2002 (WD N° 13), as well as WD N° 20 of Mr. Ben Fayot presenting a note by Advocate-General Francis Jacobs.

³ See cf., comprehensively on judicial and non judicial remedies, doc. CONV 221/02 CONTRIB 76 of Mr. Söderman; specifically on Art. 230: CONV 45/02 CONTRIB 25 by Hannes Farnleitner; the Group's WD N° 17 by Jürgen Meyer; WD N° 20 of Mr. Ben Fayot presenting a note by Advocate-General Francis Jacobs; the hearing of Judge Skouris (WD N° 19); the hearing of Mr. Schoo (WD N° 13); an overview of the debate and options are given in WD N° 21 by the Group's Chairman.

ANNEX: Proposals by the Working Group for drafting adjustments in the horizontal articles of the Charter¹:

Article 51 (1):

"The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers **and respecting the limits of the powers of the Union as conferred on it by other parts of [this Treaty / the Constitutional Treaty].**"

Article 51 (2):

"This Charter does not **extend the scope of application of Union law beyond the powers of the Union or** establish any new power or task for [the Community or] the Union or modify powers and tasks defined **by the other [Chapters / parts] of [this Treaty / the Constitutional Treaty].**"

add to Article 52:

"52(4) Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions."

"52 (5) The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions and bodies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality."

"52 (6) Full account shall be taken of national laws and practices as specified in this Charter."

¹ The wording in brackets depends on the exact final Treaty architecture.

ANNEXE: Propositions, faites par le Groupe, d'adaptations rédactionnelles dans les dispositions horizontales¹ de la Charte:

Article 51 (1):

"Les dispositions de la présente Charte s'adressent aux institutions et organes de l'Union dans le respect du principe de subsidiarité, ainsi qu'aux Etats membres uniquement lorsqu'ils mettent en œuvre le droit de l'Union. En conséquence, ils respectent les droits, observent les principes et en promeuvent l'application, conformément à leurs compétences respectives **et dans le respect des limites des compétences de l'Union telles qu'elles lui sont conférées par les autres parties du [présent traité/traité constitutionnel].**"

Article 51 (2):

La présente Charte **n'étend pas le champ d'application du droit de l'Union au-delà des compétences de l'Union, ni** ne crée aucune compétence ni aucune tâche nouvelles pour [la Communauté et pour] l'Union et ne modifie pas les compétences et tâches définies par **les autres chapitres du [présent traité/traité constitutionnel].**

ajouter à l'article 52:

"52(4) Dans la mesure où la présente Charte reconnaît des droits fondamentaux tels qu'ils résultent des traditions constitutionnelles communes aux Etats membres, ces droits doivent être interprétés en harmonie avec les dites traditions."

"52 (5) Les dispositions de la présente Charte qui contiennent des principes peuvent être mises en œuvre par des actes législatifs et exécutifs pris par les institutions et organes de l'Union, et par des actes des Etats membres lorsqu'ils mettent en œuvre le droit de l'Union, dans l'exercice de leurs compétences respectives. Leur invocation devant le juge n'est admise que pour l'interprétation et le contrôle de la légalité de tels actes."

"52(6) Les législations et pratiques nationales doivent être pleinement prises en compte comme précisé dans la présente Charte."

¹ Les formules mises entres crochets dépendent de l'architecture finale exacte des Traités.

LA CONVENTION EUROPÉENNE
LE SECRETARIAT

Bruxelles, le 18 octobre 2002

Groupe de travail II

Document de travail 26 REV 1

Les membres du groupe de travail II trouveront ci-joint des commentaires au projet de rapport final du groupe (WD 025)

ANNEX

Mr. A. KELEMEN, Alternate Member

The European Convention
Working Group on “Incorporation of the Charter/Accession to the ECHR”

Modalities and consequences of incorporation into the Treaties of the Charter of Fundamental
Rights and accession of the Community/ Union to the ECHR

Subject: Incorporation of the Charter

1. Techniques of incorporation

Although the working group has limited its approach to the examination of the technical aspects of incorporation, the choice between different forms of incorporation representing different degrees of acknowledgement of its legal value involves the substantial question of the legal status of the Charter in the future.

Only some of the methods of incorporation ensure that the Charter acquire the status of a legally binding text. A binding force has beneficial effects as regards justiciability, and would ensure consistency between the different human rights standards across the three pillars of the Union. Therefore, I consider, that the options ensuring a binding force are preferable.

Furthermore, a treaty of a constitutional character containing a list of fundamental rights would constitute a move for the Community towards conceiving itself as a constitutional unit thus, the incorporation may convey a stronger political message. The coherent list of fundamental rights having legally binding force would raise people’s awareness of their rights.

2. The question of “replication” in the Charter

The necessary elimination of the replications created by the incorporation of the Charter raises the question of whether the articles of the Charter or those of the current Treaty should be deleted. As far as I see, both general provisions of fundamental rights having broader scope and those relating to specific chapters and sectors are to be maintained given the complementary character of more detailed provisions.

3. Treaty provisions concerning the Court of Justice

a) Amendment of Article 46(d)

Article 46(d) of the TEU conflicting with Article 51(1) of the Charter codifying the well established case law of the Court of Justice is to be deleted in order to ensure legal certainty.

b) Competences of the Court in the field of justice and home affairs

The Treaty of Amsterdam has significantly extended the role of the Court of Justice in the 3rd Pillar. Nevertheless, the jurisdictional competence remained restricted and the preliminary ruling procedure has been modified to the detriment of the citizens. Given that the prevalence of the fundamental rights in the field of the 3rd Pillar is particularly important and the availability of the Court of Justice is essential in guaranteeing the respect those rights, we agree with further extension of the competence of the Court and the proposed modification in the wording of the provision limiting the use of the preliminary ruling procedure.

c) The question of liberalizing the conditions for direct action before the Court

Ensuring binding force to the Charter brings about the need to ensure that individuals have direct access to the European Court in order to challenge Community acts violating their fundamental rights. The introduction of the direct recourse procedure is essential in assuring full protection and transparency among others.

Subject: Accession of the Community/Union to the ECHR

The accession of the Community/Union to the ECHR would put in place an effective external control mechanism of the legislative and enforcement activity of the Community institutions providing for a possibility of direct access of individuals to an independent court ensuring full protection of human rights. Therefore, I am in favour of an eventual accession.

Despite the fact that the consultation mechanism proposed in the working paper could be useful in order to eliminate the problems arising from the possible lack of coherence in the interpretation of human rights of the two courts, I am not convinced by the necessity of its introduction. The purpose of the establishment of the consultation mechanism in the European legal order has been related to the specific character of the Community judicial system; hence this mechanism is not essential in the ECJ – European Court relation.

The main concerns of the opponents of accession to the ECHR relate to the autonomy of Community law and the subordination of the Luxemburg Court. In my opinion, the autonomy of the Community law is not affected by the accession, given that the Strasbourg Court has no competence in the interpretation of Community law nor in the annulment of Community legal acts. According to my views, the subsidiary competence of the Strasbourg Court is manifested by the fact, that the Court respects a certain degree of discretionary power of the national authorities.

Subject: Rights of minorities with special regard to those of national minorities

Being aware of the fact, that the completion of the protected fundamental rights of the Charter will be effectuated by a political decision to be made eventually by the plenary session of the Convention, the contradiction between the practice of the EU enforcing the protection of minority rights in the accession candidate countries by the Copenhagen-criteria, Europe Agreements and the recommendations made in the framework of the Accession Partnership and the lack of legal basis in this field for the adoption of the same kind of measures in the Community necessitates urgent action. Furthermore, I would like to draw the attention to the fact, that the Europe Agreements remaining in force after the first round of enlargement will maintain this controversial “double standard” situation despite the fact that the Charter provides for the non-discrimination of persons on the grounds of their membership in a national minority.

Mr. I. Svensson,
Alternate Member

Comments on the draft final report of working group II (doc. no. 25)

Dear Mr Vitorino,

I wish to thank you for the excellent draft final report which describes, in a very balanced manner, the gist of our discussions and the support expressed by members of the group both for an incorporation of the Charter of fundamental rights and for the accession of the European Union to the European Convention of Human Rights.

I only have a few comments to make. They are as follows:

1. There is a marked difference in how the draft report refers to the topic of incorporation and to the topic of accession. In order to avoid this difference I propose to add a sentence in A.I.1 on page 3 at the end of paragraph 2 (following the words: "... ensuring legal certainty"):

"Furthermore, the aforementioned common understanding is to be seen in conjunction with the corresponding unity on the issue of accession by the European Union to the European Convention on Human Rights, cf. point B I, 3rd paragraph below".

2. It has been my impression that working groups should refrain from submitting detailed drafting proposals. This is why I would suggest a slight change of the text now in A.II.1, the second paragraph of page 5 where we should delete any reference to "drafting adjustments" and instead let the two first sentences read:

"Accordingly and appropriate as explained below and as set out in the Annex to this report".

3. Under A, II, 3 I wish to propose, in the third paragraph on page 7, ("dédouplements") the following wording (bold): "Furthermore, the Group is of the view that, as regards these rights, a certain "replication" ("dédouplements") between the Charter and other parts of Treaty law **might** be inevitable for legal reasons **and should be minimised.**"

4. In Chapter B,I, second paragraph on page 12 the report rightly mentions that the Group has discussed the necessary constitutional authorisation enabling the Union to accede to the ECHR. The same paragraph ends with a sentence stating that questions which are "not of a constitutional nature are not for the Convention". In my opinion, the Convention is competent to discuss a great variety of issues and not at all limited to constitutional matters, as is clear from debates in and recommendations of other working groups.

I therefore propose to delete the last sentence of paragraph 2 as inaccurate and to replace it with the following text:

"However, nothing prevents the Heads of State and Government to commit themselves politically to an accession by the European Union to the European Convention of Human

Rights, for instance in the Final Act of the Intergovernmental Conference which is to be convened following the Convention."

5. Still on Chapter B, I, paragraph 4 (pages 12-13) there is an enumeration of reasons in favour of accession. Much more could be said in this context but if no other change is made I would at least ask that what is now the **third indent ("greater Europe" argument) be placed first.**

6. There is another difference of expression pertaining to what the group sees fit to recommend regarding on the one hand the incorporation (A.I.2 paragraph 1 on pages 3-4, options "a and b") and on the other the accession (B.I. paragraph 7 on page 14). In the first context, the Group straightforwardly recommends the Plenary to consider two options whereas in the latter the Group's recommendation is not only conditioned by a later Plenary decision but also less well presented.

This is why I first propose to **delete the words** "if the Plenary agrees politically on the idea of accession" since the group must have the full right to make proposals regardless of subsequent decisions of the Plenary and also since all who have spoken in our group have been in favour of an accession.

I then propose that the presentation follows the one in A.I.2 on pages 3-4 so that the first sentence of the paragraph will appear as follows:

"In the light of the above, the Group therefore recommends -----:

- that a legal basis should be inserted at an appropriate place in the Constitutional Treaty which would authorise the Union to accede to the ECHR."

7. Regarding B.II.1 on page 15 I propose to delete the last four words of the first paragraph ""in cases of doubt") which seem ambiguous in the context.

8. Regarding B.III on page 16 I am very much attached to your writing concerning "alternative mechanisms" especially since concerted legal opinions have ruled them out.

Finally, I assume that the last part of the report concerning Access to the ECJ should be labeled "C".

Yours sincerely,

Ingvar

Mr. B. FAYOT, Member of the Convention

GROUPE DE TRAVAIL II / DOCUMENT DE TRAVAIL 25 du 14 octobre 2002

INCORPORATION DE LA CHARTE DES DROITS FONDAMENTAUX - ACCESSION DE L'UE A LA CEDH

Impression générale: Il faut reconnaître que le projet de rapport constitue un effort important pour rendre fidèlement les détails et l'accord obtenu. Cependant, il ne cesse de mettre en avant une prudence extrême, voire une grande méfiance à l'encontre de la Charte des Droits fondamentaux, comme si celle-ci était une machine de guerre diabolique pour élargir subrepticement les compétences de l'Union au détriment des compétences des Etats membres. Or, il faut rappeler que la Charte a fait l'objet d'un large consensus lors de la 1ère Convention et qu'elle a fait l'objet d'une déclaration solennelle du Conseil européen de Nice. Surtout, elle a rencontré un accueil très favorable dans un grand nombre d'Etats membres et surtout auprès des opinions publiques et de la société civile. Tout en reconnaissant les limites de ce document, il faut convenir que c'est le premier document lisible et visible où les citoyens européens trouvent rassemblés leurs droits.

Etant donné la prudence et la méfiance dont question plus haut, le noyau central du rapport donne l'impression de se concentrer sur une limitation encore plus prononcée que dans le documents original des droits y contenus.

A. On the Charter

I. Recommendations as to the form of possible incorporation of the Charter

1. General recommendation

Le rapport parle (p. 3 version anglaise) du "common understanding" sur certains aspects légaux et techniques de la Charte.

Ces aspects concernent sans doute les points suivants:

- les articles horizontaux
- l'importance du préambule
- le statut des commentaires des articles établis par la présidence de la 1ère Convention

Or, si nous étions d'accord sur le rôle important du préambule et sur le statut des commentaires, nous ne l'étions pas sur la nécessité d'ajouter des articles horizontaux.

2. Recommendations as to the concrete form of incorporation

La majorité s'est prononcée pour l'incorporation du texte complet de la Charte dans un traité constitutionnel pour des raisons de lisibilité de ce traité.

II. Conclusions and recommendations on certain legal and technical aspects...

1. Le groupe de travail n'a pas reconnu la nécessité d'adaptations aux articles horizontaux. Les propositions de nouvelles formulations aux articles horizontaux n'ajoutent rien quant à la sécurité juridique et donnent au contraire l'impression de vouloir à tout prix limiter voire annuler la portée de la Charte des droits fondamentaux.

2. C'est pourquoi je ne peux donner mon accord à l'alinéa 2 de ce paragraphe 2 où il est dit: "...the Group recommends the drafting adjustments to Art. 52.1 and 2."

Il ne me semble pas nécessaire d'ajouter dans 52.6 une référence à la subsidiarité, déjà indiquée dans le Préambule.

III. Recommendations concerning further questions arising in the context of possible incorporation

1. Preamble of the Charter

Je suis sceptique quant à la formulation : "the Charter Preamble...enriched by further elements as appropriate" au cas où le préambule deviendrait celui du traité constitutionnel. Pour ma part, je suis d'avis qu'il convient d'intégrer toute la Charte et éviter d'y toucher.

2. /

3. The importance of the "Explanations"

On propose d'ajouter les commentaires de ce rapport sur les adaptations des articles horizontaux aux commentaires de la Charte.

Or, ceux-ci étaient les commentaires du Présidium et étaient purement explicatifs. Je ne pense pas qu'on puisse imposer maintenant, par le biais de ce rapport, des interprétations à ces explications

C. Access to the Court of Justice

Quant à la nécessité d'étendre la protection juridique, il convient d'ajouter, outre les règlements européens directement exécutoires, les mesures prises dans le cadre du 3e pilier et des agences comme Europol qui touchent aux droits et libertés des individus et ne rentrent pas nécessairement dans le champ d'action des tribunaux nationaux.

Voilà quelques rapides remarques lors d'une première lecture. Je regrette que le délai qui nous est donné pour examiner le rapport du président soit extrêmement court.

Ben Fayot

15/10/2002

Mr. R. van der LINDEN, Member of the Convention

Re: Comment on the Draft Final report WD 25

Dear Mr Vitorino,

It is with great satisfaction that I have read the draft final report. I want to compliment you on the way you succeeded in this difficult task.

However, I want to put forward one point of great importance.

In your report you have left the decision on the incorporation in the (Constitutional) Treaty or in a Protocol attached to it, to the Convention Plenary.

Yet I want to stress the importance of a clear choice of this Working Group as regards the modalities of the incorporation of the Charter.

The EU grows from a economic and political Union to a Union of values. The heart and soul of this Union of values is the Charter. It is, in your words, the ‘building block’.

But how can we stress the importance of a Union of values, without taking on board the Charter in the Treaty itself?

I am convinced that the Charter belongs in the (Constitutional) Treaty itself, even regarding the equally legally binding nature of a Protocol. In my impression this opinion was shared by all members of the group.

For this reason I strongly plead for an explicit choice in this final report in favour of the full incorporation of the Charter in the Treaty itself.

With Kind Regards,

René VAN DER LINDEN

Member of the Convention

Nuth (NL), 16 October 2002 Rlinden2@wish.net

From: Baroness Scotland of Asthal
To: Secretariat

Subject : Draft final report – UK’s proposed amendments

1.	2. CURRENT TEXT (<i>Bold italics show proposed deletions</i>)	3. UK’S PROPOSAL (Bold type shows proposed adjustments)
p. 3 A, I, 1., 1 st paragraph	“... to prepare such a decision...”	“... to prepare for such a decision...”
p. 3 A, I, 1., 2 nd paragraph	“... on <i>all</i> key issues (...) an incorporation of the Charter <i>in a form which would make the Charter legally binding and give it constitutional status.</i> ”	“... on key issues (...) an incorporation of the Charter.”
p. 3 A, I, 1., 2 nd paragraph	“... <i>the necessary</i> groundwork ...”	“... sufficient groundwork...”
p. 3 A, I, 1., 2 nd paragraph	“... on certain legal and technical aspects of the Charter which are of great significance for <i>a smooth incorporation</i> ensuring legal certainty.”	“... on clarifying certain legal and technical aspects of the Charter which are of great significance for ensuring greater legal certainty.”
p. 4, A, I, 2., b.	“... insertion of an appropriate reference to the Charter in <i>one article of</i> the Constitutional Treaty; such a reference could be combined with annexing the Charter to the Constitutional Treaty, either as a specific part of the Constitutional Treaty containing only the Charter or as a separate legal text (<i>e.g., in form of a Protocol.</i>)”	“... insertion of an appropriate reference to the Charter in the Constitutional Treaty; such a reference could be combined with annexing or attaching the Charter to the Constitutional Treaty, either as a specific part of the Constitutional Treaty containing only the Charter or as a separate legal text.”
p. 4 A, I, 2., 2 nd paragraph.	“... a <i>large</i> majority of the Group would prefer the first option. The second option is favoured by certain other members, some of them emphasising the need to <i>annex</i> the Charter <i>to</i> the Treaty, as a specific part of that Treaty or as a protocol. The Group as a whole underlines that both basic options <i>can</i> serve to make the Charter a <i>legally binding</i> text of constitutional status.”	“... a majority of the Group would prefer the first option. The second option is favoured by certain other members, some of them emphasising the need to associate the Charter with the Treaty, as a specific part of that Treaty or as some form of attachment or protocol. The Group as a whole underlines that both basic

1.	2. CURRENT TEXT (<i>Bold italics show proposed deletions</i>)	3. UK'S PROPOSAL (Bold type shows proposed adjustments)
		options could serve to make the Charter a text of constitutional status.”
p. 4, A, II	“... a smooth incorporation of the Charter, <i>as a legally binding document</i> , into the new Treaty architecture...”	“... a smooth incorporation of the Charter into the new Treaty architecture...”
p. 4, A, II, 1., 1 st paragraph	“The <u>whole</u> Charter (...) should <i>therefore</i> be respected by this Convention <i>and not be re-opened by it.</i> ”	“The <u>whole</u> Charter (...) should in general be respected by this Convention.”
p. 5, A, II, 1., 2 nd paragraph	“ <i>Accordingly</i> , the Group has not considered any changes...”	“The Group has not considered any changes...”
p. 5, A, II, 1., 2 nd paragraph	“... render <i>absolutely</i> clear and legally watertight...”	“... render clearer and more legally watertight...”
p. 5, A, II, 2., 1 st paragraph	“... incorporation of the Charter <i>will</i> in no way modify the allocation of competences...”	“... incorporation of the Charter must in no way modify the allocation of competences...”
p. 6, A, II, 3., 2 nd paragraph	“... ensuring complete compatibility <i>and coordination</i> between the statements of the rights in the Charter and their more detailed regulation as currently found in the EC Treaty.”	“... ensuring complete compatibility between the statements of the rights in the Charter and their more detailed regulation as currently found in the EC Treaty and secondary legislation. ”
p. 6, A, II, 3., 2 nd paragraph	“... reflecting that principle of compatibility <i>and coordination</i> ...”	“... reflecting that principle of compatibility...”
p. 7, A, II, 3., 3 rd paragraph	“...a certain "replication" ("dédouplements") between the Charter and other parts of Treaty law will be inevitable for legal reasons and will not be harmful.”	“...a certain "replication" ("dédouplements") between the Charter and other parts of Treaty law will be inevitable for legal reasons and will not be harmful provided it is made clear, as is proposed, that the Charter articles are not intended to disrupt the Treaty provisions. ”
p. 7, A, II, 3., 4 th	“... as advocated by a <i>large</i> majority of the	“... as advocated by a majority of the Group...”

1.	2. CURRENT TEXT (<i>Bold italics show proposed deletions</i>)	3. UK'S PROPOSAL (Bold type shows proposed adjustments)
paragraph	Group..."	
p. 7, A, II, 4.	"... this article does not prevent more extensive protection (i) in Union legislation and (ii) in those articles of the Charter which, although based on the ECHR, go beyond the ECHR because Union law <i>acquis</i> had already reached a higher level of protection (e.g., Article 47 on effective judicial protection, or Article 50 on the right not to be punished twice for the same offence)."	"... this article does not prevent more extensive protection already achieved or which may subsequently be provided for (i) in Union legislation and (ii) in those articles of the Charter which, although based on the ECHR, go beyond the ECHR because Union law <i>acquis</i> had already reached a higher level of protection (e.g., Article 47 on effective judicial protection, or Article 50 on the right not to be punished twice for the same offence). Thus, the guaranteed rights in the Charter reflect higher levels of protection in <u>existing</u> Union law. "
p. 7, A, II, 5.	"... the Charter has <i>deep</i> roots in the Member States' common constitutional traditions..."	"... the Charter has firm roots in the Member States' common constitutional traditions..."
p. 7-8, A, II, 5.	"...represents an important source for <i>the</i> rights recognised by the Charter. In order to <i>highlight</i> these roots and in the interest of a smooth incorporation of the Charter <i>as a legally binding document...</i> "	"... represents an important source for some rights recognised by the Charter. In order to emphasise the importance of these roots and in the interest of a smooth incorporation of the Charter..."
p. 8, A, II, 5.	"Under that rule, <i>rather than following a rigid approach of "a lowest common denominator"</i> , the Charter rights concerned should be interpreted in a way offering a high standard of protection <i>which is adequate for the law of the Union and</i> in harmony with the common constitutional traditions."	"Under that rule, account must be taken of the constitutional traditions that actually exist in the individual Member States. A rigid "lowest common denominator" approach need not be applied; instead the Charter rights concerned should be interpreted in a way which offers a high standard of protection in harmony with the common constitutional traditions."

1.	2. CURRENT TEXT (<i>Bold italics show proposed deletions</i>)	3. UK'S PROPOSAL (Bold type shows proposed adjustments)
p. 8, A, II, 6., 1 st paragraph	“In order to <i>reconfirm</i> that distinction while increasing legal certainty in the perspective of a <i>legally binding</i> Charter <i>with constitutional status</i> , the Group proposes an additional general provision (see Article 51 § 5 in the <u>Annex</u>) encapsulating <i>in a clear legal definition</i> the understanding of the concept of "principles" ...”	“In order to confirm that distinction while increasing legal certainty in the perspective of an incorporated Charter, the Group proposes an additional general provision (see Article 51 § 5 in the <u>Annex</u>) encapsulating the understanding of the concept of "principles" ...”
p. 8, A, II, 6., 1 st paragraph	“... they may call for implementation through legislative or executive acts; <i>accordingly, they</i> become significant for the Courts when such acts are <i>interpreted or reviewed</i> .”	“... they may call for implementation through legislative or executive acts. Such principles become significant for the Courts only when such legislative or executive acts are adopted by the Union .”
p. 8, A, II, 6., 2 nd paragraph	“... to express the character ("right" or "principle") of individual Charter articles as best as possible in the wording of the respective articles <i>and to leave it, on this basis and</i> taking into account the <i>valuable</i> guidance provided by the "Praesidium's Explanations", for future jurisprudence to rule on the exact attribution of articles to the two categories.”	“... to express the character ("right" or "principle") of individual Charter articles as best as possible in the wording of the respective articles taking into account the crucial guidance provided by the "Praesidium's Explanations", supplemented by explanations from the current Working Group , for future jurisprudence to rule on the exact attribution of articles to the two categories. See also section III.3 below .”
p. 9, A, III, 1.	“... <i>should in the Group's view</i> be used as the Preamble to the Constitutional Treaty.”	“... could be used as the Preamble to the Constitutional Treaty.”
p. 9, A, III, 1.	“If in turn the Charter is incorporated as a specific part of the Constitutional Treaty or as a separate <i>binding legal</i> text (<i>e.g. in the form of</i>	“If in turn the Charter is incorporated as a specific part of the Constitutional Treaty or as a separate text within the Union's constitutional architecture...”

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	<i>a Protocol</i>) within the Union's constitutional architecture...”	
p. 9, A, III, 1.	“... <i>the</i> elements of general importance...”	“... elements of general importance...”
p. 10, A, III, 2., 1 st paragraph	“... Union law is open for future evolutions...”	“... Union law is open for future evolution...”
p. 10, A, III, 3.	“ <i>It recognises that these Explanations are presently not sufficiently accessible for legal practitioners. The Group recommends therefore that, upon possible incorporation of the Charter, attention be drawn in an appropriate manner to these Explanations which, as they themselves state, have no legal value but are intended to clarify the provisions of the Charter. In particular, it would be important to publicise them more widely.</i> To the extent that the Convention takes on board the drafting adjustments proposed by this Group, the corresponding explanations given in this report should be <i>added to</i> the original Explanations.”	“To the extent that the Convention takes on board the drafting adjustments proposed by this Group, the corresponding explanations given in this report should be integrated with the original Explanations. This technical work should be done prior to possible incorporation of the Charter and associated with the Charter in an appropriate manner. ”
p. 11, B, I, 3 rd paragraph	“... on the basis of the <i>arguments and conclusions set out</i> below...”	“... on the basis of the safeguards proposed below...”
p. 11, B, I, 4 th paragraph	“Accession to the ECHR would give citizens <i>the same degree</i> of protection...”	“Accession to the ECHR would give citizens similar protection...”
p. 12, B, I, 6 th paragraph	“... the Union's accession to the ECHR <i>should</i> not be regarded as <i>alternatives</i> ...”	“... the Union's accession to the ECHR need not be regarded as <i>alternatives</i> ...”

1.	2. CURRENT TEXT (<i>Bold italics show proposed deletions</i>)	3. UK'S PROPOSAL (Bold type shows proposed adjustments)
p. 13, B, I, 7 th paragraph	“... authorise the Union to accede to the ECHR...”	“... authorise the Union, subject to the safeguards set out below , to accede to the ECHR...”
p. 13, B, I, 7 th paragraph	“The drafting of such a legal basis could be kept <i>very</i> simple...”	“The drafting of such a legal basis could be kept fairly simple...”
p. 13, B, II, 1., 2 nd paragraph	“... accession by the Union to the ECHR - like incorporation of the Charter – <i>will</i> in no way modify the allocation of competences...”	“... accession by the Union to the ECHR - like incorporation of the Charter – must in no way modify the allocation of competences...”
p. 13, B, II, 1., 1 st paragraph	“... a provision in the accession treaty and / or in an accompanying declaration made by the Union.”	“... a provision in the accession treaty and / or in an accompanying declaration made by the Union and/or as a general reservation. ”
Footnote 1, p. 13	“The legal base could for example state that the Union shall be authorised to accede to the ECHR.”	“The legal base could for example state that the Union shall be authorised to accede to the ECHR subject to competence and without prejudice to the national positions of individual Member States in relation to the ECHR. ”
p. 14, B, II, 2.	“... accession by the Union to the ECHR <i>does</i> not affect the positions...”	“... accession by the Union to the ECHR must not affect the positions...”
p. 14-15, B, II, 2. (2 nd bullet)	“... <i>would</i> in any event remain unaffected by accession...”	“... should in any event remain unaffected by accession...”
p. 15, B, III	“... <i>are</i> not <i>recommended</i> by the Group.”	“... were not explored further by the Group.”
p. 15, B (meaning C?), 2 nd paragraph	“... the Union's present system of remedies available <i>for the defence of their Charter rights.</i> ”	“... the Union's present system of remedies available.”
p. 17 (title)	ANNEX	ANNEX ADD EXPLANATIONS

Mr. M. LOBO ANTUNES, Alternate Member

Comments 1. Given the technical nature - that the report itself acknowledges - of the various subjects discussed at the WG with which other members of the Convention may not be very familiar with, I believe it could be useful to begin the report with a kind of "executive summary" listing the Group's recommendations to the plenary. This would make the report more "attractive" and easy reading for those wishing a quick access to those conclusions.

2. To redraft last sentence of page 2 and first page 3 (1.General recommendations) as follows: "(quote)At the outset, the Group stresses that, in accordance with its mandate, the final political decision TO RECOMMEND the possible incorporation....etc. (continues unchanged)"(unquote).

3. To redraft second sentence page 11 (1. general conclusions and recommendations) as follows: "(quote)".....Group's mandate, the final political decision TO RECOMMEND the possible accession by..etc. (continues unchanged)"(unquote).

These drafting proposals are, in my view, more on line with the mandate enshrined in the Laeken Declaration (see point on Final Document).

Best regards,
Manuel Lobo Antunes
member of the WGII

Ms. N. KUTSKOVA, Alternate Member

As it will be impossible for me to be present during the next meeting of Working Group II on 21 October 2002, I would like to express my support for the last version of the draft final report (working document 25). I think it reflects in a correct and balanced way the opinions expressed during the work of the group. As a representative of a candidate country, I would especially like to stress the importance of the strengthening of the horizontal clauses (general provisions) which is foreseen in the annex to the report.

Sincerely yours,

Nelly Kutzkova

Alternate to the Representative of the Bulgarian Government

Mr. G. CISNEROS Member of the Convention

En relación con el proyecto de informe final del grupo de trabajo II, remitido por el Secretariado, documento de trabajo 25, SN 3794/02 (apartado B II. 2), el miembro de la Convención adscrito al grupo citado D. Gabriel Cisneros formula la siguiente aportación fundada en un estudio realizado por la profesora Dña Belén Becerril, miembro del Instituto de Estudios Europeos, perteneciente a la Universidad San Pablo-CEU, sobre el estado actual del Convenio Europeo de Derechos Humanos en los Estados de la Unión Europea.

La Carta de Derechos Fundamentales de la Unión Europea ha colmado un gran vacío en una Comunidad que durante años había carecido de un catálogo escrito de derechos fundamentales. Sin embargo, la Carta no ha dado por zanjado otro debate que se plantea desde los años setenta en la arena comunitaria: la posible adhesión de la Comunidad o de la Unión al Convenio Europeo para la protección de los Derechos Humanos y de las Libertades Fundamentales (en adelante, CEDH).

Los argumentos a favor y en contra de una eventual adhesión son de todos conocidos. Los partidarios alegan que la adhesión aumentaría la protección de los derechos fundamentales en la Unión, extendiendo a las instituciones europeas el mecanismo de control judicial externo al que están sometidos los Estados miembros, y articulando armoniosamente los dos sistemas europeos de protección de derechos fundamentales. Los detractores, por su parte, alegan que la adhesión sería incompatible con el principio de autonomía del Derecho comunitario y significaría la ruptura de la supremacía jurisdiccional del Tribunal de Justicia. A esto hay que añadir las reticencias que despierta el hecho de que, tras una eventual adhesión, la Unión quedaría sometida al control de jueces de terceros Estados, más lejanos a la especificidad de la integración europea, y en ocasiones, con menor tradición democrática y menor experiencia en el control de la observancia de los derechos humanos.

A estos argumentos podríamos sumar uno más que hasta ahora no ha recibido apenas atención y que no obstante podría suponer un obstáculo adicional para que la adhesión pudiese producirse, o al menos, para que ésta pudiese desplegar los efectos esperados.

Los quince Estados miembros de la Unión Europea y los diez Estados candidatos que ultiman en estos meses sus negociaciones de adhesión (Chipre, República Checa, Eslovaquia, Eslovenia, Estonia, Hungría, Letonia, Lituania, Malta, y Polonia) han firmado y han ratificado el CEDH. Sin embargo, una lectura detenida del Convenio y de los trece protocolos que lo han

completado y modificado a lo largo de los años, pone de manifiesto que la situación de estos veinticinco Estados respecto al Convenio es muy diversa.

Esta diversidad se deriva principalmente de que, como Tratado internacional, el Convenio admite reservas y declaraciones (algunas de las cuales se refieren a su aplicación territorial) por parte de los Estados firmantes. Los trece protocolos admiten a su vez reservas y declaraciones, y además, éstos no han sido, en su totalidad, firmados y ratificados por los veinticinco Estados. El resultado es que la situación de cada uno de éstos Estados respecto al Convenio es diferente.

Durante muchos años esta diversidad alcanzaba tanto al sistema de protección de los derechos fundamentales como al catálogo de derechos protegidos. Sin embargo, el protocolo XI, abierto a la firma el 11 de mayo de 1997 y en vigor desde el 1 de noviembre de 1998, realizó una profunda reforma del sistema procedimental, simplificándolo y terminando con la notable heterogeneidad existente hasta entonces. El protocolo XI instauró un nuevo Tribunal permanente que conoce de todas las demandas, ya sean introducidas por los Estados o por los particulares¹. No obstante, la diversidad sigue siendo muy notable en lo que respecta a la parte sustantiva, es decir, al catálogo de derechos y libertades protegidos (derechos y libertades de los artículos 2 a 14 del CEDH, completado por los Protocolos 1, 4, 6, 7, 12 y 13).

Derechos y libertades de los artículos 2 a 14 del CEDH:

El Convenio recoge en su artículo 1 la obligación de respetar los derechos humanos. Las Altas Partes contratantes reconocen a toda persona dependiente de su jurisdicción los derechos y libertades que están definidos en el Título I del Convenio:

Art. 2: Derecho a la vida.

Art. 3: Prohibición de la tortura.

Art. 4: Prohibición de esclavitud y del trabajo forzado.

¹ Hasta entonces, el sistema de protección variaba considerablemente según cada Estado hubiese o no aceptado expresamente (a través de una Declaración al artículo 46) la competencia del Tribunal, según hubiese o no reconocido (a través de una Declaración al artículo 25) la posibilidad de que los particulares que se considerasen víctimas de una violación pudiesen interponer una denuncia, y según hubiese o no firmado y ratificado el protocolo IX, reconociendo a los particulares la posibilidad de pedir la elevación de un asunto al Tribunal (garantizando así al particular el derecho a una decisión emitida por un órgano judicial, apartado de las razones políticas a las que era más permeable el Comité).

Art.5: Derecho a la libertad y a la seguridad.

Art.6: Derecho a un proceso equitativo.

Art.7: No hay pena sin ley.

Art.8: Derecho al respeto de la vida privada y familiar.

Art.9: Libertad de pensamiento, de conciencia y de religión.

Art.10: Libertad de expresión.

Art.11: Derecho de reunión y de asociación.

Art.12: Derecho a contraer matrimonio.

Art.13: Derecho a un recurso efectivo.

Art.14: Prohibición de discriminación.

Todos los Estados miembros de la Unión, así como los diez Estados candidatos cuya situación examinamos, han firmado y ratificado el Convenio, por lo cual, los veinticinco reconocen estos derechos y libertades a toda persona dependiente de su jurisdicción. No obstante, las reservas y declaraciones emitidas a estos artículos son muy numerosas, como puede examinarse en el primer cuadro matricial que hemos recogido a continuación. Una mención especial merecen los artículos 5 y 6, pues a ellos se refieren la mayor parte de las reservas y declaraciones emitidas por los Estados.

Además, el catálogo de derechos recogido en el Convenio ha sido ampliado por sucesivos protocolos adicionales¹.

Derechos y libertades del Protocolo 1º:

El Protocolo 1º, abierto a la firma el 20 de marzo de 1952, y en vigor desde el 18 de mayo de 1954 recoge los siguientes derechos y libertades:

Art.1: Protección de la propiedad.

Art.2: Derecho de instrucción.

Art.3: Derecho a elecciones libres.

¹ Incluimos referencias a los protocolos en su versión actual, es decir con las modificaciones introducidas por el Protocolo 11.

Los veinticinco Estados han firmado y ratificado este protocolo, aunque han emitido numerosas reservas y declaraciones a los artículos 1 y 2, tal y como puede examinarse en el segundo cuadro matricial.

Derechos y libertades del Protocolo 4º:

El Protocolo 4º, abierto a la firma el 16 de septiembre de 1963, y en vigor desde el 2 de mayo de 1968, recoge los siguientes derechos y libertades:

Art.1: Prohibición de la privación de libertad por incumplimiento de obligaciones contractuales.

Art.2: Libre circulación.

Art.3: Prohibición de expulsión de nacionales.

Art.4: Prohibición de expulsión colectiva de extranjeros.

Este Protocolo no ha sido firmado por Grecia, y no ha sido ratificado por España ni por el Reino Unido. Además, se han emitido diversas reservas y declaraciones al mismo, tal y como puede examinarse en el tercer cuadro matricial.

Derechos y libertades del Protocolo 6º:

El Protocolo 6º, abierto a la firma el 28 de abril de 1983 y en vigor desde el 1 de marzo de 1985, dispone:

Art.1: Abolición de la pena de muerte.

Conviene no obstante notar que el artículo 2 dispone que “Un Estado podrá prever en su legislación la pena de muerte para aquellos actos cometidos en tiempo de guerra o de peligro inminente de guerra; dicha pena solamente se aplicará en los casos previstos por dicha legislación y con arreglo a lo dispuesto en la misma. Dicho Estado comunicará al Secretario General del Consejo de Europa las correspondientes disposiciones de la legislación en cuestión”.

Este Protocolo ha sido firmado y ratificado por los veinticinco Estados. No se han emitido reservas al mismo, pues tal cosa queda prohibida por su artículo 4. Sí se han emitido declaraciones, tal y como puede examinarse en el cuarto cuadro matricial.

Derechos y libertades del Protocolo 7º:

El Protocolo 7º, abierto a la firma el 22 de noviembre de 1984, y en vigor el 1 de noviembre de 1988, recoge los siguientes derechos y libertades:

Art.1: Prohibición de expulsión arbitraria de extranjeros

Art.2: Derecho a un recurso contra una condena penal

Art.3: Derecho a indemnización por anulación de condena

Art.4: Principio *non bis in ídem*

Art.5: Igualdad jurídica de los esposos

Este Protocolo no sido firmado por Bélgica, Malta y el Reino Unido, y no ha sido ratificado por Alemania, España, Países Bajos, Polonia y Portugal. Así pues, sólo está en vigor en 17 de los 25 Estados cuya situación examinamos. Además, se han emitido diversas reservas y declaraciones al mismo, tal y como puede examinarse en el quinto cuadro matricial.

Derechos y libertades del Protocolo 12º:

El Protocolo 12 fue abierto a la firma el 4 de noviembre de 2000, pero aún no ha entrado en vigor. Dispone:

Art.1: Prohibición general de discriminación.

Este Protocolo no ha sido firmado por Dinamarca, España, Francia, Lituania, Malta, Polonia, Reino Unido y Suecia. Tan sólo ha sido ratificado por uno de los veinticinco Estados, Chipre, tal y como puede examinarse en el sexto cuadro matricial.

Derechos y libertades del Protocolo 13º:El Protocolo 13 fue abierto a la firma el 3 de mayo de 2002, pero aún no ha entrado en vigor. Dispone:

Art.1: Abolición de la pena de muerte.

Este Protocolo ha sido firmado por los veinticinco Estados y ha sido ratificado por dos de ellos, Irlanda y Malta, tal y como puede examinarse en el séptimo cuadro matricial.

CUADRO 1°
LA SITUACIÓN DE LOS QUINCE ESTADOS MIEMBROS DE LA UNION EUROPEA Y DIEZ
CANDIDATOS A LA ADHESIÓN RESPECTO AL
CONVENIO EUROPEO DE DERECHOS HUMANOS:

Estados	Fecha de firma:	Fecha de ratificación:	Fecha de entrada en vigor:	Reservas a los artículos:	Declaraciones a los artículos ¹ :
Alemania	4.11.50	5.12.52	3.9.53	3.1.	
Austria	13.12.57	3.9.58	3.9.58	5, 6	
Bélgica	4.11.50	14.6.55	14.6.55		
Chipre	16.12.61	6.10.62	6.10.62		
Rep. Checa	21.2.91	18.3.92	1.1.93	5, 6	
Dinamarca	4.11.50	13.4.53	3.9.53		
España	24.11.77	4.10.79	4.10.79	3.2. 5, 6, 11	10, 15
Eslovaquia	21.2.91	18.3.92	1.1.93	5, 6	
Eslovenia	14.5.93	28.6.94	28.6.94		
Estonia	14.5.93	16.4.96	16.4.96	6	
Finlandia	5.5.89	10.5.90	10.5.90	6	
Francia	4.11.50	3.5.74	3.5.74	5, 6, 15	56
Grecia	28.11.50	28.11.74	28.11.74		
Hungría	6.11.90	5.11.92	5.11.92		
Irlanda	4.11.50	25.2.53	3.9.53	6	
Italia	4.11.50	26.10.55	26.10.55		
Letonia	10.2.95	27.6.97	27.6.97		
Lituania	14.5.93	20.6.95	20.6.95	5	
Luxemburgo	4.11.50	3.9.53	3.9.53		
Malta	12.12.66	23.1.67	23.1.67	10	6
Países Bajos	4.11.50	31.8.54	31.8.54		56
Polonia	26.11.91	19.1.93	19.1.93		
Portugal	22.9.76	9.11.78	9.11.78	5, 7	

¹ Declaración, Declaración sobre aplicación territorial o Comunicación. Solo constan referencias de las reservas o declaraciones que están en vigor en la actualidad. Asimismo, se han suprimido referencias a declaraciones que si bien no han sido formalmente retiradas han quedado sin efecto, como las declaraciones de Alemania sobre la aplicación territorial al *Land* de Berlín.

Estados	Fecha de firma:	Fecha de ratificación:	Fecha de entrada en vigor:	Reservas a los artículos:	Declaraciones a los artículos¹:
Reino Unido	4.11.50	8.3.51	3.9.53		56, 15
Suecia	28.11.50	4.2.52	3.9.53		

CUADRO 2°
LA SITUACIÓN DE LOS QUINCE ESTADOS MIEMBROS DE LA UNIÓN EUROPEA Y DIEZ
CANDIDATOS A LA ADHESIÓN RESPECTO AL
PROTOCOLO 1 :

Estados	Fecha de firma:	Fecha de ratificación:	Fecha de entrada en vigor:	Reservas a los artículos:	Declaraciones a los artículos ¹ :
Alemania	20.3.52	13.2.57	13.2.57	3.3.	2
Austria	13.12.57	3.9.58	3.9.58	1	
Bélgica	20.3.52	14.6.55	14.6.55		
Chipre	16.12.61	6.10.62	6.10.62		
Rep. Checa	21.2.91	18.3.92	1.1.93		
Dinamarca	20.3.52	13.4.53	18.5.54		
España	23.2.78	27.11.90	27.11.90	3.4. 1	
Eslovaquia	21.2.91	18.3.92	1.1.93		
Eslovenia	14.5.93	28.6.94	28.6.94		
Estonia	14.5.93	16.4.96	16.4.96	1	1
Finlandia	5.5.89	10.5.90	10.5.90		
Francia	20.3.52	3.5.74	3.5.74		4
Grecia	20.3.52	28.11.74	28.11.74		
Hungría	6.11.90	5.11.92	5.11.92		
Irlanda	20.3.52	25.2.53	18.5.54		2
Italia	20.3.52	26.10.55	26.10.55		
Letonia	21.3.97	27.6.97	27.6.97	1	
Lituania	14.5.93	24.5.96	24.5.96		
Luxemburgo	20.3.52	3.9.53	18.5.54	1	
Malta	12.12.66	23.1.67	23.1.67		2
Países Bajos	20.3.52	31.8.54	31.8.54		2, 4
Polonia	14.9.92	10.10.94	10.10.94		
Portugal	22.9.76	9.11.78	9.11.78		
Reino Unido	20.3.52	3.11.52	18.5.54	2, 4	D ²
Suecia	20.3.52	22.6.53	18.5.54	2	

¹ Declaración o Declaración sobre aplicación territorial.

² D: Declaración que no se refiere a ningún artículo específico.

CUADRO 3°
LA SITUACIÓN DE LOS QUINCE ESTADOS MIEMBROS DE LA UNION EUROPEA Y DIEZ
CANDIDATOS A LA ADHESIÓN RESPECTO AL
PROTOCOLO 4 :

Estados	Fecha de firma:	Fecha de ratificación:	Fecha de entrada en vigor:	Reservas a los artículos:	Declaraciones a los artículos ¹ :
Alemania	16.9.63	1.6.68	1.6.68	3.5.	
Austria	16.9.63	18.9.69	18.9.69	3	
Bélgica	16.9.63	21.9.70	21.9.70		
Chipre	6.10.88	3.10.89	3.10.89		4
Rep. Checa	21.2.91	18.3.92	1.1.93		
Dinamarca	16.9.63	30.9.64	2.5.68		
España	23.2.78			3.6.	
Eslovaquia	21.2.91	18.3.92	1.1.93		
Eslovenia	14.5.93	28.6.94	28.6.94		
Estonia	14.5.93	16.4.96	16.4.96		
Finlandia	5.5.89	10.5.90	10.5.90		
Francia	22.10.73	3.5.74	3.5.74		5
Grecia					
Hungría	6.11.90	5.11.92	5.11.92		
Irlanda	16.9.63	29.10.68	29.10.68		3
Italia	16.9.63	27.5.82	27.5.82	3	
Letonia	21.3.97	27.6.97	27.5.82		
Lituania	14.5.93	20.6.95	20.6.95		
Luxemburgo	16.9.63	2.5.68	2.5.68		
Malta	5.6.02	5.6.02	5.6.02		
Países Bajos	15.11.63	23.6.82	23.6.82		3, 5
Polonia	14.9.92	10.10.94	10.10.94		
Portugal	27.4.78	9.11.78	9.11.78		
Reino Unido	16.9.63				
Suecia	16.9.63	13.6.64	2.5.68		

¹ Declaración o Declaración sobre aplicación territorial.

CUADRO 4°
LA SITUACIÓN DE LOS QUINCE ESTADOS MIEMBROS DE LA UNION EUROPEA Y DIEZ
CANDIDATOS A LA ADHESIÓN RESPECTO AL
PROTOCOLO 6¹:

Estados	Fecha de firma:	Fecha de ratificación:	Fecha de entrada en vigor:	Declaraciones a los artículos²:
Alemania	28.4.83	5.7.89	1.8.89	D
Austria	28.4.83	5.1.84	1.3.85	
Bélgica	28.4.83	10.12.98	1.1.99	
Chipre	7.5.99	19.1.00	1.2.00	2
Rep. Checa	21.2.91	18.3.92	1.1.93	
Dinamarca	28.4.83	1.12.83	1.3.85	
España	28.4.83	14.1.85	1.3.85	
Eslovaquia	21.2.91	18.3.92	1.1.93	
Eslovenia	14.5.93	28.6.94	1.7.94	
Estonia	14.5.93	17.4.98	1.5.98	
Finlandia	5.5.89	10.5.90	1.6.90	
Francia	28.4.83	17.2.86	1.3.86	
Grecia	2.5.83	8.9.98	1.10.98	
Hungría	6.11.90	5.11.92	1.12.92	
Irlanda	24.6.94	24.6.94	1.7.94	
Italia	21.10.83	29.12.88	1.1.89	
Letonia	26.6.98	7.5.99	1.6.99	
Lituania	18.1.99	8.7.99	1.8.99	
Luxemburgo	28.4.83	19.2.85	1.3.85	
Malta	26.3.91	26.3.91	1.4.91	
Países Bajos	28.4.83	25.4.86	1.5.86	D, 2
Polonia	18.11.99	30.10.00	1.11.00	
Portugal	28.4.83	2.10.86	1.11.86	
Reino Unido	27.1.99	20.5.99	1.6.99	D
Suecia	28.4.83	9.2.84	1.3.85	

¹ *** Conviene notar que este Protocolo, en virtud de su artículo 4, no admite reservas.

² Declaración, Declaración sobre aplicación territorial o Comunicación.

CUADRO 5°
LA SITUACIÓN DE LOS QUINCE ESTADOS MIEMBROS DE LA UNION EUROPEA Y DIEZ
CANDIDATOS A LA ADHESIÓN RESPECTO AL
PROTOCOLO 7:

Estados	Fecha de firma:	Fecha de ratificación:	Fecha de entrada en vigor:	Reservas a los artículos:	Declaraciones a los artículos ¹ :
Alemania	19.3.85			3.7.	2, 3, 4
Austria	19.3.85	14.5.86	1.11.88		2, 3, 4
Bélgica					
Chipre	2.12.99	15.9.00	1.12.00		
Rep. Checa	21.2.91	18.3.92	1.1.93		
Dinamarca	22.11.84	18.8.88	1.11.88	2	6, 2
España	22.11.84			3.8.	
Eslovaquia	21.2.91	18.3.92	1.1.93		
Eslovenia	14.5.93	28.6.94	1.9.94		
Estonia	14.5.93	16.4.96	1.7.96		
Finlandia	5.5.89	10.5.90	1.8.90		
Francia	22.11.84	17.2.86	1.11.88	2, 3, 4, 5, 6	2
Grecia	22.11.84	29.10.87	1.11.88		
Hungría	6.11.90	5.11.92	1.2.93		
Irlanda	11.12.84	3.8.01	1.11.01		
Italia	22.11.84	7.11.91	1.2.92		2, 3, 4
Letonia	21.3.97	27.6.97	1.9.97		
Lituania	14.5.93	20.6.95	1.9.95		
Luxemburgo	22.11.84	19.4.89	1.7.89	5	
Malta					
Países Bajos	22.11.84				2
Polonia	14.9.92				
Portugal	22.11.84				
Reino Unido					
Suecia	22.11.84	8.11.85	1.11.88		1

¹ Declaración, Declaración sobre aplicación territorial o Comunicación.

CUADRO 6°
LA SITUACIÓN DE LOS QUINCE ESTADOS MIEMBROS DE LA UNION EUROPEA Y DIEZ
CANDIDATOS A LA ADHESIÓN RESPECTO AL
PROTOCOLO 12:

Estados	Fecha de firma:	Fecha de ratificación:	Fecha de entrada en vigor:	Reservas a los artículos:	Declaraciones a los artículos:
Alemania	4.11.00			3.9.	
Austria	4.11.00				
Bélgica	4.11.00				
Chipre	4.11.00	30.4.02			
Rep. Checa	4.11.00				
Dinamarca					
España				3.10.	
Eslovaquia	4.11.00				
Eslovenia	7.3.01				
Estonia	4.11.00				
Finlandia	4.11.00				
Francia					
Grecia	4.11.00				
Hungría	4.11.00				
Irlanda	4.11.00				
Italia	4.11.00				
Letonia	4.11.00				
Lituania					
Luxemburgo	4.11.00				
Malta					
Países Bajos	4.11.00				
Polonia					
Portugal	4.11.00				
Reino Unido					
Suecia					

CUADRO 7°
LA SITUACIÓN DE LOS QUINCE ESTADOS MIEMBROS DE LA UNION EUROPEA Y DIEZ
CANDIDATOS A LA ADHESIÓN RESPECTO AL
PROTOCOLO 13:

Estados	Fecha de firma:	Fecha de ratificación:	Fecha de entrada en vigor:	Reservas a los artículos:	Declaraciones a los artículos:
Alemania	3.5.02			3.11.	
Austria	3.5.02				
Bélgica	3.5.02				
Chipre	3.5.02				
Rep. Checa	3.5.02				
Dinamarca	3.5.02				
España	3.5.02			3.12.	
Eslovaquia	24.7.02				
Eslovenia	3.5.02				
Estonia	3.5.02				
Finlandia	3.5.02				
Francia	3.5.02				
Grecia	3.5.02				
Hungría	3.5.02				
Irlanda	3.5.02	3.5.02			
Italia	3.5.02				
Letonia	3.5.02				
Lituania	3.5.02				
Luxemburgo	3.5.02				
Malta	3.5.02	3.5.02			
Países Bajos	3.5.02				
Polonia	3.5.02				
Portugal	3.5.02				
Reino Unido	3.5.02				
Suecia	3.5.02				

Conclusiones

La situación de los veinticinco Estados respecto al CEDH y sus protocolos varía considerablemente. Por supuesto, en líneas generales la posición es la misma, pues todos han ratificado el Convenio y todos se han sometido al Tribunal, aceptando la obligatoriedad de su jurisdicción y permitiendo a los particulares el acceso al sistema. Sin embargo, un análisis más detallado nos ha permitido ver las diferencias que se encierran tras esa aparente homogeneidad; lo cierto es que el catálogo de derechos y libertades protegidos varía considerablemente en los veinticinco Estados cuya situación hemos examinado.

Esta heterogeneidad puede presentar problemas a la Comunidad o a la Unión de cara a una eventual adhesión ¿Con qué protocolos, qué reservas y qué declaraciones se procedería a tal adhesión?

Mantener todas las reservas y renunciar a la firma de los protocolos no ratificados por todos los Estados miembros supondría adherirse a un denominador común del Convenio, lo cual sería perjudicial para la protección de los derechos fundamentales y además, negaría la autonomía del derecho comunitario.

Sin duda, la solución más acertada sería adherirse a la totalidad del mismo, sin tener en cuenta las múltiples reservas nacionales o incluyendo determinadas reservas propiamente comunitarias. La Comunidad invocaría aquí su propia sensibilidad, como ha venido haciendo en su jurisprudencia defensora de los derechos fundamentales, y recordaría a los Estados que en todo caso, el control se produciría sobre el derecho comunitario, no sobre sus normas de derecho nacional.

Sin embargo, esta solución no dejaría de plantear problemas, más aún con los delicados fenómenos de “incorporación” que pueden producirse en aquellos casos en los que las fronteras son muy difusas, y el Tribunal de Luxemburgo debe ser muy meticuloso para no incorporar la normativa nacional a su control de protección de derechos fundamentales.

En todo caso, por encima de estas consideraciones de carácter jurídico, la notable heterogeneidad que se ha señalado en este estudio pone de manifiesto que el Consejo de Europa, con sus 44 Estados miembros y su enorme diversidad, es un marco muy lejano al que representa la Unión Europea del siglo XXI: una comunidad de valores integrada, homogénea y sólidamente asentada en sus Estados miembros.

También se ha puesto de manifiesto que el CEDH es un Tratado flexible y complejo, carente de la transparencia y la simplicidad que precisa en la actualidad la protección de los derechos

fundamentales en la Unión. En este sentido conviene recordar que el Informe sobre Derechos Fundamentales en la Unión Europea del grupo de expertos presidido por el profesor Spiros Smitis, de febrero de 1999, afirmaba que: “Los derechos fundamentales sólo pueden cumplir su función si los ciudadanos conocen su existencia y son conscientes de la posibilidad de hacerlos aplicar, por lo que resulta esencial expresar y presentar los derechos fundamentales de forma que todos los individuos puedan conocerlos y tener acceso a ellos; dicho de otro modo, los derechos fundamentales deben ser visibles (...) Deben encontrarse los medios para conseguir la máxima visibilidad de los derechos, lo que implica su enumeración expresa, a riesgo de repetirse, en lugar de una simple referencia general a otros convenios en los que figuran”.

Tras largos años de protección jurisprudencial de los derechos fundamentales, el sistema europeo precisa, sobre todo, claridad y transparencia. Los Derechos Fundamentales de la Unión deben ser los de Carta, y su intérprete supremo debe ser el Tribunal de Justicia de Luxemburgo.

Mr. A. ARABADJIEV, Alternate Member

Since I will not be able to attend the meeting of the working group on 21 October 2002 and "any reactions" to the draft are allowed,

I want to state that I find that the draft reflects in a correct and balanced manner the discussions held in the Working Group and the common understanding reached by the Group on most of the key issues included in its mandate.

For this reason I prefer not to suggest any amendments to the proposed text.

On some issues which need, in my view, to be further clarified or strengthened, I will express my opinion during the debate on the report in the Convention Plenary. These include:

- The distinction between "rights" and "principles";
- The "scope" of EU accession to the ECHR(and the specific possible situation of the Strasbourg Court having to rule on the allocation of competences between the Union and the Member States when an application is addressed against both);
- The limits reached (in the ECJ's case-law) as to individual access to that court.

Alexander Arabadjiev

Mr. Diego López Garrido, Alternate Member**Contribución al Proyecto de Informe Final del Grupo de Trabajo II (Carta)**

Quiero mostrar mi acuerdo con el conjunto del Proyecto de Informe. No obstante, formulo las siguientes observaciones:

1. Entiendo que el informe corresponde al consenso posible obtenido en el seno del Grupo, aun cuando no estemos de acuerdo en todos sus extremos.
2. La redacción del Informe ha tenido en cuenta suficientemente las preocupaciones y reservas manifestadas por algunos miembros del Grupo respecto a la Carta.
3. Por mi parte, recuerdo que presenté a la última sesión del Grupo una serie de enmiendas a las llamadas “cláusulas horizontales”. Algunas de dichas enmiendas fueron aceptadas y otras no. Estas últimas las considero retiradas para así facilitar el acuerdo final sobre el texto del Informe.

En todo caso, quiero señalar que mi aceptación de la redacción del conjunto del Proyecto de Informe se produce en el bien entendido de que la Carta de Derechos Fundamentales debe integrarse en la futura Constitución europea con carácter jurídicamente vinculante, como así se señala en el Proyecto final que se nos ha sometido.

English VERSION

Mr. Diego López Garrido, Alternate Member

Contribution to the Draft Final Report issued by Working Group II (Charter)

I agree with the Draft Report as a whole. However, I should also like to make the following remarks:

1. It is my understanding that the Report reflects the consensus that the Group has been able to agree, even though we have been unable to agree on every point of the Report.
2. The Draft Report adequately reflects the concerns and reservations expressed by some Group members regarding the Charter.
3. At the last Group session I put forward a number of proposed amendments to the ‘horizontal clauses’. Some proposals were accepted, while others were rejected. I hereby withdraw the latter proposals in order to facilitate final agreement on the text of the Report

4. t. In any event, I should like to point out that I accept the Draft Report expressly on the understanding that the Fundamental Rights Charter must form a part of the future European Constitution in a legally binding way, as set forth in the final Draft submitted to the Group members.
-

Mr. R. Rack, Alternate Member

Dear Commissioner,

I would like to thank you very much for your draft final report of working group II. It reflects to a very great extent the consensus reached in the group and points out all important aspects which arise in respect of the mandate of the group and which were discussed over the past four months.

With respect to some details, however, I could envisage a different or more precise formulation.

Paragraph 2 on page 14 for example seems to suggest that, in case of accession of to the ECHR, the Union's relationship with the Council of Europe is already settled or at least fairly clear. However, especially the representation of the Union in the Committee of Ministers – an organ of the Council of Europe of which the Union will not be a member – does not seem to be an automatic consequence of EU accession to the ECHR. It should be pointed out in the final report of the working group that certain “technical” questions regarding the relationship between the Union and the Council of Europe will have to be settled upon accession. (This entails for example the question of a Union representative in the Committee of Ministers, the participation of the Union in the different monitoring processes of the Council of Europe with regard to the ECHR or the representation in ECHR-related expert committees of the Council of Europe.)

On page 16 footnote 1, to quote the UPA judgement of the European Court of Justice with regard to the obligation of the Member States to provide for effective remedies for rights derived from Union law seems somewhat misleading. While it is true that the Court confirms this obligation of the Member States in para 41 of the UPA judgement, this statement only appears in the context of the argument that direct action for annulment before the Community Court cannot depend on whether the individual is allowed to bring proceedings before a national court to contest the validity of the Community measure at issue. The main statement of the UPA judgement, however, rather seems to envisage a reform of the current system of judicial review of the legality of Community measures of general application under Article 230 TEC.

In general it seems to me that the opinions expressed by the group during the discussion about a possible amendment of Article 230 § 4 TEC were slightly more positive than one might suggest from reading your report.

As to page 10 paragraph 1, I think that the group's discussion on Article 6 § 2 TEU focused on the question of whether there should be a reference to the common constitutional traditions rather than on the question whether a reference to the ECHR should be kept. In particular I would suggest to delete the words “ECHR and” in the last sentence. The sentence would then read: “... such a reference in the Constitutional Treaty could serve to complete the protection offered by the Charter

and clarify that Union law is open for future evolutions in Member States' human rights law." If the Union accedes to the ECHR and there are any future developments like, for example a new protocol, it would be – as pointed out later in the draft final report – for the Council and the Parliament to decide whether the Union should sign and ratify this protocol. A future protocol which has not been ratified by the Union cannot become binding on it by way of jurisprudence of the European Court of Justice.

As to this suggested texts of Arts 51 and 52 I would like to point out again that I see them as an extremely generous compromise to some of our group, who feel a need for further clarification or further restrictions of the horizontal charter articles; a view I and many colleagues do not really share. Therefore any additional step towards watering down the substance and legal implications of the charta would certainly not be acceptable.

Due to the forthcoming elections in Austria I will not be able to attend the group's final meeting on October 21. I would hope that you will take my above-mentioned concerns into account when drafting the final version of the report.

However, if consensus on these points cannot be reached, I should like to accept the report as it stands.

Yours sincerely,

Reinhard Rack.

Mr. V.P. Andriukaitis, Member of the Convention

Working Group II “Integration of the Charter/Accession to the ECHR”

I generally support the draft final report of the Working Group II. Nevertheless, I would like to make a few comments on certain aspects of the report.

1. I fully agree with the premise that the whole Charter - including its Preamble - should be respected and debates on its content should not be reopened by the Convention. However, in section entitled “Preamble of the Charter” of Part A of the report we read about the splitting of the Charter Preamble from the Charter articles and about “enrichment” of the Charter Preamble “by further elements as appropriate, should it be used as a Preamble to the Constitutional Treaty”.

Firstly, I would hesitate to support the proposal of cutting the text of the Charter in two parts and separating the Preamble from the body of the Charter. The Working Group does not seem to have reached a consensus on this point. I would rather see the whole text of the Charter - including its Preamble - kept intact and incorporated into the Constitutional Treaty as its first and principle Chapter.

Secondly, I would be highly reluctant to support the idea of “enriching” the Charter Preamble. To my mind, in essence it would mean reopening of the debates on the content of the Charter involving lengthy and controversial drafting exercise. Moreover, that the majority of the members of our Working Group seem to strongly oppose such an idea.

2. Under the mandate of our Working Group (CONV 72/02), we were entrusted with examining the question whether to keep a reference - of the kind currently in Article 6 § 2 TEU – to common constitutional traditions of the Member States and the ECHR.

I would like to encourage the Working Group to take a stand on this issue. I do not think that we have to make a “firm” recommendation, but at least to express our view. Moreover that the

tendency to favour EU's accession to the ECHR is quite strong and seems to be the majority opinion among the members of our group. Therefore, I would like to support the opinion of a number of our members that the reference to the two external sources of inspiration for fundamental rights in current Article 6 § 2 TEU after the Charter is incorporated in the Constitutional Treaty, will be redundant, and thus not necessary.

3. Under the mandate of our Working Group (CONV 72/02), we were also asked to express our opinion on the question of appeals to the Court of Justice, namely amendments to Article 230 § 4 TEC with regard to the right of direct access by individuals to the Court of Justice.

The language of the section entitled "Access to the Court of Justice" of the draft final report, to my mind might be strengthened. The statement that "the Group's discussion has shown that a certain lacuna of protection might exist, given the current condition of "individual concern" in Article 230 § 4 TEC and the case law interpreting it" seems to be quite weak and insufficient to express the opinion on the matter as important as ensuring effective judicial protection of fundamental rights.

Again, I would like to urge the Working Group not to refrain from stating its position on the issue. I agree that the "division of work" between the Community and national courts should not be "profoundly altered", but at the same time, a number of the members of our Working Group seem to share the view that there is a need to expand the right of direct access by individuals to the Court of Justice. I fully share this view.

Mr. N. Mac Cormick, Alternate Member

I must thank you and Commissioner Vitorino for the excellent work which has been done in putting together the Draft Report. Being in Texas at the moment, I am behind time for returning comments, but perhaps it will be helpful to know that I am fully happy with the Draft Report as it stands now.

I have to restate my apology for absence from the Group's final meeting, as I am continuing from here to Canada to give some lectures.

Please convey to Commissioner Vitorino my sincere congratulations on the excellent conduct and outcome of the Group's deliberations, and to the other members of the secretariat as well as yourself my thanks for the extremely efficient servicing of the Group's work.

Yours sincerely,

Neil MacCormick

Observations de Mme Paciotti au WD 25 du groupe "Charte"

Au Secrétariat de la Convention

Observations sur le document de travail 25 du Groupe de travail "Charte"

En rapport avec le contenu du projet de rapport final, que je partage en grande partie, je souhaite vous communiquer que je suis en désaccord avec ce qui est écrit au point 6 de la lettre A et confirmer ma divergence par rapport aux clauses horizontales ajoutées à l'article 52 de la Charte, reproduites en annexe au rapport, en particulier en me référant à la clause 52.5.

1. Au point A.6 il est question de la distinction - qui aurait été fondamentale dans la précédente Convention - entre droits et principes et il est prétendu que les principes seraient différents des droits parce qu'ils demanderaient une mise en oeuvre par des actes législatifs ou exécutifs. L'opposition entre principes et droits ne me paraît pas pouvoir être proposée sous cette forme. En effet, les droits fondamentaux classiques peuvent eux-mêmes requérir des lois et mesures pour être protégés, alors que les principes peuvent constituer des obligations juridiques immédiatement efficaces qui limitent les pouvoirs législatifs et exécutifs.

Je rappelle aussi que la répartition des articles de la Charte, qui ne se fait plus selon la division traditionnelle en droits politiques et civils et droits économiques et sociaux, mais selon les chapitres "Dignité, Liberté, Egalité, Solidarité, Citoyenneté, Justice", a voulu signifier que toutes les dispositions avaient la même valeur et n'étaient pas susceptibles d'une graduation leur donnant une intensité de protection différente (sauf bien sûr les limites de compétence des institutions européennes, répétés à juste raison dans le rapport).

Par ailleurs, les Cours constitutionnelles des Etats membres, ayant des constitutions écrites et rigides, appliquent directement les principes constitutionnels pour en déduire des droit ou pour les interpréter.

2. Quant aux nouvelles clauses horizontales de la Charte proposées dans le document annexé au rapport, je trouve qu'elles ne feraient que créer des incertitudes d'interprétation et qu'elles modifieraient l'équilibre du compromis de la Convention précédente.

En particulier, la nouvelle clause 52.5 selon laquelle "les dispositions de la présente Charte qui contiennent des principes **peuvent** être mis en oeuvre par des actes législatifs et exécutifs pris par les institutions et les organes de l'Union ..." ("the provisions of this Charter which contain principles **may** be implemented by legislative and executive acts taken by institutions and bodies of the Union...") contredit le texte actuel de la clause 51.1 selon lequel "les institutions et organes de l'Union ...**respectent** les droits, **observent** les principes ..." ("the institutions and bodies of the Union **shall** respect the rights, observe the principles...").

Je compte sur le fait que le texte définitif du rapport pourra être modifié.

Madame, Monsieur,

Ne pouvant être parmi vous lundi prochain pour l'adoption du rapport final du groupe de travail II, je tenais à vous faire connaître mon entier accord au texte du projet de rapport.

Bien à vous

Robert Badinter

THE EUROPEAN CONVENTION**Brussels, 22 October 2002**

THE SECRETARIAT

CONV 354/02**WG II 16****REPORT**

from Chairman of Working group II "Incorporation of the Charter/ accession to the ECHR"

to Members of the Convention

Subject : **Final report of Working Group II**

Introduction

On the basis of its mandate (doc. CONV 72/02), the Group has, in the course of its seven meetings and having held hearings with several legal experts¹, examined two main complementary issues:

- the modalities and consequences of possible incorporation of the EU Charter of Fundamental Rights (hereinafter: "the Charter") into the Treaties (Chapter A);
- the modalities and consequences of possible accession of the Community / the Union to the European Convention on Human Rights (hereinafter: "the ECHR") (Chapter B).

In addition, the Group has discussed the specific issue of access by individuals to the Court of Justice, which, as mentioned in the Group's mandate, arises independently of the questions of incorporation of the Charter and of accession to the ECHR but has a wider link to fundamental rights (Chapter C).

¹ Mr. Johann Schoo, Director, Legal Service of the Parliament, Mr. Jean-Claude Piris, Jurisconsult, Director-General of the Legal Service of the Council, and Mr. Michel Petite, Director-General of the Legal Service of the Commission, heard on 23 July (see WD N° 13 and CONV 223/02); Mr. Marc Fischbach, Judge, European Court of Human Rights, and Mr. Vassilios Skouris, Judge, European Court of Justice, heard on 17 September (see WD N° 19 and CONV 295/02). Mr. Söderman, European Ombudsman and observer in the Convention, attended the Group's meeting on 4th October and presented his contribution CONV 221/02 CONTRIB 76.

Thanks to the strong sense of commitment, the willingness to engage in detailed technical discussion, and the remarkable spirit of compromise of its members, the Group has succeeded in producing a highly consensual report on both main issues; both parts of this report have to be seen as complementary and belonging to the same context.

A. On the Charter

I. Recommendations as to the form of possible incorporation of the Charter

1. General recommendation

At the outset, the Group stresses that, in accordance with its mandate, the political decision about possible incorporation of the Charter into the Treaty Framework will be reserved for the Convention Plenary. The mandate of the Group has been to prepare for such a decision through examination of a series of specific questions relating to modalities and consequences of such incorporation.

Without prejudice to that political decision, and on the basis of the common understanding reached by the Group on all key issues related to the Charter as set out below, all members of the Group either support strongly an incorporation of the Charter *in a form which would make the Charter legally binding and give it constitutional status* or would not rule out giving favourable consideration to such incorporation. Different forms exist, in the Group's view, to achieve that result, as set out below; but in any event, a "building block" as central as fundamental rights should find its place in the Union's constitutional framework. The Group is confident that, with its report, the necessary groundwork allowing the Plenary to take its political decision on incorporation has now been done; notably, this general recommendation of the Group has been facilitated by a common understanding, reached within the Group as set out below, on clarifications of certain legal and technical aspects of the Charter which are advisable in case of a legally binding Charter and of great significance for smooth incorporation ensuring legal certainty.

2. Recommendations as to the concrete form of incorporation

The Group is fully aware that the choice to make as to the concrete form of incorporation does not depend exclusively on considerations linked to the Charter or to fundamental rights in general, but also on the overall picture of the Treaty architecture which will emerge in future discussions of the Convention Plenary. For this reason, it would not be appropriate for this Group to restrict the Convention's further overall work by proposing only one technique for incorporation of the Charter. Rather, out of the various possibilities submitted to the Group at the outset of its work¹, the Group recommends the Plenary to consider the following basic options:

- a. insertion of the text of the Charter articles at the beginning of the Constitutional Treaty, in a Title or Chapter of that Treaty; or
- b. insertion of an appropriate reference to the Charter in one article of the Constitutional Treaty; such a reference could be combined with annexing or attaching the Charter to the Constitutional Treaty, either as a specific part of the Constitutional Treaty containing only the Charter or as a separate legal text (e.g., in form of a Protocol).
- c. According to one member of the Group, an "indirect reference"² to the Charter could be used in order to make the Charter legally binding without giving it constitutional status.

Having considered the questions coming under the Group's mandate, a large majority of the Group would prefer the first option in the interest of a greater legibility of the Constitutional Treaty. The second option is favoured by certain other members, some of them emphasising the need to annex the Charter to the Treaty, as a specific part of that Treaty or as a Protocol. The Group as a whole underlines that both these basic options could serve to make the Charter a legally binding text of constitutional status.

¹ See documents CONV 72/02 and 116/02, pp. 7-8.

² See document CONV 116/02, p. 7.

II. Conclusions and recommendations on certain legal and technical aspects of the Charter of importance for the smooth incorporation of the Charter into the new Treaty architecture

An important part of the Group's work has been to examine a number of legal and technical aspects of the Charter which, as has become clear during the Group's discussions, are important in the perspective of a smooth incorporation of the Charter, as a legally binding document, into the new Treaty architecture. The Group has found a common understanding on these questions and on ensuing recommendations which are proposed with large majority support, two of its members having reservations, as set out hereafter.

1. Respecting the content of the Charter

The basic starting point underlying the Group's conclusions on the Charter is that the content of the Charter represented a consensus reached by the previous Convention, a body which had special expertise in fundamental rights and served as model for the present Convention, and endorsed by the Nice European Council. The whole Charter - including its statements of rights and principles, its preamble and, as a crucial element, its "general provisions" - should be respected by this Convention and not be re-opened by it.

Accordingly, the Group has not considered any changes to the rights and principles contained in the Charter. The Group recognises however that certain technical *drafting adjustments* in the Charter's "general provisions" are nonetheless possible and appropriate as explained below; the Group therefore proposes to the Plenary the drafting adjustments set out in the Annex to this report¹. It is important to note that these adjustments proposed by the Group do not reflect modifications of *substance*. On the contrary, they would serve to *confirm*, and render absolutely clear and legally watertight, certain key elements of the overall consensus on the Charter on which the previous Convention had already agreed. They are prompted by the new perspective of a Constitutional Treaty which has arisen in the present Convention, but also by the concern of legal certainty in the field of fundamental rights, to which the Charter is designed to contribute. Thus, all drafting adjustments proposed herein fully respect the basic premise of the Group's work, i.e. to leave intact

¹ In addition to the adjustments indicated in the Annex, it should be kept in mind that, depending on the future Treaty architecture, purely drafting adjustments may become necessary to the various references, made throughout the Charter, to "the Treaties", "the Community Treaties", "the Treaty on the European Union", "Community law", etc., see doc. CONV 116/02, p. 7.

the substance agreed by consensus within the previous Convention, and the Group urges the Plenary equally to respect this premise when considering the proposed drafting adjustments.

2. Incorporation of the Charter will not modify the allocation of competences between the Union and the Member States

The Group is able to confirm that incorporation of the Charter will in no way modify the allocation of competences between the Union and the Member States. This point, on which there was consensus already in the previous Convention, is currently reflected in Article 51 § 2 of the Charter. The fact that certain Charter rights concern areas in which the Union has little or no competence to act is not in contradiction to it, given that, although the Union's *competences* are limited, it must *respect* all fundamental rights wherever it acts and therefore avoid indirect interference also with such fundamental rights on which it would not have the competence to legislate.

However, in order to render this point clear beyond any doubt, even in the perspective of a Charter forming part of a constitutional treaty, the Group recommends the drafting adjustments to Article 51 § 1 and 2 set out in the Annex. Moreover, the Group considers it useful to confirm expressly, in Article 51 § 2, in light of established case law, that the protection of fundamental rights by Union law cannot have the effect of extending the scope of the Treaty provisions beyond the competences of the Union.¹

Furthermore, the Group recalls in this context that the Charter was drafted with due regard to the principle of subsidiarity, as is clear from its Preamble, its Article 51 § 1 and from those Charter Articles which make references to national laws and practices; it seems appropriate to the Group to include a clause in the general provisions of the Charter (see Article 52 § 6 in the Annex) recalling these references. Likewise, it is in line with the principle of subsidiarity that the scope of application of the Charter is limited, in accordance with its Article 51 § 1, to the institutions and bodies of the Union, and to Member States *only* when they are implementing Union law.²

¹ See Judgment of the Court of Justice C-249/96 Grant, 1998 ECR I-621, at par. 45.

² It should be noted that, upon possible incorporation of the Charter into the Treaty, the current wording of Article 46 (d) TEU would have to be brought in line with existing case law and Article 51 of the Charter on the (limited) application of fundamental rights to acts of Member States.

3. Full compatibility between the fundamental rights of the EC Treaty and the Charter articles which restate them

As regards the specific case of those fundamental rights which are already expressly enshrined in the EC Treaty and merely "restated" in the Charter (notably rights derived from Union citizenship)¹, there was already consensus in the previous Convention on the principle that the legal situation as defined by the EC Treaty should remain unaffected by the Charter; this is presently expressed in the "referral clause" of Article 52 § 2 of the Charter².

Reconfirming that point, the Group has reached consensus on the need to have, as concerns these rights, a legally "watertight" referral clause, such as presently included in Article 52 § 2 of the Charter, ensuring complete compatibility between the statements of the rights in the Charter and their more detailed regulation as currently found in the EC Treaty. The Group stresses that this clause of Article 52 § 2 will, if the Charter is to become a part of the constitutional treaty, logically need a slight drafting adjustment, so as to make it clear that the referral is made to *other parts* of Treaty law where the conditions and limits of the exercise of these rights are defined. The precise formulation of such a drafting adjustment, reflecting that principle of compatibility, cannot be undertaken at this stage as it will depend on the exact overall Treaty architecture.

Furthermore, the Group is of the view that, as regards these rights, "replication" ("dédouplements") between the Charter and other parts of Treaty law might, to a limited extent, be inevitable for legal reasons and will not be harmful, given that, as is proposed, a referral clause will ensure compatibility.

The Group signals that if, as advocated by a large majority of the Group, incorporation is achieved by the insertion of the Charter text in the first part of the Constitutional Treaty, it would then become necessary to combine, in an appropriate manner, in that Treaty the Charter articles on citizens' rights and the provisions on citizenship of the EC Treaty having constitutional importance; this should be considered as a technical operation raising no political problems.

¹ A list of those rights is to be found in WD N° 9 of the Chairman, page 3, Fn. 2.

² See also the "Explanations" (Document CHARTE 4473/00 CONVENT 49 of 11 October 2000; see in detail below, section A III 3) under Article 52 § 2: "The Charter does not alter the system of rights conferred by the Treaties".

4. Correspondence between Charter rights and rights guaranteed by the ECHR

The Group underlines and reconfirms the central importance of Article 52 § 3 of the Charter, on those Charter rights which correspond to rights guaranteed by the ECHR; it recalls that this clause was a crucial element of the overall consensus in the previous Convention.¹ On the basis of the "Explanations" on the Charter², the Group confirms its common understanding on the meaning of this provision: the rights in the Charter which correspond to ECHR rights have the same scope and meaning as laid down in the ECHR; this includes notably the detailed provisions in the ECHR which permit limitations of these rights. The second sentence of Article 52 § 3 of the Charter serves to clarify that this article does not prevent more extensive protection already achieved or which may subsequently be provided for (i) in Union legislation and (ii) in some articles of the Charter which, although based on the ECHR, go beyond the ECHR because Union law *acquis* had already reached a higher level of protection (e.g., Article 47 on effective judicial protection, or Article 50 on the right not to be punished twice for the same offence). Thus, the guaranteed rights in the Charter reflect higher levels of protection in existing Union law.

5. An interpretation in harmony with common constitutional traditions

The Group stresses that the Charter has firm roots in the Member States' common constitutional traditions, which were brought together impressively in the previous Convention's work. The extensive case law on fundamental rights derived from the common constitutional traditions established by the Court of Justice and confirmed by Article 6 § 2 TEU, represents an important source for a number of rights recognised by the Charter. In order to emphasise the importance of these roots and in the interest of smooth incorporation of the Charter as a legally binding document, the large majority of the Group proposes to include a rule of interpretation in the general provisions (see Article 52 § 4 in the Annex); two of its members have reservations against this proposal. The rule is based on the wording of the current Article 6 § 2 TEU and takes due account of the approach to common constitutional traditions followed by the Court of Justice as explained by Judge Skouris at the hearing of 17 September. Under that rule, rather than following a rigid approach of "a lowest common denominator", the Charter rights concerned should be interpreted in a way offering a high standard of protection which is adequate for the law of the Union and in harmony with the common

¹ Cf. on Article 52 § 3 of the Charter also the concurrent statements made by Judge Fischbach of the European Court of Human Rights and Judge Skouris of the European Court of Justice at the hearing on 17 September, doc. CONV 295/02.

² On the "Explanations", see in detail below, section A III 3.

constitutional traditions.

6. The distinction between "rights" and "principles" in the Charter

The Group stresses the importance of the distinction between "rights" and "principles", which was an important element – already expressed in the Preamble and in Article 51 § 1 of the Charter - of the consensus reached by the previous Convention. In order to confirm that distinction while increasing legal certainty in the perspective of a legally binding Charter with constitutional status, the large majority of the Group proposes an additional general provision (see Article 51 § 5 in the Annex) encapsulating the understanding of the concept of "principles" which marked the work of the previous Convention and has been recalled in the discussions of the Working Group by members of that Convention; two of its members have reservations against this proposal. According to that understanding, principles are different from subjective rights. They shall be "observed" (Article 51 §1) and may call for implementation through legislative or executive acts; accordingly, they become significant for the Courts when such acts are interpreted or reviewed. This is consistent both with case law of the Court of Justice¹ and with the approach of the Member States' constitutional systems to "principles" particularly in the field of social law.

In addition, with the proposed clause the Group reconfirms the line followed by the previous Convention to express the character ("right" or "principle") of individual Charter articles as clearly as possible in the wording of the respective articles taking into account the important guidance provided by the "Praesidium's Explanations", supplemented by explanations from the current Working Group (see section III.3. below), permitting future jurisprudence to rule on the exact attribution of articles to the two categories.

¹ Cf. notably recent case law on the "precautionary principle" in Article 174 § 2 TEC: judgment of the CFI of 11 September 2002, T-13/99, Pfizer vs. Council, with numerous references to earlier case law; and a series of judgments on Article 33 (ex-39) on the principles of agricultural law, e.g. judgment of the Court of Justice C-265/85, Van den Berg, 1987 ECR I 1155: scrutiny of the principle of market stabilisation and of reasonable expectations, further references see Comm. Megret, tome 3, pp. 80 et seq.

III. Recommendations concerning further questions arising in the context of possible incorporation

1. Preamble of the Charter

The Group considers the Charter Preamble as a crucial element of the overall consensus on the Charter reached by the previous Convention. The Group therefore recommends that this element should in any event be preserved in the future Constitutional Treaty framework. The Group also recalls that the Charter Preamble comprises language on the fundamental nature of the Union going well beyond the area of fundamental rights. As is the case with the Charter as a whole, the concrete form of an "incorporation of the Charter Preamble" into the Treaty framework, as recommended by the Group, will equally depend on the overall Treaty structure to be defined by the Plenary. Thus, if the Charter articles were to be inserted directly in the Constitutional Treaty, the Charter Preamble should be used as the Preamble to the Constitutional Treaty. If in turn the Charter is incorporated as a specific part of the Constitutional Treaty or as a separate binding legal text (e.g., in the form of a Protocol) within the Union's constitutional architecture, the Charter Preamble could remain attached to the text of the Charter without any changes; that would of course not preclude the Convention from using, for the drafting of the new Treaty preamble, the elements of general importance to be found in the Charter preamble.

2. Continued reference to external sources (such as currently found in Article 6 § 2 TEU)

The Group discussed whether or not, in case of incorporation of the Charter, the Constitutional Treaty should also contain a reference to the two external sources of inspiration for fundamental rights, as is currently found in Article 6 § 2 TEU, i.e. the ECHR and the constitutional traditions common to the Member States. Valid arguments have been advanced both for and against this.

Some members have taken the view that maintaining such a reference would be redundant and create legal confusion, given that the Charter already includes rights derived from the ECHR and the common constitutional traditions and makes references to these sources. Others have argued that such a reference in the Constitutional Treaty could serve to complete the protection offered by the Charter and clarify that Union law is open for future evolutions in ECHR and Member States' human rights law.

In any event, the Group recognises that this question is closely related to the choice of the form of incorporation which the Convention will have to make. The Group therefore refrains from making a firm recommendation on this issue; instead, it limits itself to stating that such a reference, if appropriately drafted¹, is not excluded by the prospect of a legally binding Charter, and signals the issue to the Plenary for consideration.

3. The importance of the "Explanations"

The Group stresses the importance of the "Explanations", drawn up at the instigation of the Praesidium of the previous Convention², as one important tool of interpretation ensuring a correct understanding of the Charter³. It recognises that these Explanations are presently not sufficiently accessible for legal practitioners. To the extent that the Convention takes on board the drafting adjustments proposed by this Group, the corresponding explanations given in this report should be fully integrated with the original Explanations. Upon possible incorporation of the Charter, attention should then be drawn in an appropriate manner to the Explanations which, though they state that they have no legal value, are intended to clarify the provisions of the Charter. In particular, it would be important to publicise them more widely.

4. Procedure for future amendment of the Charter

As a consequence of possible incorporation of the Charter into the Constitutional Treaty framework, the question will arise according to which procedure the Charter can be amended in the future. However, the Group has considered that this question goes beyond its mandate since it will have to be examined by the Plenary as part of the general question of amendment procedure(s) for the various building blocks of the future Treaty framework.

¹ See doc. CONV 116/02, page 9.

² Document CHARTE 4473/00 CONVENT 49 of 11 October 2000.

³ The Group furthermore notes in this context that the previous Convention worked in public - as the present Convention does - and that its meeting records and working documents are publicly accessible (see <http://ue.eu.int/df>).

B. On accession to the European Convention on Human Rights

I. General conclusions and recommendations

Just as in the case of the Charter, the Group stresses at the outset that, in accordance with the Group's mandate, the political decision about the perspective of possible accession to the ECHR by the Union (i.e. by the new single legal personality as emerging from the work of Working Group III) will be reserved to the Convention Plenary. The mandate of the Group has been to prepare such a decision through examination of a number of specific questions relating to modalities and consequences of possible accession.

The Group furthermore stresses that the Convention is to decide only on whether to introduce into the new Treaty a constitutional authorisation *enabling* the Union to accede to the ECHR. In contrast, it would later be for the institutions of the Union, notably for the Council deciding by unanimity, to open negotiations for an accession treaty and set the concrete framework of those negotiations; during such negotiations, a range of technical questions regarding the concrete modalities of accession, of which the Group has taken due note¹, will have to be dealt with. Likewise, the decision on the appropriate timing for possible accession by the Union to the ECHR and to its various additional protocols should be left for the Council. All these questions are not of a constitutional nature and therefore not for the Convention.

Without prejudice to the political decision by the Plenary, and on the basis of the arguments and conclusions including on certain safeguards as set out below, all members of the Group either strongly support or are ready to give favourable consideration to the creation of a constitutional authorisation enabling the Union to accede to the ECHR.

The main political and legal arguments speaking in favour of accession by the Union to the ECHR, which have been recognised by the Group, are the following:

- As the Union reaffirms its own values through its Charter, its accession to the ECHR would give a strong political signal of the coherence between the Union and the "greater Europe", reflected in the Council of Europe and its pan-European human rights system.

¹ See notably WD N° 8, containing a study carried out within the Council of Europe on technical and legal questions of possible accession to the ECHR.

- Accession to the ECHR would give citizens an analogous protection vis-à-vis acts of the Union as they presently enjoy vis-à-vis all the Member States. This appears to be a question of credibility, given that Member States have transferred substantial competences to the Union and that adherence to the ECHR has been made a condition for membership of new States in the Union.
- Accession would be the ideal tool to ensure a harmonious development of the case law of the two European Courts in human rights matters; for some, this argument has even greater force in view of a possible incorporation of the Charter into the Treaties. In this connection, mention should also be made of the problems resulting from the present non-participation of the Union in the Strasbourg judicial system in cases where the Strasbourg Court is led to rule indirectly on Union law without the Union being able to defend itself before that Court or to have a judge in the Court who would ensure the necessary expertise on Union law.

The Group has looked in depth into the possible impact of accession to the ECHR on the principle of autonomy of Community (or Union) law including the position and authority of the European Court of Justice. It has emerged from the Group's discussion and expert hearings¹ that the principle of autonomy does not place any legal obstacle to accession by the Union to the ECHR. After accession, the Court of Justice would remain the sole supreme arbiter of questions of Union law and of the validity of Union acts; the European Court on Human Rights could not be regarded as a superior Court but rather as a specialised court exercising external control over the international law obligations of the Union resulting from accession to the ECHR. The position of the Court of Justice would be analogous to that of national constitutional or supreme courts in relation to the Strasbourg Court at present.

The Group stresses that the incorporation of the Charter into the Treaties and the Union's accession to the ECHR should not be regarded as *alternatives*, but rather as complementary steps ensuring full respect of fundamental rights by the Union: just as the existence of the Charter does not in any way diminish the benefits of extending the control of the Strasbourg Court to cover Union acts, so accession to the ECHR does not reduce the significance of the Union's own catalogue of fundamental rights. The two steps would lead to a situation analogous to that in the laws of the Member States whose Constitutions protect fundamental rights but who at the same time have

¹ Cf. the concurring statements by Judges Skouris (WD N° 19) and Fischbach (CONV 295/02) as well as by Messrs. Schoo and Petite (WD N° 13).

subscribed to the additional external human rights check of the Strasbourg system.

In the light of the above, the Group therefore recommends (subject to the above-mentioned political decision and the safeguards set out below) that a legal basis should be inserted at an appropriate place in the Constitutional Treaty which would authorise the Union to accede to the ECHR. The drafting of such a legal basis could be kept fairly simple¹. Given the constitutional significance of possible accession, it should however also be specified that the signature and conclusion of the accession treaty require a decision by the Council by unanimity and the assent of the European Parliament; otherwise, the normal procedures for international agreements would apply.

II. Conclusions and recommendations with respect to specific questions linked to possible accession by the Union to the ECHR

1. Accession to the ECHR will not modify the division of competences between the Union and the Member States

The Group agrees on the central importance of the fact that accession by the Union to the ECHR - like incorporation of the Charter - will in no way modify the allocation of competences between the Union and the Member States. According to the Group's common understanding, the legal "scope" of the Union's accession to the ECHR would be limited to issues in respect of which the Union has competence; it would thus not lead to any extension of the Union's competences, let alone to the establishment of a general competence of the Union on fundamental rights². Accordingly, "positive" obligations of the Union to take action to comply with the ECHR would arise only to the extent to which competences of the Union permitting such action exist under the Treaty.

The Group recommends the use of certain technical devices in order to clarify with certainty that the Union's accession to the ECHR does not modify the allocation of competences. Firstly, a provision clarifying this point could be included in the possible legal basis authorising accession. Secondly, upon accession, a statement stressing the Union's limited competences in the area of fundamental rights could be included in a provision in the accession treaty and / or in an accompanying declaration made by the Union. Thirdly, a mechanism allowing the Union and a

¹ The legal base could for example state that the Union shall be authorised to accede to the ECHR. On a possible additional clause clarifying that the division of competences shall not be modified, see the next section of this report.

² Existing preparatory work for accession has also proceeded upon this understanding, see the Council of Europe's study, WD N° 8, at para. 26, an understanding confirmed by Judges Skouris and Fischbach (WD N° 19; CONV 295/02) and by Mr. Petite (WD N° 13) at the respective hearings.

Member State to appear jointly as "co-defendants" before the Strasbourg Court could ensure that that Court would not make any ruling on the allocation of competences between the Union and the Member States¹.

In this context, it is important to bear in mind that accession by the Union to the ECHR would not mean that the Union would become a member of the Council of Europe, nor that it would become a general political player in Strasbourg. Rather, the Union and its law would simply take part (with a "scope" limited to its competences) in the specific system of judicial human rights control established by the ECHR. Basically (and without anticipating the details to be negotiated upon accession), there would be a judge at the Strasbourg Court elected "with respect to" ("à titre de") the Union, who would contribute specific expertise in Union law to the Court. Furthermore, a representative of the Union would take part in the Committee of Ministers' specific task of supervising execution of judgments under Article 46 ECHR (which is important notably to ensure that the Committee is properly informed on questions of Union law such as on the system of competences), but not in the Committee's general functions outside of the ECHR.²

2. The Member States' individual positions with respect to the ECHR will be unaffected by the Union's accession

The Group underlines the importance of the principle that accession by the Union to the ECHR does not affect the positions which the Member States have taken individually with respect to the ECHR, as reflected in particular in their individual decisions on the ratification of certain additional protocols, in the reservations they have entered upon ratification of the ECHR or its additional protocols, and in their right to make specific derogations. The Group stresses that this point can be fully taken into account, since:

- As explained above, the Convention now has to discuss the insertion in the Treaty of a legal basis permitting accession by the Union to the ECHR. If such a possible legal basis were inserted, it would then be for the Council to define, by unanimity, to which additional protocols the Union should accede and when, and which reservations the Union should enter in respect of the ECHR *in its own name*.

¹ The mechanism has been explained to the Group by Judge Fischbach, see summary note CONV 295/02, p. 5, and is also explained in detail in the Council of Europe's study, Working Document n° 8, at paras 57 - 62.

² This statement is without prejudice to presently existing arrangement of participation in the meetings of the Committee of Ministers by the Community without a right to vote, see WD N° 8, at para. 34.

- The *Member States'* individual reservations made in respect of the ECHR and additional protocols, as well as their right to make specific derogations (Article 15 ECHR), would in any event remain unaffected by accession since they concern the respective national law, whereas accession by the Union would have legal effect only insofar as Union law is concerned.

III. Conclusions with respect to alternative mechanisms proposed to accession to the ECHR

In the light of expert testimony¹ given to the group on the legal and practical problems with several mechanisms sometimes suggested as alternatives to accession by the Union to the ECHR, such alternative mechanisms (e.g., a special procedure of "referral" or "consultation" from the Court of Justice to the Strasbourg Court, a special recourse to the Strasbourg Court against the institutions without accession, or a "joint panel/chamber" composed of judges from both European Courts), are not recommended by the Group.

C. Access to the Court of Justice

The Group discussed the Union's current system of remedies available to individuals, notably in the light of the fundamental right to effective judicial protection.

In this context, the Group has examined the idea of establishing a special procedure before the Court of Justice for the protection of fundamental rights. As a majority of members had reservations about this idea, the Group does not recommend it to the Convention. The Group underlines however the great benefit which citizens would gain from a possible incorporation of the Charter into the Constitutional Treaty architecture, thereby making the Union's present system of remedies available.

The Group wishes however to draw the Plenary's attention to a different issue, namely the question whether or not the conditions of direct access by individuals to the Court (Article 230 § 4 TEC) need to be reformed in the interest of ensuring effective judicial protection. On this point, the Group's discussion has shown that a certain lacuna of protection might exist, given the current condition of

¹ See the hearing of Mr. Schoo, Mr. Piris and Mr. Petite of 23 July 2002 (Working Document 13, pp. 14, 32 fn. 2, 50 - 51) as well as the hearing of Judge Fischbach of 17 September 2002, doc. CONV 295/02.

"direct and individual concern" in Article 230 § 4 TEC and the case law interpreting it, in the specific case of "self-executing" Community regulations which impose directly applicable prohibitions on individuals. On the other hand, a widely shared trend emerged in the group's discussion according to which the present overall system of remedies, and the "division of work" between Community and national courts it entails, should not be profoundly altered by a possible reform of Article 230 § 4 TEC. Some members have referred to the possibility of a provision in the Treaty on the obligation of Member States, as spelt out in recent case law¹, to provide for effective remedies for rights derived from Union law.

In any event, while the issue of Article 230 § 4 TEC certainly has a nexus with fundamental rights, it transcends the protection of those rights - as judicial protection must exist for *all* subjective rights -, and it arises quite independently of the concrete questions of the incorporation of the Charter and accession to the ECHR. The Group considers that this issue and its institutional implications must be examined together with other topics such as the limits of Court jurisdiction in Justice and Home affairs² or judicial control of subsidiarity. The Group therefore refrains from making concrete recommendations and commends the question of possible reform in Article 230 § 4 TEC, together with the valuable contributions submitted thereon³, for further examination by the Convention in an appropriate context.

¹ Judgment of the Court of Justice of 25 July 2002, C-50/00 P, UPA, at paras 41, 42. It should also be recalled that the Court noted in this judgment that, while it is possible to envisage a system of judicial review of the legality of Community measures of general application different from that established by the Treaty, it is for the Member States, if necessary, in accordance with Article 48 TEU, to reform the system currently in force.

² In this connection, attention is drawn to expert testimony given to the Group reflecting concerns, from a perspective of protection of fundamental rights, about these limits as presently contained in Article 68 TEC and Article 35 TEU in an area as sensitive to fundamental rights as Justice and Home affairs, and on limits of judicial control over Union bodies such as Europol; see the hearing of Judge Skouris (WD N° 19) and of Mr. Schoo of 23 July 2002 (WD N° 13), as well as WD N° 20 of Mr. Ben Fayot presenting a note by Advocate-General Francis Jacobs.

³ See, comprehensively on judicial and non judicial remedies, doc. CONV 221/02 CONTRIB 76 of Mr. Söderman; specifically on Art. 230: CONV 45/02 CONTRIB 25 by Mr. Hannes Farnleitner; the Group's WD N° 17 by Mr. Jürgen Meyer; WD N° 20 of Mr. Ben Fayot presenting a note by Advocate-General Francis Jacobs; the hearing of Judge Skouris (WD N° 19); the hearing of Mr. Schoo (WD N° 13); and an overview of the debate and options in WD N° 21 by the Group's Chairman.

ANNEX***Proposals by the Working Group for drafting adjustments in the horizontal articles of the Charter¹:***

Article 51 (1):

"The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers **and respecting the limits of the powers of the Union as conferred on it by other parts of [this Treaty / the Constitutional Treaty].**"

Article 51 (2):

"This Charter does not **extend the scope of application of Union law beyond the powers of the Union or** establish any new power or task for [the Community or] the Union or modify powers and tasks defined **by the other [Chapters / parts] of [this Treaty / the Constitutional Treaty].**"

add to Article 52:

"52(4) Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions."

"52 (5) The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions and bodies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality."

"52 (6) Full account shall be taken of national laws and practices as specified in this Charter."

¹ The wording in brackets depends on the exact final Treaty architecture.



the european convention

Points no. 4

Main points of the report by the Working Group on the Charter submitted to the European Convention at its plenary session on 28 and 29 October 2002.

Chairman of the Working Group: Mr António Vitorino

FUNDAMENTAL RIGHTS: AN INTEGRAL PART OF THE FUTURE CONSTITUTIONAL TREATY

The Working Group on the Charter considers it essential that fundamental rights be enshrined in the future constitutional treaty. That premise was basic to the proceedings of the Working Group, which had to provide answers to two questions:

- should the Charter of Fundamental Rights of the European Union be incorporated into the constitutional treaty ?
- should the European Union be able to accede to the European Convention on Human Rights?

The Working Group would answer both questions in the affirmative.

The Charter of Fundamental Rights of the European Union concerns the Union's institutions and bodies and the Member States when they are implementing Union law (see over). Regarding incorporation of the Charter into the future treaty, the Working Group stresses that:

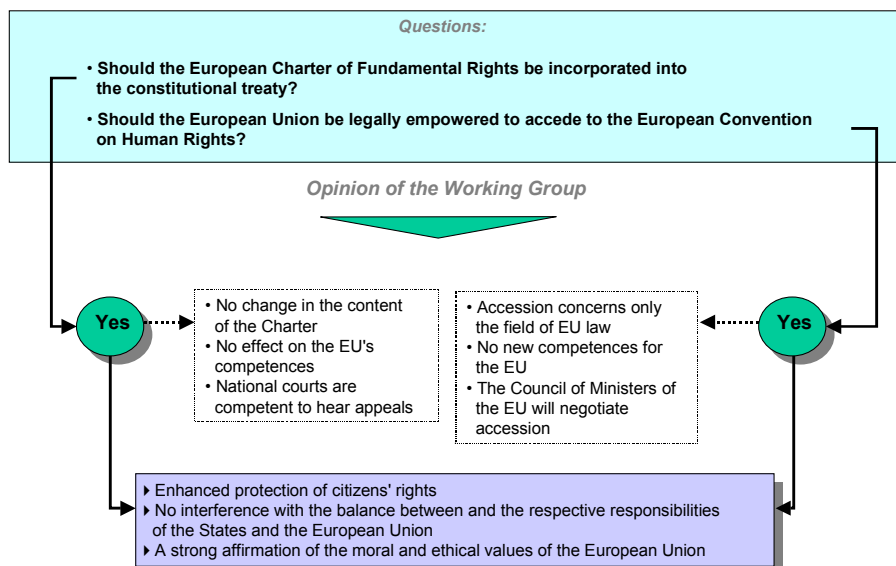
- ▶ no new competences will thereby be conferred on the European Union;
- ▶ the substance of the Charter will not thereby be altered. All that will probably be necessary is a few technical adjustments to the text of the Charter to ensure that it is fully compatible with the EC Treaty;
- ▶ if the Charter becomes a binding text, jurisdiction in actions relating thereto will lie principally with the courts of the Member States, although in certain cases the European Court of Justice will also be competent.

As for the possibility (unconnected with incorporation of the Charter into the Treaty) of European Union accession to the European Convention on Human Rights (ECHR), it will be for the Council of Ministers of the European Union to decide unanimously when and how accession might take place.

The Working Group suggests that a legal basis be created to make this accession possible. Accession would:

- ▶ give citizens the same degree of protection of their fundamental rights at Union level as they enjoy in their own countries;
- ▶ have effect only insofar as the law of the European Union is concerned;
- ▶ create no new competences;
- ▶ not mean that the European Union would become a member of the Council of Europe;
- ▶ not affect the individual positions of the Member States with respect to the ECHR.

Incorporation of the Charter into the Treaty and the ability of the Union to accede to the European Convention on Human Rights would enhance the protection of the fundamental rights of citizens vis-à-vis action at European level and highlight the moral and ethical commitments of the European Union.



The text of the Charter : http://europa.eu.int/comm/justice_home/unit/charte/pdf/charter_en.pdf.

The report by the Working Group on the Charter can be found at the following address: <http://european-convention.eu.int>

THE EUROPEAN CONVENTION**Brussels, 25 October 2002**

THE SECRETARIAT

CONV 368/02**CONTRIB 128****COVER NOTE**

from Secretariat

to The Convention

Subject : **Contribution from Mr Iñigo Méndez de Vigo, Mr Klaus Hänsch and Mr Andrew Duff, members of the Convention**
"European Parliament resolution on the impact of the Charter of Fundamental Rights of the European Union and its future status"

The Secretary-General of the Convention has received the attached contribution from Mr Iñigo Méndez de Vigo, Mr Klaus Hänsch and Mr Andrew Duff, members of the Convention.

ANNEX**P5_TA-PROV(2002)0508****European Union Charter of Fundamental Rights****European Parliament resolution on the impact of the Charter of Fundamental Rights of the European Union and its future status (2002/2139(INI))**

The European Parliament,

- having regard to its resolution of 16 March 2000 on the drafting of a Charter of Fundamental Rights of the European Union,¹
- having regard to its assent to the draft Charter of Fundamental Rights of the European Union on 14 November 2000,²
- having regard to Rule 163 on 14 November 2000 of its Rules of Procedure,
- having regard to the report of the Committee on Constitutional Affairs and the opinion of the Committee on Legal Affairs and the Internal Market, the opinion of the Committee on Women's rights and Equal Opportunities and the opinion of the Committee on Petitions (A5-0332/2002),

Whereas:

Legitimacy of the Charter

- A. The Treaty of Maastricht (1992) first made provision for the concept of European Union citizenship and established, in Article 6(2), that the Union should 'respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law'.³ For the next decade progress was made in developing the Union's human rights profile mainly in its external policies, but also in the Copenhagen criteria for enlargement (1993);
- B. In June 1999 the European Council of Cologne agreed to establish a Charter of Fundamental Rights of the Union 'in order to make their overriding importance and relevance more visible to the Union's citizens'. It resolved that once the Charter had been proclaimed 'it will then have to be considered whether and, if so, how the Charter should be integrated into the treaties'. To draft the Charter the European Council convened an ad hoc body (that decided to call itself a Convention) made up of representatives of the Heads of State and Government and representatives of the President of the Commission, and Members of the European

¹ OJ C 377, 29.12.2000, p. 329.

² OJ C 223, 8.8.2001, p. 74.

³ The European Court of Justice had already considered fundamental rights to be part of the general principles of Community law at least since 1969 (*Stauder v. City of Ulm*).

Parliament and of national parliaments,

- C. The Convention worked from 17 December 1999 until 2 October 2000 under the chairmanship of Roman Herzog, former Federal President of the Federal Republic of Germany. The European Council developed the mandate of the Convention at its meeting in Tampere in October 1999 and reviewed progress at Feira in June 2000. The Convention worked in a very open manner and consulted widely. Notwithstanding the question of the Charter's ultimate status, it decided, famously, to work 'as if' it were drafting a legally binding juridical text and with the express intention of ensuring legal certainty. The Convention precisely fulfilled its mandate from the European Council, which, in turn, unanimously accepted the draft Charter at Biarritz on 13-14 October 2000;
- D. After having received the affirmation of the European Parliament (14 November 2000) and Commission (6 December 2000), as well as that of several national parliaments, the Charter was solemnly proclaimed by the presidents of the three EU institutions at Nice on 7 December 2000. The Intergovernmental Conference also committed itself to considering the future status of the Charter in a year's time as one of four specific items of further constitutional reform of the Union to be concluded in a new IGC in 2004;
- E. In the Laeken Declaration of 15 December 2001 the European Council established a constitutional Convention with legitimacy corresponding to that of the Charter Convention, under the chairmanship of Valéry Giscard d'Estaing, former President of the French Republic, to consider, among other things, whether the Charter 'should be included in the basic treaty and ... whether the European Community should accede to the European Convention on Human Rights';
- F. The Convention has set up a working group under the chairmanship of Commissioner Vitorino to deal with the modalities and consequences of the incorporation of the Charter into the Treaty and accession by the EC/EU to the European Court of Human Rights¹;

Content

- G. The Charter embraces the classical human rights of the ECHR as developed by the jurisprudence of the European Court of Human Rights in Strasbourg. It has a much wider scope, however. First, as befits a catalogue of rights that stem from the competence of the European Union as laid down in the Treaties and as developed by the case law of the European Court of Justice in Luxembourg. Second, importantly, the Charter reaffirms the rights and principles resulting from the constitutional traditions and international treaty obligations common to Member States. Third, the Charter addresses modern scientific and technological developments. Fourth, the Charter fully reflects and respects the European social model;

¹ For the mandate of the working group see CONV 72/02, and for a paper on modalities CONV 116/02.

- H. Like the Bills of Rights common to the constitutions of most Member States, the Charter draws together in a single text a comprehensive catalogue of not only specific rights but also general freedoms, values and principles. In style, form and precision it is a familiar document;
- I. While the Charter was not intended to create new rights, it succeeded in making existing rights more visible. In building a fresh, large consensus around a new formulation of rights, the Charter brings greater clarity and salience to them. It reflects contemporary European norms of good governance with respect to equality and anti-discrimination, social policy, ecology, civic rights, administration and justice. The rights are indivisible: in Europe, liberty, equality and solidarity hang together;
- J. The Charter is a dynamic document, seeking, as in the Preamble, to “strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments”. Its purpose is to assist the Union in its task of further developing common values while respecting the diversity of national identities. Its formulation allows for the future development of the *acquis communautaire*;
- K. The Charter, therefore, has a durable quality. Despite its unsettled legal status, it was fully legitimised by the manner of its drafting, and it was designed to last. While no such constitutional document can be perfect, and all such documents must be amendable, to open it up now for revision, especially so early in its life, might reduce its integrity and moral force. Experience of the application of a mandatory Charter is needed before amendment can be contemplated. In any case, the current Convention has not been mandated by the Laeken Declaration to re-write the Charter; it should be made clear that such a revision can only be carried out using, at the very least, the same method as for revision of other constitutional provisions,
- L. There may nevertheless have to be some technical changes made to the Charter in relation to the 'horizontal clauses' to enable it to be incorporated in the Treaty;

Scope

- M. The Charter does not attribute competence to the Union. On the contrary, it has the effect of limiting the exercise of power by the EU institutions because of their obligation to respect the Charter. The institutions also have the duty within their competence to promote respect for the provisions of the Charter;
- N. The Charter does not limit the competences of Member States under the Treaties. It is not a substitute for the fundamental rights regimes of Member States, but a complement to them;
- O. The Charter is addressed to the institutions and bodies (and agencies) of the European Union and the Member States when and in so far as they implement Union law and policy;
- P. In so far as the Charter postulates a direct relationship between the citizen on the one hand and supranational authority on the other, it will help the Union respect the principle of subsidiarity. The Charter should set the tone for the whole constitutional settlement;

Effect

- Q. Although the Charter is not directly justiciable, its status as a solemn proclamation means that it has already become, as expected, an important reference document. It is respected by the EU institutions and is invoked by both Member States and citizens¹, in particular through the petitions submitted to the European Parliament and the complaints lodged with the European Ombudsman. The Commission is determined to regard the Charter as binding upon itself and instituted internal procedures to ensure compliance with its provisions.² It treats the Charter as a general principle of Community law. In making legislative proposals, the Commission lays claim to have respected the Charter on a systematic basis³;
- R. The Council has not yet chosen to regard the Charter as mandatory, but it has referred expressly to the Charter in four Decisions and in two Resolutions⁴;
- S. Rule 58 of its Rules of Procedure states that Parliament shall pay particular attention to ensuring that legislative acts are in conformity with the Charter of Fundamental Rights; furthermore, Parliament has used the Charter as a template for its annual reviews of the situation as regards fundamental rights in the EU; references to the Charter have appeared frequently in the Parliament's reports and resolutions, as well as in MEPs' questions to the Commission and Council;
- T. Three acts adopted under the codecision procedure have also relied on references to the Charter (access to documents, social exclusion and financial collateral).⁵ Numerous others are pending;
- U. The Ombudsman and the Committee on Petitions have received many petitions and approaches from citizens citing the Charter, although there are numerous apparent misunderstandings of its scope or level of protection. Nevertheless they have been in the forefront of those who have actively deployed the Charter in the interests of the citizen. They have upheld complaints and used their powers of own initiative over discrimination in the recruitment and employment policies of the EU institutions in respect of age, sex, race, freedom of expression and parental leave. They also apply systematically the Code of Good Administrative Behaviour to seek to give effect to the provisions of the Charter. They consider that the Charter should be binding whenever Community law is being applied. The

¹ See for example judgment of the Court of Justice, 10.9.2001, Case C-377/98, Netherlands v. Parliament and Council.

² Commission Communication, Application de la Charte, SEC(2001)380/3, 13 March 2001.

³ Draft acts in which articles of the Charter are cited cover competition policy, labour conditions, data protection, scientific research, asylum and refugee policy, advertising and sponsorship of tobacco, drug trafficking, parental responsibility and the rights of the child, access to justice, the arrest warrant, disabilities, health protection, racism and xenophobia, and staff regulations.

⁴ Council Decision 2001/903/EC of 3 December 2001 on the European Year of People with Disabilities 2003; Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime; Council Framework Decision 2002/475/JHA on combating terrorism; Council Framework Decision 2002/584/JHA on the Europe arrest warrant and the surrender procedures between Member States and Council resolutions 2002/C50/01 and 2002/C163/01 on languages and life-long learning.

⁵ Respectively, Regulation (EC) No 1049/2001; Decision No 50/2002/EC; Directive No 2002/47/EC.

Committee on Petitions and the European Ombudsman and his network of national ombudsmen could play an important role in promoting and monitoring the implementation of the Charter, and the Ombudsman could be empowered to refer important fundamental rights cases to the Court of Justice;

- V. There have been several attempts to call the Charter in aid of litigation in the European Courts. Advocates-General are making an increased number of references to the Charter in their Opinions, and it has become an important source of guidance for the judges.¹ In one case the Court of First Instance has decided that the Charter confirms a right to judicial review as a general principle of Community law.² In another case, the same Court, citing the Charter, has sought to widen the access to effective judicial remedy of a party directly but not individually concerned³; even though the Court of Justice has ruled against that interpretation because it would cause the Community courts to go beyond their competences⁴, it has nevertheless, at the same time, suggested amending the Treaty accordingly⁵. The European Court of Human Rights has also begun to make positive references to the Charter⁶;
- W. Not only the European Parliament and Commission⁷ but also the Economic and Social Committee and the Committee of the Regions have called for the Charter to become legally binding. This powerful message was recently reinforced by the Convention's Civil Society Forum and Youth Convention;

Consonance with ECHR

- X. Fears the Charter would pose a threat to the credibility of the ECHR and the European Court of Human Rights have not been realised. The jurisdiction of the Strasbourg court provides an external monitoring of and the assertion of minimum standards upon the human rights performance of the 44 States of the Council of Europe. The jurisdiction of the Luxembourg court provides an internal control on and an insistence on a high level of respect for human rights within the European Union's legal space. The significance of the Charter is that it provides for a more extensive rights-based regime within the European Union;
- Y. As has been said repeatedly by both the European Parliament and the Parliamentary Assembly of the Council of Europe, the best means of ensuring coherence between the ECHR and EU human rights law would be for the Union to accede to the former. It is important to remove the anomaly whereby the EU, which enjoys competences attributed by its Member States. Is not a high contracting party to the ECHR alongside those same Member States. If it were to sign up to the ECHR, the EU would be subject to the same external control in respect of human rights as that of its Member States. On the one hand, the existence of the Charter makes EU accession to the ECHR neither unnecessary nor irrelevant. Accession is desirable

¹ See for example the Opinions of Advocate General Tizzano in C-173/99, BECTU and Leger in C-353/99, Hautala.

² T-54/99, Max.mobil.

³ T-177/01, Jégo-Quéré.

⁴ Judgment 25 July 2002, Case C-50/00 P, Unión de Pequeños Agricultores, Rn. 44 f.

⁵ Judgment 25 July 2002, Case C-50/00 P, Unión de Pequeños Agricultores, Rn. 45 f.

⁶ ECHR Application no. 25680/94, Judgment 11 July 2002.

⁷ COM(2000) 644.

for its own sake whatever the status of the Charter. On the other hand, accession to the ECHR does not render the incorporation of the Charter into the Treaty any less necessary or relevant; considers this accession as a forerunner to other EU accessions to international instruments for the protection of fundamental human rights;

- Z. Even after accession of the EU to the ECHR, the European Court of Justice would remain the court of last instance for Community law. Its relationship with the European Court of Human Rights would be exactly the same as that of national supreme or constitutional courts who recognise the role of the European Court of Human Rights to verify consistency and compatibility with pan-European human rights norms. The European Union, once endowed with international legal personality, would be represented directly at the Court of Human Rights, thereby strengthening the authority and autonomy of both the European Court of Justice and the European Court of Human Rights;
1. Notes that the procedure adopted for the Charter's creation, in conjunction with the wide use made of it by the institutions already, courts and citizens, invests it with great authority; believes that the Charter's effectiveness would be significantly strengthened if the rights laid down in it were to become enforceable under EU law before the courts;
 2. Urges the Convention to enhance legal certainty and end political confusion as to the Charter's scope and level of protection by giving it the status of primary law, thereby making it a central reference point for the Court of Justice and national courts; to this end, stresses that the Charter should be incorporated into the constitutional law of the European Union;
 3. Warns of the dangers of refusing to make the Charter mandatory upon all the EU institutions, bodies and agencies and on Member States when and in so far as they implement EU law and policy, thereby disappointing the expectations of European citizens;
 4. Maintains that an increased status for the Charter is highly desirable in the context of enlargement because it will serve to enshrine a fundamental rights regime at the heart of the European integration process thereby reassuring old, new and potential Member States alike;
 5. Points out that making the Charter binding will initiate a new phase in the development of EU citizenship and that, in order to protect the citizen from any abuse by the European Union of its enlarged powers, judicial remedies will need to be developed;
 6. Proposes, therefore, that the Convention, in close consultation with the Courts, draws up measures to improve direct access to the Court of First Instance (with a right of appeal to the Court of Justice) to enhance the legal protection of individuals; believes that national courts in the Member States and candidate countries must be made more aware of their obligation to deploy the Charter on behalf of the citizen;
 7. Finds it unthinkable to have a modern constitution of the European Union without a binding Bill of Rights, and takes the view that if the Convention drafts a new treaty without the Charter it will fall short of having the constitutional effect which is both necessary and desirable;
 8. Believes that the Charter should be incorporated in the new constitutional treaty without making any changes to its provisions;

9. Notes that the Charter once incorporated should be amendable only according to the most solemn constitutional provisions; insists that any subsequent development of the Charter must be drafted by a new special Convention, to be established at a later stage;
 10. Expects that such a new Convention would be gender-balanced and would work to reinforce the principle of equality between the sexes;
 11. Acknowledges the already good collaboration between the Court of Justice and the European Court of Human Rights; reiterates its support for the opening of accession negotiations by the Union, to become a high contracting party to the ECHR and other international instruments in the field of human rights;
 12. Recalls that European Union accession to the ECHR is a complement to and not a substitute for the granting of mandatory status to the Charter under EU law, both actions being necessary and timely;
 13. Invites the European Parliamentary delegation to the Convention to submit this resolution as a formal contribution to the Convention;
 14. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States and candidate countries, the Court of Justice and the European Court of Human Rights.
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THE EUROPEAN CONVENTION

THE SECRETARIAT

Brussels, 28 October 2002

(OR. fr)

CONV 369/02

COVER NOTE

from Praesidium

to The Convention

Subject : Preliminary draft Constitutional Treaty

Attached is the preliminary draft Constitutional Treaty, drawn up by the Praesidium, which the President will present at the Plenary session on 28 October 2002.

Preliminary draft

[The aim of this text is to illustrate the possible articulation of a treaty. The inclusion (or non inclusion) in Part I of some articles, and the exact content of others, will depend on the Convention's proceedings. Their treatment in this text is in no way intended to prejudge the result of the Convention's debates.]

TREATY

ESTABLISHING A CONSTITUTION FOR EUROPE

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¹ References to "Union" would be replaced throughout the text by "European Community", "European Union", "United States of Europe" or "United Europe", if it were decided to change the Union's name.

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Title X: Union Membership

Article 43: A Union open to all the European States which strictly respect its values and fundamental rights and accept its rules of operation.

Article 44: Procedure for accession to the Union.

Article 45: Suspension of Union membership rights.

Article 46: Withdrawal from the Union.

PART TWO: UNION POLICIES AND THEIR IMPLEMENTATION

This part would contain the legal bases. For each area it should specify the type of competence (Title III) and the acts and procedures (Title V) to be applied, in line with what is decided for Part I. Technical amendments will be necessary to ensure that Part II correctly matches Part I.

A. POLICIES AND INTERNAL ACTION**A1. INTERNAL MARKET**

- I. Free movement of persons and services
 1. Workers;
 2. Freedom of establishment;
 3. Freedom to provide services;
 4. Visas, asylum and immigration and other policies related to the movement of persons.
- II. Free movement of goods
 1. Customs union;
 2. Prohibition of quantitative restrictions.

- III. Capital and payments
- IV. Harmonisation of legislation.

A2. ECONOMIC AND MONETARY POLICY

A3. POLICIES IN OTHER SPECIFIC AREAS

- I. Competition rules
- II. Social policy
- III. Economic and social cohesion
- IV. Agriculture and fisheries
- V. Environment
- VI. Consumer protection
- VII. Transport
- VII. Trans-European networks
- IX. R and D.

A4. INTERNAL SECURITY

Policy on police matters, and against crime

A5. AREAS WHERE THE UNION MAY TAKE SUPPORTING ACTION

- I. Employment
- II. Public health
- III. Industry
- IV. Culture
- V. Education, professional training, youth

B. EXTERNAL ACTION

- I. Commercial policy
- II. Development cooperation
- III. External aspects of policies covered in Chapters A1 to A4

- IV. Common foreign and security policy
 - 1. Foreign policy
 - 2. Crisis management
- V. The conclusion of international agreements

C. **DEFENCE**

D. **THE FUNCTIONING OF THE UNION**

Institutional and procedural provisions; budgetary provisions.¹

PART THREE: GENERAL AND FINAL PROVISIONS

Last Title: Repeal of previous treaties. Legal continuity in relation to the European Community and the European Union.

Territorial application

Protocols

Revision procedures

Adoption, ratification, and entry into force

Duration

Languages.

¹ The extent of the institutional and procedural provisions in this (2nd) Part will depend on the degree of detail in Part 1. One could also envisage that such provisions in this Part would deal only with inter-institutional procedures: provisions concerning arrangements internal to the institutions could be set out in Protocols.

B. SUMMARY DESCRIPTION

PART ONE: CONSTITUTIONAL STRUCTURE

PREAMBLE

TITLE I: DEFINITION AND OBJECTIVES OF THE UNION

Article 1

- Decision to establish [an entity called the European Community, European Union, United States of Europe, United Europe].
- A Union of European States which, while retaining their national identities, closely coordinate their policies at the European level, and administer certain common competences on a federal basis.
- Recognition of the diversity of the Union.
- A Union open to all European States which share the same values and commit themselves to promote them jointly.

Article 2

This article sets out the values of the Union: human dignity, fundamental rights, democracy, the rule of law, tolerance, respect for obligations and for international law.

Article 3

Objectives of the Union

This article establishes the general objectives, such as:

- protection of the common values, interests and independence of the Union
- promotion of economic and social cohesion
- strengthening of the internal market, and of economic and monetary union

- promotion of a high level of employment and a high degree of social protection
- a high level of environmental protection
- encouragement for technological and scientific progress
- creation of an area of liberty, security and justice
- development of a common foreign and security policy, and a common defence policy, to defend and promote the Union's values in the wider world.

These objectives shall be pursued by appropriate means, depending on whether competences are allocated wholly or partly to the Union, or exercised jointly by the Member States.

Article 4

Explicit recognition of the legal personality of the [European Community/Union, United States of Europe, United Europe]

TITLE II: UNION CITIZENSHIP AND FUNDAMENTAL RIGHTS

Article 5

This article establishes and defines Union citizenship: every citizen of a Member State is a citizen of the Union; enjoys dual citizenship, national citizenship and European citizenship; and is free to use either, as he or she chooses; with the rights and duties attaching to each.

The article sets out the rights attaching to European citizenship (movement, residence, the right to vote and to stand as a candidate in municipal elections and elections to the European Parliament, diplomatic protection in third countries, right of petition, right to write to, and obtain a reply from, the European institutions in one's own language).

The article establishes the principle that there shall be no discrimination between citizens of the Union on grounds of nationality.

Article 6

The wording of this article will depend on the proceedings of the Working Group on the Charter.

It could be modelled on Article 6 of the Treaty on European Union.

It could:

- either refer to the Charter;
- or state the principle that the Charter is an integral part of the Constitution, with the articles of the Charter being set out in another part of the Treaty or in an annexed protocol;
- or incorporate all the articles of the Charter.

TITLE III: UNION COMPETENCE AND ACTIONS**Article 7**

This article sets out the principles of Union action, which must be carried out in accordance with the provisions of the treaty, within the limits of the competences conferred by the treaty, and in compliance with the principles of subsidiarity and proportionality.

Article 8

This article establishes the principle that any competence not conferred on the Union by the Constitution rests with the Member States.

It establishes the primacy of Union law in the exercise of the competences conferred on the Union.

It would set out the rules for effective monitoring of subsidiarity and proportionality. The role of National Parliaments in this respect would be mentioned.

It determines the rules governing the adaptability of the system (Article 308).

It sets out the obligation of loyal cooperation of Member States vis-à-vis the Union, and the principle that the acts of the Institutions are implemented by the Member States.

THE EUROPEAN CONVENTION**Brussels, 20 January 2003**

THE SECRETARIAT

CONV 495/03**CONTRIB 198****COVER NOTE**

from Secretariat
to The Convention

**Subject : Contribution submitted by Mr Erwin Teufel, member of the Convention:
"Freiburg Draft of a European Constitutional Treaty"**

The Secretary-General of the Convention has received the contribution annexed hereto from Mr Erwin Teufel, member of the Convention.

ANNEX

FREIBURG DRAFT OF A EUROPEAN CONSTITUTIONAL TREATY

Status: November 12, 2002

Preface

This draft of a European Constitutional Treaty has been prepared on the basis of intensive discussions in the framework of a Franco-German working group. It is the result of an academic research project; it is not a mandated expert opinion or an advisory paper for any specific institution.

The following people were members of the research working group:

Prof. *Jean François Flauss*, Strassbourg/Lausanne;

Jean Marie Woehrling, General Secretary of the Commission Centrale pour la Navigation du Rhin, Strassbourg;

Johannes Schoo, Director in the Legal Service of the European Parliament, Luxembourg;

Prof. Dr. *Jürgen Schwarze*, Europa-Institute Freiburg e. V.;

the research assistants of Freiburg University *Nicolai Böcker*, *Sebastian Strohmayer*, *Lukas Wasielewski*.

This draft was translated into English by Dr. *Marcus Geiss* and *Quynh Hoang*.

Dr. *Karl von Wogau*, MEP, Strassbourg; Dr. *Jan-Peter Hix*, Legal Service of the Council, Brussels, as well as *Florian Schmidt*, LL.M., also research assistant in Freiburg, took part in the deliberations of the working group from time to time.

Insofar as expert opinions of the members of the working group have found their way into the draft, such expertise reflects their personal opinion only.

The seeds of this project were sown by a comparative research project which was carried out by the undersigned in cooperation with research teams from five other Member States of the EU.

This earlier project arrived at the conclusion that, despite all the differences in terms of historical development and conceptual features, there was clear evidence for an approximation of the analyzed national constitutional orders in particular due to the requirements of European integration which meant the time seemed right to draft a European Constitutional Treaty.

The results of the above mentioned research project on constitutional law have been published in their entirety in 2000 by the Nomos Verlag, Baden-Baden in a tome called "Die Entstehung einer europäischen Verfassungsordnung" (ed. J. Schwarze).

They are also available in an English language version („The Birth of a European Constitutional Order", Nomos-Verlag, Baden-Baden 2001) and a French edition („La naissance d'un ordre constitutionnel européen", Nomos Verlag, Baden-Baden 2001).

The idea for the current project which has resulted in this draft of a European Constitutional Treaty was born at a time when the Constitutional Convent which is now chaired by the former French President Giscard d'Estaing was not even agreed upon let alone constituted.

In keeping with the earlier project, this research project has again been kindly sponsored by the Fritz Thyssen Stiftung.

This draft follows the model of a treaty dichotomy, i.e. the separation into two component parts: One (fundamental) part consisting of the actual Constitutional Treaty which is complemented by a second Treaty on the Policies of the Union. Specific amendments and modifications notwithstanding, the rules of the existing Treaties are contained in the Treaty on the Policies of the Union. This differentiation would have the following consequences: As far as the Treaty on the Policies of the Union is concerned, there would be special rules that would allow for easier treaty amendments in the future – albeit subject to the continued requirement for unanimity of the Member States. In keeping with the aims and the nature of the research project, the draft presented hereafter only contains the (fundamental) Treaty for a European Constitution. This approach is justified particularly in view of the fact that the necessary amendments within the Treaty on the Policies of the Union are mainly technical in nature.

The draft focuses on four issues which have been identified in the course of the meetings of the European Council at Nice and Laeken as having priority for the European constitutional reform:

1. A better delimitation of competencies between the Union and its Member States.
2. An improved standard for the protection of human rights by recourse to the Charter of Fundamental Rights.
3. The simplification of the Treaties.
4. The reform of the institutional structure involving the national parliaments.

This draft offers a workable model and proposals regarding these key issues. Furthermore, it proposes certain material modifications towards a reform of the Treaties, based on the extended remit of Laeken. These modifications notwithstanding, the draft is largely based on the current primary law, aiming predominantly at a simplification of the text of the Treaty.

The work of the Convention hitherto has been taken into account in this draft. We reserve the right to continue to amend and modify the presented draft text in the course of the further deliberations of the Convention and in view of the evolving European public debate.

A preliminary draft of this text was discussed on October 11/12, 2002 in Freiburg by a larger group of experts. We now present an updated version. It is to be hoped that the Freiburg Draft will not only serve to inspire academic debate but may also be of use for the deliberations of the Convention and the subsequent Intergovernmental Conference.

Freiburg, November 12, 2002

Jürgen Schwarze

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Section A: Fundamental Provisions

Art. 1 [Treaty on the Constitution for the European Union]

- (1) Through this Treaty the Member States establish a Constitution for the European Union
- (2) Continuing the process of European integration achieved so far, the Union aims to promote the peaceful co-existence of the peoples in a spirit of open-minded international cooperation, to safeguard a closer unity of the Member States within a uniform institutional framework and to secure economic welfare as well as social balance in an internal market. The Union shall place the citizens of the Union at the heart of its activities.
- (3) This Treaty provides the foundations for the activities of the Union and limits the exercise of its competencies vis-à-vis the Member States and the citizens of the Union.
- (4) The Union has legal personality.

Art. 2 [Fundamental Provisions of the Union]

- (1) The Union is founded on the principles which are common to the legal orders of all the Member States, i.e. the principles of liberty, democracy, the rule of law, respect for human rights and fundamental freedoms, solidarity and compliance with the rules of public international law. It shall take its decisions as openly and as close to the citizens as possible.
- (2) The Union shall respect the national identity and the organisational structure of its Member States. It shall respect the variety of the cultures and traditions of the peoples of Europe.
- (3) The Member States and the Union are committed to exercising their respective competencies in a spirit of mutual loyalty. The Member States are also obliged to cooperate loyally amongst themselves.

Art. 3 [Primacy and Direct Effect of the Union Law]

- (1) The Union law shall prevail over the law of the Member States.
- (2) Insofar as Union law places direct and unconditional obligations on the Member States, it shall also have direct effect for the individual.

Art. 4 [Fundamental Rights]

- (1) In consideration of the common constitutional traditions of the Member States and the guarantees enshrined in the European Convention on Human Rights, the Union respects the human rights as contained in the Charter of Fundamental Rights solemnly proclaimed at Nice on December 7, 2000.
- (2) The Charter of Fundamental Rights is part of this Constitutional Treaty. It aims to strengthen the standard of human rights' protection for the citizens of the Union both vis-à-vis the institutions and bodies of the Union and the Member States in cases where they implement Union law. It does not interfere with the standard of protection for human rights granted by the constitutional law of the Member States and the European Convention on Human Rights.

Art. 5 [Citizenship of the Union]

- (1) Every person holding the nationality of a Member State shall be a citizen of the Union.
- (2) The citizens of the Union shall enjoy the rights conferred by this Treaty, in particular
 - the right to vote and to stand as a candidate in elections to the European Parliament and at municipal elections of the Member State, in which they reside permanently;
 - the right to move and reside freely within the territory of all the Member States;
 - the right to protection by the diplomatic and consular authorities of any Member State.
- (3) The details shall be regulated by a law requiring qualified majority in the Council according to Article 55 paragraph 2.

Art. 6 [Prohibition of Discrimination]

Within the scope of application of this Constitutional Treaty and the Treaty on the Policies of the Union and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality by the Union and the Member States shall be prohibited.

Art. 7 [Tasks]

- (1) It shall be part of the tasks of the Union
 - to create and maintain a European internal market including a common trade policy, to strengthen economic and social cohesion and to establish an economic and monetary union;
 - to maintain and develop the Union as an area of freedom, security and justice;
 - to safeguard its identity on the international scene, in particular through the implementation of a common foreign and security policy including the progressive framing of a common defence policy.
- (2) These tasks shall be carried out in compliance with the rules on the competencies of the Union.

Art. 8 [Principles governing the Exercise of its Tasks]

In implementing its policies, the Union shall respect the following principles:

- the solidarity between the Member States;
- a harmonious, balanced and sustainable development of economic activities;
- sustainable and non-inflationary growth;
- a high degree of competitiveness and convergence of economic performance;
- a high level of employment and of social protection;
- a high level of protection and improvement of the quality of the environment and the quality of life;
- equality between men and women;
- the fight against discrimination within the meaning of Article 21 of the Charter of Fundamental Rights.

Art. 9 [Competencies of the Union]

- (1) To enable the Union to carry out its tasks, the Member States delegate to the Union the sovereign rights of legislation, administration and jurisdiction as set out in this Treaty.
- (2) The Union and its institutions shall act only in compliance with the competencies expressly assigned to them in this Treaty.

Union Policies or of any rule of law relating to the application of these Treaties. Any natural or legal person may, under the same conditions, demand that decisions and Commission-regulations shall be declared void.

(5) Action for Failure to Act

The Member States and the Union may bring an action to establish that an institution of the Union has infringed this Treaty, the Treaty on Union Policies or any rule relating to the application of these Treaties by failing to adopt a decision. Any natural or legal person may, under the same conditions, bring a complaint that the Union has failed to address a legal act to that person.

(6) Fundamental Rights Complaint

Any natural or legal person may contest a legal act of the Union due to a violation of any of the rights granted to it by the Charter of Fundamental Rights of the Union if no other judicial recourse is available for seeking review of the violation of the fundamental right in question. Specific requirements for the acceptance of a Fundamental Rights Complaint may be provided for.

(7) Action for Damages

The Court of Justice shall have jurisdiction in disputes relating to the non-contractual liability of the Union to pay damages.

Art. 66 [The European Court]

(1) The European Court shall comprise at least one Judge per Member State. It may be supported in its tasks by Advocates-General.

(2) Specialised judicial panels may be attached to the European Court which shall exercise judicial tasks in certain specific areas.

(3) The Judges and Advocates-General of the European Court shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to high judicial office in their respective Member State. They shall be appointed by unanimous decision of the Council upon a proposal by the governments of the Member States for a term of twelve years. They may not be reappointed.

(4) The Judges shall elect the President of the European Court from among their number for a term of four years. He may be re-elected.

(5) The European Court shall sit in Chambers.

(6) The European Court shall appoint its Registrar. It shall establish its Rules of Procedure in agreement with the Court of Justice. These Rules of Procedure shall require the approval of the Council.

Art. 67 [Procedures with the European Court]

(1) The Law on the Courts of the Union shall determine which of the court actions listed in Article 65 shall be decided by the European Court in first instance. In accordance with the Law on the Courts of the Union, decisions of the European Court shall be subject to a right of appeal to the European Court of Justice on points of law only.

(2) Certain categories of procedures may be allocated to the specialized Chambers in the first instance. In accordance with the Law on the Courts of the Union, the decisions of the Chambers may be contested before the European Court and, in exceptional cases, this further decision may also be subject to appeal to the European Court of Justice on points of law only.

THE EUROPEAN CONVENTION

THE SECRETARIAT

Brussels, 6 February 2003**(OR. fr/en)****CONV 528/03****NOTE**

from : Praesidium**to :** Convention

Subject : **Draft of Articles 1 to 16 of the Constitutional Treaty**

Members of the Convention will find in Annex I a draft of Articles 1 to 16 (Titles I, II and III) as proposed by the Praesidium, and in Annex 2 an explanatory note.

These Articles generally correspond to the description given in the document containing the draft structure for the Constitutional Treaty (CONV 369/02). A few minor changes have been made to the numbering to take account of the debate in the Convention. The draft texts given here reflect the reports of the Working Groups on Legal Personality, the Charter, Economic Governance, Complementary Competencies, the Principle of Subsidiarity and External Action, as well as the guidelines that emerged on the basis of their recommendations during the plenary debate.

DRAFT TEXT
OF THE ARTICLES OF THE TREATY
ESTABLISHING A CONSTITUTION FOR EUROPE

TITLE I: Definition and objectives of the Union**Article 1: Establishment of the Union**

1. Reflecting the will of the peoples and the States of Europe to build a common future, this Constitution establishes a Union [entitled ...], within which the policies of the Member States shall be coordinated, and which shall administer certain common competences on a federal basis.
2. The Union shall respect the national identities of its Member States.
3. The Union shall be open to all European States whose peoples share the same values, respect them and are committed to promoting them together.

Article 2: The Union's values

The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.

Article 3: The Union's objectives

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall work for a Europe of sustainable development based on balanced economic growth and social justice, with a free single market, and economic and monetary union, aiming at full employment and generating high levels of competitiveness and living standards. It shall promote economic and social cohesion, equality between women and men, and environmental

and social protection, and shall develop scientific and technological advance including the discovery of space. It shall encourage solidarity between generations and between States, and equal opportunities for all.

3. The Union shall constitute an area of freedom, security and justice, in which its shared values are developed and the richness of its cultural diversity is respected.
4. In defending Europe's independence and interests, the Union shall seek to advance its values in the wider world. It shall contribute to the sustainable development of the earth, solidarity and mutual respect among peoples, eradication of poverty and protection of children's rights, strict observance of internationally accepted legal commitments, and peace between States.
5. These objectives shall be pursued by appropriate means, depending on the extent to which the relevant competences are attributed to the Union by this Constitution.

Article 4: Legal personality

The Union shall have legal personality.

TITLE II: Fundamental rights and citizenship of the Union

Article 5: Fundamental rights

1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out [in the second part of/in a Protocol annexed to] this Constitution.¹
2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.

¹ [The full text of the Charter, with all the drafting adjustments given in Working Group II's final report (CONV 354/02) will be set out either in a second part of the Constitution or in a Protocol annexed thereto, as the Convention decides.]

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Article 6: Non-discrimination on grounds of nationality

In the field of application of this Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

Article 7: Citizenship of the Union

1. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship; it shall not replace it. All citizens of the Union, women and men, shall be equal before the law.
2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in this Constitution. They shall have:
 - the right to move and reside freely within the territory of the Member States;
 - the right to vote and to stand as a candidate in elections to the European Parliament and in municipal elections in their Member State of residence under the same conditions as nationals of that State;
 - the right to enjoy, in the territory of a third country in which the Member State of which they are a national is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;
 - the right to petition the European Parliament, to apply to the Ombudsman, and to write to the institutions and advisory bodies of the Union in any of the Union's languages and to obtain a reply in the same language.
3. These rights shall be exercised in accordance with the conditions and limits defined by this Constitution and by the measures adopted to give it effect.

EXPLANATORY NOTE**TITLES I and II**Article 1:

This Article establishes the Union and describes its fundamental characteristics. In response to requests made at the plenary, the wording proposed is designed to adequately express the dual dimension of a Union of States and of peoples of Europe in terms appropriate to a Constitutional Treaty.

Because of its fundamental political importance, it was deemed advisable to emphasise in Article 1 the Union's respect for the national identity of its Member States; Article 9(6) then lists certain features of national identity which more specifically require respect in the legal sense when the Union is exercising its competences.

It also seems appropriate already to list the conditions for membership of the Union in Article 1, although the procedures for accession of new Member States, suspension of rights and withdrawal from the Union would be dealt with in more detail in Title X.

Article 2

This Article concentrates on the essentials – a short list of fundamental European values. Further justification for this is that a manifest risk of serious breach of one of those values by a Member State would be sufficient to initiate the procedure for alerting and sanctioning the Member State (see Article 45 of the preliminary draft Treaty which would incorporate the mechanism set out in Article 7 TEU), even if the breach took place in the field of the Member State's autonomous action (not affected by Union law). This Article can thus only contain a hard core of values meeting two criteria at once: on the one hand, they must be so fundamental that they lie at the very heart of a peaceful society practising tolerance, justice and solidarity; on the other hand, they must have a clear non-controversial legal basis so that the Member States can discern the obligations resulting therefrom which are subject to sanction.

That does not, of course, prevent the Constitution from mentioning additional, more detailed elements which are part of the Union's "ethic" in other places, such as, for instance, in the Preamble, in Article 3 on the general objectives of the Union, in the Charter of Fundamental Rights (which, unlike this Article, does not, however, apply to autonomous action by the Member States), in Title VI on "The democratic life of the Union" and in the provisions enshrining the specific objectives of the various policies.

Article 3

The philosophy of this Article is to set out the *general* objectives justifying the very existence of the Union and its action for its citizens in a more cross-sectoral fashion and not to list the specific objectives pursued by the various policies of the Union which are to be found in Part Two of the Treaty.

The fundamental difference between this Article and Article 2 therefore needs to be emphasised: while Article 2 enshrines the basic values which make the peoples of Europe feel part of the same "union", Article 3 sets out the main aims justifying the creation of the Union for the exercise of certain powers in common at European level.

Article 4

In accordance with the recommendation from Working Group III (CONV 305/02), this Article confers legal personality on the Union.

An Article on the Union's legal capacity (see Article 282 TEC), given its highly technical nature, should appear in Part Two of the Constitutional Treaty.

Article 5:

The text proposed reflects two central recommendations by Working Group II (CONV 354/02), on the one hand to incorporate in the Constitution the Charter of Fundamental Rights so that it has constitutional status and is legally binding and, on the other hand, to enable the Union to accede to the European Convention on Human Rights.

As to the technique for incorporating the Charter, the fact that the complete text (with all the drafting adjustments mentioned in the Working Group's final report) will appear either in a separate second part of the Constitution or as a Protocol annexed to it will safeguard its fully binding legal nature and allow the general rules concerning future amendments of the Constitution to be applied to the Charter. Moreover, that technique will also keep the structure of the Charter intact and avoid making the first part of the Constitution more lengthy. At the same time, the reference to the Charter in the first few articles of the Constitution will underline its constitutional status.

The legal basis in paragraph 2 enabling the Union to accede to the ECHR also expressly provides that accession must not affect the division of competences between the Union and the Member States, in line with a recommendation from Working Group II. Only the European Convention on Human Rights is mentioned in this paragraph because of the fact that a Court of Justice opinion in 1996 had rejected Community competence to accede to that Convention on the basis of considerations specific to it. This paragraph is not therefore intended to rule out the possibility of Union accession to other international conventions relating to human rights on the basis of the competences conferred in Part Two of the Treaty.

Paragraph 3 draws on Article 6(2) TEU as it now stands and is intended to indicate clearly that, in addition to the Charter, Union law recognises additional fundamental rights as general principles resulting from two sources – the European Convention on Human Rights on the one hand and the constitutional traditions common to the Member States on the other. As stressed by various members of the Convention in Working Group II (see pages 9 and 10 of the final report, CONV 354/02) and at the plenary, the usefulness of this provision is to make clear that incorporation of the Charter does not prevent the Court of Justice from drawing on those two sources to recognise additional fundamental rights which might emerge from any future developments in the ECHR and common constitutional traditions. That is in line with classic constitutional doctrine which never interprets the catalogues of fundamental rights in constitutions as being exhaustive, thus permitting the development, through case-law, of additional rights as society changes.

THE EUROPEAN CONVENTION**Brussels, 19 February 2003**

THE SECRETARIAT

CONV 567/03**CONTRIB 253****COVER NOTE**

from Secretariat

to The Convention

**Subject : Contribution by Mr David Heathcoat-Amory, member of the Convention:
"The EU Convention, the Council of Europe and the Future of Europe"**

The Secretary-General of the Convention has received the contribution in Annex from Mr David Heathcoat-Amory, member of the Convention.

ANNEX**THE EU CONVENTION, THE COUNCIL OF EUROPE AND THE FUTURE OF EUROPE****Submitted by Rt Hon David Heathcoat-Amory, MP:
The views of five delegates to the Council of Europe**

Five members of the Council of Europe have come together to remind us of some basic facts, and challenge the present autopilot mode of Convention thinking.

All of us should welcome the forthcoming enlargement of the European Union.

But these delegates have a basic message to tell: when EU officials and MEPs say it will reunite Europe, they are wrong.

Europe has already been re-united – in the Common European Home that is their organisation, the Council of Europe.

We must avoid the creation of a second common home which would be at the expense of the Council.

These members, experienced in European politics, fear that the European Union, as it enlarges, will also expand its activities into areas of their competence.

They fear that the European Union Charter of Fundamental Rights will compete with the European Convention of Human Rights;

They fear that the Luxembourg Court will clash with the Strasbourg Court;

They fear that the broad legal framework that already exists for Europe based on the Council of Europe's 185 conventions will compete with double standards imposed by the EU;

They fear that the work of their Congress of Local and Regional Authorities in promoting local democracy and transfrontier co-operation will be duplicated by the EU;

They fear that the EU Convention will make recommendations to the Inter – Governmental Conference that will threaten the primacy of the work of the Council of Europe, and undermine the assets they have been developing for over half a century.

This Paper appeals to the EU Convention not to re – invent the Europe we already have – the confederation that is the Council of Europe.

THE EU CONVENTION, THE COUNCIL OF EUROPE AND THE FUTURE OF EUROPE

Paper prepared by: David Atkinson MP
Baroness Hooper
Sir Sydney Chapman MP.
John Wilkinson MP
Sir Teddy Taylor, MP

A. Introduction.

The EU Convention will pave the way for institutional reform and a possible constitutional framework. Its outcome will have consequences for all the institutions of Europe including the Council of Europe (COE).

The Council of Europe, not the Common Market - the present EU, was established in 1949 as the political forum for dialogue between governments (through the Committee of Ministers) and national parliaments (in its Parliamentary Assembly) to avoid and resolve disputes.

Today, with 44 member states, it is the only pan-European organisation to represent the entire continent. It can fairly claim the greatest expertise in the field of human rights, democratic institutions, the rule of law, and cultural and educational co-operation.

The Council of Europe represents a confederation of European nation states which, through its conventions, provides a legal framework for the entire continent. Its European Convention on Human Rights, enforced by the Court in Strasbourg, upholds the highest standards of human rights anywhere in the world.

The EU Convention provides an opportunity to confirm the leading role of the COE in the future architecture of the continent. In particular its recommendations to the IGC should avoid competing with or duplicating the work of the Council of Europe.

B. Human Rights and a European Constitution

The European Convention on Human Rights, with its protocols, has been the standard setting 'charter' of human rights and fundamental freedoms in Europe for over 50 years. It is required to be ratified by all COE member states. This includes all EU and EU applicant states. It can be enhanced by the addition of further protocols.

The EU Charter of Fundamental Rights, adopted at the Nice European Council, defines the rights and freedoms of EU citizens. Its status will be considered by the IGC. It is anticipated to become legally binding under the European Court of Justice in Luxembourg and incorporated into an EU constitution.

The EU Charter of Fundamental Rights should not complicate or compete with the European Convention of Human Rights. The Luxembourg Court should not confuse the findings of the Strasbourg Court.

This can be avoided if the EU were to apply for accession to the European Convention of Human Rights to create a single legal mechanism for the protection of human rights applied on an equal basis to all European states.

The European Convention of Human Rights would be an appropriate basis for any EU Constitution. The European Court in Strasbourg should be recognised as the principle judicial authority of Europe.

C. A Legal Framework for the Continent

The 185 Conventions of the Council of Europe, which member states are obliged or encouraged to ratify, provide a legal framework for the entire continent of Europe defining standards on human dignity and democracy, culture, educational and social cohesion, daily life and the media.

They can be enhanced by additional Protocols, and incorporated into national laws.

There is no justification for a separate legal framework for the European Union.

D. The role of National Parliaments in the EU

It is anticipated that the EU Convention will make proposals on a more precise delimitation of competence between the European Union and its member states, and the role of national parliaments in the European architecture.

These may lead to the EU Council concentrating on decision making, the EU Commission on its executive role, with legislative tasks performed by the European Parliament.

A role for national parliaments should be introduced into the European Parliament.

This can be done by introducing an inter-parliamentary chamber to the European Parliament: a body of representatives of national parliaments to form, in due course, a second chamber.

This inter-parliamentary chamber could have responsibility for scrutinising policies that continue to be intergovernmental and areas in which competence is complimentary or shared such as foreign affairs, security and defence, police and judiciary co-operation in criminal matters, and other matters concerning the entire continent.

The Parliamentary Assembly of the Council of Europe (PACE) is the only inter-parliamentary assembly exclusive to Europe, and soon to be representative of every European national parliament.

Members of the national delegations to the PACE are practical politicians representing local constituencies. This double mandate can be used to enhance the parliamentary dimension of the EU.

The PACE can form the basis of any new role for national parliaments that would make up the “democratic deficit” of the European Parliament. That it represents 44 states should be no impediment – rather an asset in being able to promote a constitutional ideal.

E. Local Government in Europe: the CLRAE

The Council of Europe's Congress of Local Regional Authorities (CLRAE) is the only pan-European organisation for promoting local democracy structures and trans-frontier co-operation.

The EU Convention should not seek to introduce duplication or parallel activities by the EU which would undermine the CLRAE.

THE EUROPEAN CONVENTION

THE SECRETARIAT

Brussels, 26 February 2003 (04.03)
(OR. de,en,fr)

CONV 574/1/03
REV 1

COVER NOTE

from : Secretariat

to : Convention

Subject : **Reactions to draft Articles 1 to 16 of the Constitutional Treaty**
– Analysis

Members will find in the attached Annex a revised version of the summary sheets of the proposed amendments to Articles 1 to 16 (CONV 528/03).

SUMMARY SHEET OF THE PROPOSALS FOR AMENDMENTS TO ARTICLE 2

ARTICLE 2: THE UNION'S VALUES

"The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity."

I. THEMATIC EXAMINATION OF AMENDMENTS

➤ **Add equality to the values in the first sentence**

- Duhamel + 9 members of the Convention + Andriukaitis + Michel + 5 Belgian members of the Convention + Paciotti + Spini + Portuguese members of the Convention + Katiforis + Voggenhuber + Lichtenberger + Giannakou + Einem + Tiilikainen + Peltomäki (inclusion in the 2nd sentence) + Kiljunen + Vanhanen + Svensson + Palacio + Kaufmann

➤ **Add "equality between men and women"**

- Dybkjaer + Gabaglio (observer) + Vassiliou + Cristina + Costa + Puwak + 3 Portuguese members of the Convention + McAvan + Einem + Wittbrodt + Fogler + Hjelm-Wallén + 4 Swedish members of the Convention

➤ **Inclusion of all or some of the values in the 2nd sentence ("peace, tolerance, justice, solidarity") among the values in the first sentence and deletion of the second sentence**

- Michel + 5 Belgian members of the Convention + Lopes + Puwak + Paciotti + Spini + Katiforis + Voggenhuber + Lichtenberger + Costa + 3 Portuguese members of the Convention + McAvan + Frenco + Serracino + Inguanez + Hübner

➤ **Add "pluralism" (Lequiller), "diversity" (Würmeling + Altmaier), "cultural and linguistic diversity" (MacCormick + Figel) "respect for the rights of disabled people and minorities" (Kiljunen + Vanhanen) "social justice" (Voggenhuber + Lichtenberger + Einem) + Gabaglio (observer), "openness" (Kiljunen + Vanhanen + Svensson), "cultural diversity" (Duff + 3 members of the Convention + MacLennan), "national and regional identities" (Duff + 3 members of the Convention + MacLennan), "national minorities" (Balázs)**

➤ **Add or replace human rights by "fundamental rights" or "fundamental freedoms"**

- de Villepin + Roche + Puwak + Tiilikainen + Peltomäki + Tiilikainen + Peltomäki + Berès + Socialist Group + Kuneva + Tiilikainen + Peltomäki + Rupel + Duff + 3 members of the Convention + MacLennan + Palacio

- **Keep the 2nd sentence but delete "at peace"**
 - de Villepin + Haenel + Badinter + Dini
- **Specify "universal values" or "universal and indivisible values"**
 - Duhamel + 9 members of the Convention + Lenmarker
- **Replace "values" by "principles" or state "on the principles of respect for"**
 - de Villepin + Kuneva
- **Different proposals for including a reference to religion: reference to God (modelled on the Polish Constitution)/reference to Christianity/mention of Judaeo-Christian roots/reference to the Graeco-Roman, Judaeo-Christian, secular and liberal traditions**
 - Kroupa + Skaarup + Fini + Teufel + Korčok + 3 members of the Convention + Muscardini + Wittbrodt + Fogler + Teufel + Brok + 16 members of the Convention
- **Separation of Church and State**
 - Berès + Di Rupo

II. DETAILS OF THE AMENDMENTS:

(II)/1 DUHAMEL + 9 members of the Convention

Add "equality, solidarity and justice" to the common values.

(II)/2 ABITBOL

Completely recast Article 2 and include many new concepts, such as a ban on interference in the expression of the Member States' universal suffrage.

(II)/3 BORRELL + 2 members of the Convention

Add "equality, promotion of dignity" and "universal and indivisible" values

(II)/4 DUHAMEL

Drafting amendment

(II)/5 DYBKJAER

Add "equality, in particular between men and women"

(II)/6 ECKSTEIN

Add after human rights "including the rights of national minorities"

(II)/7 GABAGLIO – Observer

Add "social justice" and "equality between men and women"

(II)/8 HAENEL + BADINTER

Add "solidarity", "equality" + promotion of these values throughout the world. Deletion of 2nd sentence

(II)/9 KROUPA

Add new paragraph with the reference to God from the Polish Constitution

(II)/10 MacCORMICK

The 2nd sentence should mention respect for cultural and linguistic diversity

(II)/11 LENMARKER

Add universal values

(II)/12 ANDRIUKAITIS + 3 members of the Convention

Add equality

(II)/13 ROCHE

Add "and fundamental freedoms" after "human rights".

(II)/14 HAIN

Delete 2nd sentence, which could be included in the preamble.

(II)/15 BERÈS + 17 members of the Convention

Add "human dignity", replace "human rights" by "fundamental rights"

(II)/16 CRAVINHO

Add pluralism

(II)/17 VASSILIOU

Add equality between men and women

(II)/18 PACIOTTI + SPINI

Add "quality", delete " second sentence and include "solidarity" and "justice" in first sentence.

(II)/19 LOPES

Delete reference to values

New wording of second sentence to include tolerance, justice, solidarity and equality between Member States.

(II)/20 MICHEL + 5 Belgian members of the Convention

Deletion of 2nd sentence (ditto Hain)

Inclusion of values of solidarity, equality, tolerance and justice in the first sentence.

(II)/21 de VILLEPIN

Replace values by principles
add reference to fundamental freedoms

(II)/22 PUWAK

fundamental rights + solidarity + equality between men and women

(II)/23 FREUDO

Add solidarity + justice

(II) 24 BERÈS + Di RUPO

Separation of Church and State

(II) 25 KIRKHOPE

Replace "Union" by "Community"

(II) 26 KOHOUT

Delete second sentence

(II) 27 SKAARUP

Include a reference to "Christianity, embedded in European history and the lives of its people" (amendment proposed for a new Article 1a, but deemed more appropriate in Article 2, under religion)

(II) 28 ZIELENIEC

Amendment of the second sentence to include a link to values.

(II) 29 FINI

Refer to the Union's Judaeo-Christian roots

(II) 30 FAYOT

Extend 2nd sentence to add non-discrimination, equality between men and women and sustainable development

(II) 31 FOLLINI

Refer to religious tradition

(II) 32 TIILIKAINEN + PELTOMÄKI

Add "fundamental values"

(II) 33 BERÈS + OTHER members of the Convention (Corrigendum)

Human dignity + fundamental rights

(II) 34 FIGEL

Mention national characteristics

(II) 35 HEATHCOAT-AMORY

Delete dignity (subjective term) + reference to human rights "as set out in national laws"

(II) 36 AZEVEDO + 3 Portuguese members of the Convention

Add "equality between men and women" + "solidarity"

(II) 37 KORČOK + FIGEL + MIGAS + MARTINAKOVA

Refer to Polish Constitution

(II) 38 FISCHER

– Include Article 6 of TEU

(II) 39 CRISTINA

Recast the Article + include equality between men and women and solidarity

(II) 40 KATIFORIS

Transfer some values from the second to the first sentence

(II) 41 VOGGENHUBER + LICHTENBERGER

Delete second sentence and include corresponding values in first + "social justice", "plurality" and "equality"

(II) 42 GIANNAKOU

Add "equality" + "fundamental rights"

(II) 43 MUSCARDINI

Add reference to "Graeco-Roman, Judaeo-Christian, secular and liberal" tradition

(II) 44 COSTA + 3 Portuguese members of the Convention

Add "solidarity" + "equality between men and women"

(II) 45 McAVAN

Add "equality between men and women" + "solidarity and justice" and delete 2nd sentence.

(II) 46 EINEM

Add "social justice", "equality, in particular between men and women", "solidarity" in the first sentence while letting the second stand.

(II) 47 BONDE + 8 members of the Convention

Add in the beginning a reference to "the Europe of democracies" + "and in particular democracy" to the end of the second sentence. Remainder unchanged.

(II) 48 FIGEL

Refer to culture and sovereignty

(II) 49 KUNEVA

Add "fundamental freedoms" and "principles"

(II) 50 FREUDO

Delete second sentence and include corresponding content in first sentence

(II) 51 LEQUILLER

Include the value of "pluralism"

(II) 52 TIILIKAINEN + PELTOMÄKI

Include "equality" in the second sentence + add "fundamental rights"

(II) 53 SERRACINO-INGLOTT + INGUANEZ

Deletion of second sentence and inclusion of content in first sentence

(II) 54 KILJUNEN + VANHANEN

"Equality" + "minority rights" + "disabled people" + "openness"

(II) 55 SVENSSON

Add "openness", "equality", "truth", "knowledge"

(II) 56 WITTBRODT + FOGLER

Add "equality between men and women"

Add a paragraph referring to God (modelled on Polish Constitution)

Add a paragraph on the principle of solidarity between the Member States.

(II) 57 TEUFEL

Add a paragraph referring to God (modelled on Polish Constitution)

(II) 58 RUPEL

Add "fundamental freedoms"

(II) 59 DUFF + RUPEL + HELMINGER + SZENT-IVÁNYI

Reference to "shared" values, "fundamental" rights and cultural diversity

Add a second paragraph referring to national and regional identities

(II) 60 BALÁZS

Reference to the protection of national minorities

(II) 61 BROK + 15 members of the Convention

Reference to God (modelled on Polish Constitution)

(II) 62 HÜBNER

Add "tolerance, justice and solidarity" in the first sentence

(II) 63 PALACIO

Reference to equality and to "fundamental" rights

(II) 64 WÜRMEILING + ALMAIER

Reference to diversity

(II) 65 KAUFMANN

Reference in particular to equality and values shared by the Member States

(II) 66 MACLENNAN

Reference to "shared" values, "fundamental" rights and cultural diversity

Add a second paragraph referring to national and regional identities

(II) 67 OLEKSY

Reference to the spiritual dimension

(II) 68 HJELM-WALLEN + 4 Swedish members of the Convention

Add "equality between men and women" to the values

(II) 69 FLOCH

Add a paragraph referring in particular to "the struggles down the ages against all Nazi, fascist, authoritarian, totalitarian, racist and xenophobic regimes"

(II) 70 DINI

Delete any reference to "at peace" in the second sentence

(II) 71 QUEIRÓ

Specify "the fundamental values of the Union"

Add "the sanctity of life" to the values

Add the concept of "equality between the States and peoples of the Union" in the second sentence

(II) 72 LOPEZ GARRIDO

Add "principle of respect"

Drafting amendment

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SUMMARY SHEET OF PROPOSALS FOR AMENDMENTS**ARTICLE 5(1)****ARTICLE 5: Fundamental rights**

Article 5(1) "The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out [in the second part of/in a Protocol annexed to] this Constitution."

I. THEMATIC EXAMINATION OF AMENDMENTS:

– **Include the content of the Charter in Title I or II of the first part of the Constitution**

Amendment V (1)/8 (Lithuanian members of the Convention: Andriukaitis, Gricius, Jusys, Martikonis)

Amendment V (1)/18 (Teufel) + add a new paragraph specifying that the fundamental rights shall not modify competences.

Amendment V (1)/29 (Meyer): (including the preamble)

Amendment V (1)/38 (Brok + 15 EPP Convention members)

Amendment V (1)/41 (Santer, Helminger, Fayot)

Amendment V (1)/44 (Severin)

– **Incorporate the Charter as the first part of the Constitution**

Amendment V(1)/9 (Farnleitner)

Amendment V(1)/11 (Muscardini)

Amendment V (1)/14 (Kaufmann)

Amendment V (1)/ 34 (Fischer)

Amendment V (1)/49 (Paciotti, Spini)

– **Incorporate the Charter as the second part of the Constitution (the part on policies becoming the third part)**

Amendment V(1)/1 (Borrell + 2 Conv. members)

Amendment V(1)/4 (Socialist Members of the European Parliament: Duhamel, McAvan, Marinho, Van Lancker, Hänsch, Berès, Carnero, Paciotti, Thorning-Schmidt)

Amendment V (1)/11 a (Puwak)

Amendment V (1)/12 (Belgian members of the Convention: Michel, de Gucht, di Rupo, Van Lancker, Chevalier, Nagy)

Amendment V (1)/16 (Olesky)

Amendment V (1)/17 (Voggenhuber, Lichtenberger)

Amendment V (1)/22 (Palacio)

Amendment V (1)/28 (Cushnahan)

Amendment V (1)/30 (Hübner), + more formal wording

Amendment V (1)/35 (Giannakou)

Amendment V (1)/42 (Lequiller): deletion of redundant provisions

Amendment V (1)/45 (Dini)

Amendment V (1) 46 (Duff, Rupel, Helminger, MacLennan, Szent-Iványi, Dini, + Almeida-Garret): second chapter of part one.

Amendment V (1)/47 (Chabert, Dammeyer, Dewael, du Granrut, Martini, Valcarceliso)
Amendment V (1)/48 (Avgerinos)
Amendment V (1)/52 (Nagy)

– **Incorporate the Charter in a Protocol annexed to the Treaty**

Amendment V (1)/2 (Kroupa)
Amendment V (1)/10 (Roche)
Amendment V (1)/13 (Kiljunen and Vanhanen)
Amendment V (1)/15 (Tiilikainen and Peltomäki)
Amendment V (1)/20 (Schlüter)
Amendment V (1)/25 (Latvian members of the Convention: Kalniete, etc.)
Amendment V (1)/27 (Hjelm-Wallén, Lekberg, Lennmarker, Petersson and Kvist)
Amendment V (1)/24 (Korčok)
Amendment V (1)/31 (Fini)
Amendment V (1)/33 (Oguz)

– **Incorporate the Charter in an Annex to the Treaty**

Amendment V (1)/50 (Queiró)

– **The Charter "is" an integral part of the Constitution (without specifying position)**

Amendment V (1)/3 (Haenel, Badinter)
Amendment V (1)/19 (Figel: "shall be an integral part")
Amendment V (1)/23 (Svensson)

– **Alternative wording: "The fundamental rights of the European Union are set out in the Charter ..."**

Amendment V (1)/4 (Socialist Members of the European Parliament: Duhamel, McAvan, Marinho, Van Lancker, Hänsch, Berès, Carnero, Paciotti, Thorning-Schmidt)

– **Alternative wording: "The Union shall comply with the Charter of Fundamental Rights annexed to this Treaty and the ECHR"**

Amendment V (1) and (2)/5 (Abitbol)

– **Alternative wording: "The Constitutional Treaty refers to the Charter of Fundamental Rights"**

Amendment V (1)/6 (Muscardini)

– **Alternative wording: include Article 51(1) of the Charter**

Amendment V (1)/32 (Katiforis)

– **Alternative wording: "The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights ..."**

Amendment V (1)/39 (Costa, Eduarda Azevedo, d'Oliveira Martins, Nazaré Pereira)
Amendment V (1)/20 (Schlüter): "The Union respects ..."

- **Remove the phrase "shall be an integral part of the Constitution"**
Amendment V (1)/7 (Hain)
Amendment V (1)/37 (Tomlinson)
Amendment V (1)/20 (Schlüter): "The Union respects ..."
- **Lay down a referral for a preliminary ruling based on the Charter**
Amendment V (1)/21 (Giberyen)
- **Replace the reference to the "Constitution" with "Constitutional Treaty"**
Amendment V (1)/25 (Latvian members of the Convention: Kalniete, etc.)
Amendment V (1)/21 (Giberyen)
Amendment V (1)/24 (Korčok). See also Amendment V (2)/24
Amendment V (1)/20 (Schlüter)
- **Delete (so as not to give the Charter legal value)**
Amendment V (1)/26 (Heathcoat-Amory)
Amendment V (1)/40 (Kirkhope)
- **Incorporation of the Charter provided that it does not procure rights vis-à-vis their governments**
Amendment V (1)/36 (de Bruin, van Dijk)
Amendment V (1)/43 (Fini): application insofar as compatible with the Member States' legal systems.
- **Stipulate that the Charter is only binding on the Institutions. Replace "European Union" with "Europe of Democracies". It must respect the ECHR and the fundamental rights of the national constitutions.**
Amendment V (1)/51 (Belohorska + 8 members of the Convention)
- **Question of the compatibility of the various catalogues of rights mentioned in this article**
Amendment V (1)/53 (Pieters)

II. LIST OF AMENDMENTS

V (1)/1 (BORRELL + 2 CONV.)

V (1)/2 (KROUPA)

V (1)/3 (HAENEL, BADINTER)

V (1)/4 (SOCIALIST MEMBERS OF THE EUROPEAN PARLIAMENT: DUHAMEL, MCAVAN, MARINHO, VAN LANCKER, HÄNSCH, BERÈS, CARNERO, PACIOTTI, THORNING-SCHMIDT)

V (1) AND (2)/5 (ABITBOL)

V (1)/6 (MUSCARDINI)

V (1)/7 (HAIN)

V (1)/8 (LITHUANIAN MEMBERS OF THE CONVENTION: ANDRIUKAITIS, GRICIUS, JUSYS, MARTIKONIS)

V (1)/9 (FARNLEITNER)

V (1)/10 (ROCHE)

V (1)/11 (MUSCARDINI)

V (1)/11 A (PUWAK)

V (1)/12 (BELGIAN MEMBERS OF THE CONVENTION: MICHEL, DE GUCHT, DI RUPO, VAN LANCKER, CHEVALIER, NAGY)

V (1)/13 (KILJUNEN AND VANHANEN)

V (1)/14 (KAUFMANN)

V (1)/15 (TIILIKAINEN AND PELTOMÄKI)

V (1)/16 (OLESKY)

V (1)/17 (VOGGENHUBER, LICHTENBERGER)

V (1)/18 (TEUFEL)

V (1)/19 (FIGEL)

V (1)/20 (SCHLÜTER)

V (1)/21 (GIBERYEN)

V (1)/22 (PALACIO)

V (1)/23 (SVENSSON)

V (1)/24 (KORČOK)

V (1)/25 (LATVIAN MEMBERS OF THE CONVENTION: KALNIETE, ETC.)

V (1)/26 (HEATHCOAT-AMORY)

V (1)/27 (HJELM-WALLÉN, LEKBERG, LENNMARKER, PETERSSON AND KVIST)

V (1)/28 (CUSHNAHAN)

V (1)/29 (MEYER)

V (1)/30 (HÜBNER)

V (1)/31 (FINI)

V (1)/32 (KATIFORIS)

V (1)/33 (OGUZ)

V (1)/34 (FISCHER)

V (1)/35 (GIANNAKOU)

V (1)/36 (DE BRUIN, VAN DIJK)

V (1)/37 (TOMLINSON)

V (1)/38 (BROK + 15 EPP CONVENTION MEMBERS)

V (1)/39 (COSTA, EDUARDA AZEVEDO, D'OLIVEIRA MARTINS, NAZARÉ PEREIRA)
V (1)/40 (KIRKHOPE)
V (1)/41 (SANTER, HELMINGER, FAYOT)
V (1)/42 (LEQUILLER)
V (1)/43 (FINI)
V (1)/44 (SEVERIN)
V (1)/45 (DINI)
*V (1)/46 (DUFF, RUPEL, HELMINGER, MACLENNAN, SZENT-IVÁNYI, DINI, +
ALMEIDA-GARRET)*
V (1)/47 (CHABERT, DAMMEYER, DEWAELE, DU GRANRUT, MARTINI, VALCARCELSISO)
V (1)/48 (AVGERINOS)
V (1)/49 (PACIOTTI, SPINI)
V (1)/50 (QUEIRÓ)
V (1)/51 (BELOHORSKA + 8 MEMBERS OF THE CONVENTION)
V (1)/52 (NAGY)
V (1)/53 (PIETERS)

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SUMMARY SHEET OF PROPOSALS FOR AMENDMENTS**ARTICLE 5(2)****ARTICLE 5: Fundamental rights**

Article 5(2) "The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution."

I. THEMATIC EXAMINATION OF AMENDMENTS:

- **Extend the Union's competence to conclude other international agreements in the field of human rights (or accede to international organisations)**
Amendment V (2)/2 (Söderman)
Amendment V (2)/7 (Belgian members of the Convention: Michel, de Gucht, di Rupo, Van Lancker, Chevalier, Nagy)
Amendment V (2)/8 (Paciotti)
Amendment V (2)/10 (Kaufmann) + invert paragraphs 2 and 3
Amendment V (2)/11 (Voggenhuber, Lichtenberger)
Amendment V (2)/21 (MacCormick)
Amendment V (2)/30 (Duff, Rupel, Helminger, Maclennan, Szent-Iványi, Dini, + Almeida-Garret)
Amendment V (2)/31 (Paciotti, Spini)
Amendment V(2)/32 (Nagy)
 - **Add a new paragraph enabling the Union to accede to other Council of Europe conventions**
Amendment V (2)/1 (Eckstein-Kovács)
Amendment V (2)/22 (Szajer)
 - **Delete as the legal personality of the Union suffices**
Amendment V (2)/3 (Haenel and Badinter)
Amendment V (2)/4 (Socialist Members of the European Parliament: Duhamel, McAvan, Marinho, Van Lancker, Hänsch, Berès, Carnero, Paciotti, Thorning-Schmidt)
- Comment: Court of Justice case-law requires an explicit attribution of competence for the Union to accede to the ECHR
- **Specify in a separate paragraph that neither the Charter nor accession to the ECHR shall affect the Union's competences**
Amendment V (2)/5 (Lenmarker)

See also: Amendment V (1)/10 (Roche)
Amendment V (1)/18 (Teufel)

Comment: Such a provision is already contained in Article 51(1) of the Charter

- **Replace "affect" (modifier) with "extend" ("étendre")**
Amendment V (2)/6 (Hain)
Amendment V (2)/28 (Tomlinson)

- **Add or replace with "shall not affect the division of competences between the Union and its Member States"**
Amendment V (2)/12 (Teufel)
Amendment V (2)/27 (Oguz)

- **Legal basis to be incorporated into Part Two of the Constitutional Treaty or into the final provisions**
Amendment V (2)/8 a (de Villepin)
Amendment V (2)/23 (Hübner)

- **More compelling, alternative, wording: "The Union shall take the necessary steps to accede ..."; etc.**
Amendment V (2)/9 (Kiljunen and Vanhanen)
Amendment V (2)/14 (Svensson)
Amendment V (2)/20 (Hjelm-Wallén, Petersson, Lekberg, Lennmarker, Kvist): "The Union shall seek accession ..."
Amendment V (2)/16 (Van der Linden, Timmermans, Van Eekelen, van Dijk): "The Union wants to accede ..."
Amendment V (2)/17 (Tiilikainen and Peltomäki)
Amendment V (2)/18 (Arabadjiev): "The Union shall accede ..."
Amendment V (2)/26 (Brok + 15 EPP Convention members): "The Union shall request to accede ..."

- **Delete**
Amendment V (2)/19 (Giberyen)
Amendment V (2)/25 (Heathcoat-Amory)

See: Amendment V (1)/40 (Kirkhope – without explanation)

- **Linguistic amendment**
Amendment V (2)/29 (Duhamel)
Amendments V (2)/13 (Schlüter) and V (2)/24 (Korčok): "Constitution" becomes "Constitutional Treaty".

II. LIST OF AMENDMENTS

- V (2)/1 (ECKSTEIN-KOVÁCS)*
V (2)/2 (SÖDERMAN)
V (2)/3 (HAENEL AND BADINTER)
V (2)/4 (SOCIALIST MEMBERS OF THE EUROPEAN PARLIAMENT: DUHAMEL, MCAVAN, MARINHO, VAN LANCKER, HÄNSCH, BERÈS, CARNERO, PACIOTTI, THORNING-SCHMIDT)
V (2)/5 (LENNMARKER)
V (2)/6 (HAIN)
V (2)/7 (BELGIAN MEMBERS OF THE CONVENTION: MICHEL, DE GUCHT, DI RUPO, VAN LANCKER, CHEVALIER, NAGY)
V (2)/8 (PACIOTTI)
V (2)/8 A (DE VILLEPIN)
V (2)/9 (KILJUNEN AND VANHANEN)
V (2)/10 (KAUFMANN)
V (2)/11 (VOGGENHUBER, LICHTENBERGER)
V (2)/12 (TEUFEL)
V (2)/13 (SCHLÜTER)
V (2)/14 (SVENSSON)
V (2)/16 (VAN DER LINDEN, TIMMERMANS, VAN EEKELEN, VAN DIJK)
V (2)/17 (TIILIKAINEN AND PELTOMÄKI)
V (2)/18 (ARABADJIEV)
V (2)/19 (GIBERYEN)
V (2)/20 (HJELM-WALLÉN, PETERSSON, LEKBERG, LENNMARKER, KVIST)
V (2)/21 (MacCORMICK)
V (2)/22 (SZAJER)
V (2)/23 (HÜBNER)
V (2)/24 (KORČOK)
V (2)/25 (HEATHCOAT-AMORY)
V (2)/26 (BROK + 15 EPP CONVENTION MEMBERS)
V (2)/27 (OGUZ)
V (2)/28 (TOMLINSON)
V (2)/29 (DUHAMEL)
V (2)/30 (DUFF, RUPEL, HELMINGER, MACLENNAN, SZENT-IVÁNYI, DINI + ALMEIDA-GARRET)
V (2)/31 (PACIOTTI, SPINI)
V (2)/32 (NAGY)

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SUMMARY SHEET OF PROPOSALS FOR AMENDMENTS**ARTICLE 5(3)****ARTICLE 5: Fundamental rights**

Article 5(3) "Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law."

I. THEMATIC EXAMINATION OF AMENDMENTS:

- **Delete as no longer necessary given the Charter's incorporation into the Treaty**

Amendment V (3) / 2 (Haenel and Badinter)

Amendment V (3) / 3 (Socialist Members of the European Parliament: Duhamel, McAvan, Marinho, Van Lancker, Hänsch, Berès, Carnero, Paciotti, Thorning-Schmidt)

Amendment V (3) / 5 (Muscardini)

Amendment V (3) / 15 (Brok + 15 EPP Convention members)

Amendment V (3) / 10-11 (Hübner)

Amendment V (3) / 18 (Paciotti, Spini)

See also Amendment V (1) / 16 (Olesky)

- **Delete: do not formalise these Community case-law principles to prevent their extension to the CFSP**

Amendment V (3) / 4 (Hain)

- **Delete: "general principles of"**

Amendment V (3) / 1 (Borrell + 2 members of the Conv.)

- **Replace "the Union's law" with "the Union's constitutional law" (Verfassungsrechts der Union)**

Amendment V (3) / 6 (Kaufmann): + invert paragraphs 2 and 3 of Article 5.

- **Add a reference to the Charter of Fundamental Rights (while deleting the reference to Article 5(1))**

Amendment V (3) / 17 (de Bruin, van Dijk)

- **Amend by reproducing the terms of Article 6(2) of the TEU**

Amendment V (3) / 16 (Fischer): + invert the second and third paragraphs of Article 5 of the Constitutional Treaty

- **Delete**
Amendment V (3) / 12-13 (Heathcoat-Amory)

See Amendment V (1) / 40 (Kirkhope)
- **Invert paragraphs**
Amendment V (3) / 7 (Teufel): see V (2) / 12 (Teufel)
Amendment V (3) / 8 (Giberyen)
- **Add a fourth paragraph on children's rights**
Amendment V (3) / 14 (Muscardini)
Amendment V (3) / 19 (Queiró)
- **Specify relationship between the Court of Justice and the European Court of Human Rights**
Amendment V (3) / 9 (Balázs)

Comment: This provision is based to a considerable degree on Article 6(2) of the current TEU.

II. LIST OF AMENDMENTS

V (3) / 1 (BORRELL + 2 MEMBERS OF THE CONVENTION)
V (3) / 2 (HAENEL AND BADINTER)
V (3) / 3 (SOCIALIST MEMBERS OF THE EUROPEAN PARLIAMENT: DUHAMEL, MCAVAN, MARINHO, VAN LANCKER, HÄNSCH, BERÈS, CARNERO, PACIOTTI, THORNING-SCHMIDT)
V (3) / 4 (HAIN)
(V) (3) / 5 (MUSCARDINI)
V (3) / 6 (KAUFMANN)
V (3) / 7 (TEUFEL)
V (3) / 8 (GIBERYEN)
V (3) / 9 (BALÁZS)
V (3) / 10-11 (HÜBNER)
V (3) / 12-13 (HEATHCOAT-AMORY)
V (3) / 14 (MUSCARDINI)
V (3) / 15 (BROK + 15 EPP MEMBERS OF THE CONVENTION)
V (3) / 16 (FISCHER)
V (3) / 17 (DE BRUIN, VAN DIJK)
V (3) / 18 (PACIOTTI, SPINI)

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THE EUROPEAN CONVENTION

Brussels, 11 March 2003

THE SECRETARIAT

CONV 607/03

CONTRIB 274

COVER NOTE

from Secretariat

to The Convention

**Subject : Contribution by members of the Convention:
"Initiative for the incorporation of the Charter of Fundamental Rights into the
European Constitution"**

The Secretary-General of the Convention has received the contribution in Annex from the members of the Convention whose names are listed on page 3.

ANNEX**Initiative for the Incorporation of the Charter of Fundamental Rights
into the European Constitution**

The European integration process is rooted in the values, fundamental rights and freedoms enshrined in the European Charter of Fundamental Rights.

The Charter of Fundamental Rights is a unique expression of European identity. It is proof that the European Union is something far more than an economic community, that it is a community united by the shared values of the countries and peoples of Europe.

To the citizens of Europe the Charter is confirmation that in this integrating community to which they belong they have not only duties but also rights. Hence the Charter has a key role to play in helping Europe's citizens identify with the Union.

We therefore welcome the emerging consensus on the need to make the Charter an integral and legally binding part of the European constitution, without thereby conferring on the Union any new competences.

Given the fundamental nature of the Charter, its political impact is just as important as its legally binding status. Anyone looking up the European constitution expects to see his fundamental rights and freedoms spelt out right at the beginning. To tuck away the Charter in some protocol would be to deny its real worth and importance.

We therefore call for the entire Charter to be included in a prominent position in the text of the European Constitutional Treaty itself.

We call on all members of the Convention to endorse this initiative.

Teresa Almeida Garrett, Peter Altmaier, Pascale Andreani, Vytenis Andriukaitis, Michael Attalides, Paraskevas Avgerinos, Eduarda Azevedo, Robert Badinter, Peter Balazs, Michel Barnier, Pervenche Beres, Maria Berger, Josep Borrell Fontelles, Mihael Brejc, Elmar Brok, Hans Martin Bury, Carlos Carnero Gonzalez, Gabriel Cisneros Laborda, Nikolaos Constantopoulos, Alberto Costa, Manfred Dammeyer, Alfonso Dastis, Karel de Gucht, Proinsias de Rossa, Kemal Dervis, Dominique de Villepin, Panayiotis Demetriou, Elio Di Rupo, Lamberto Dini, Guilherme d'Oliveira Martins, Andrew Duff, Olivier Duhamel, Péter Eckstein-Kovacs, Caspar Einem, Hannes Farnleitner, Ben Fayot, Joschka Fischer, Jacques Floch, Marta Fogler, Michael Frendo, Emilio Gabaglio, John Gormley, Peter Gottfried, Genewefa Grabowska, Hubert Haenel, Klaus Hänsch, Paul Helminger, Danuta Hübner, Panayiotis Ioakimidis, Georges Katiforis, Sylvia-Yvonne Kaufmann, Piia-Noora Kauppi, András Kelemen, Kimmo Kiljunen, Jan Kohout, Alain Lamassoure, Janez Lenarcic, Pierre Lequiller, Evelin Lichtenberger, Manuel Lobo Antunes, Ernani Lopes, Diego Lopez Garrido, Hanja Maij-Weggen, Luis Marinho, Rytis Martikonis, Eleni Mavrou, Neil McCormick, Inigo Mendez de Vigo, Jürgen Meyer, Louis Michel, Juraj Migas, Marie Nagy, Jozef Oleksy, David O'Sullivan, Elena Paciotti, Ana Palacio, Alojz Peterle, Danny Pieters, Paolo Ponzano, Hildegard Puwak, Reinhard Rack, Dimitrij Rupel, Jaques Santer, Nicolas Schmit, Wolfgang Senff, Adrian Severin, Valdo Spini, Jozef Szajer, István Szent-Iványi, Erwin Teufel, Helle Thorning-Schmidt, Frans Timmermans, Janusz Trzcinski, Gerhard Tusek, René van der Linden, Anne van Lancker, Evripidis Stylianidis, Pál Vastagh, Johannes Voggenhuber, Renée Wagner, Edmund Wittbrodt, Joachim Wuermeling, Marietta Yannakou-Koutsikou

THE EUROPEAN CONVENTION**Brussels, 14 April 2003**

THE SECRETARIAT

CONV 659/03**CONTRIB 292****COVER NOTE**

from : Secretariat

to : The Convention

Subject : "Incorporation of the Charter in the Eu Constitutional Treaty"

The Secretary-General of the Convention has received the attached contribution from Mr Henning CHRISTOPHERSEN, Mr Gijs de VRIES, Mr Peter HAIN, Mr Sören LEKBERG, Mr Rihards PIKS, Mr Dick ROCHE, Ms Lena HJELM-WALLEN, members of the Convention, and Mr Thom de BRUIJN, Mr Niels HELVEG-PETERSEN, Mr Krisjanis KARINS, Mr Guntars KRASTS, Mr Bobby McDONAGH, Mr Sven-Olof PETERSSON, Mr Poul SCHLUTER and Baroness SCOTLAND of ASTHAL, alternate members of the Convention.

ANNEXE**Incorporation of the Charter in the EU Constitutional Treaty**

Signatories

Members of the Convention, Government Representatives

Mr Henning CHRISTOPHERSEN

Mr Gijs de VRIES

Mr Peter HAIN

Mr Dick ROCHE

Ms Lena HJELM-WALLEN

Alternate Members of the Convention, Government Representatives

Mr Thom de BRUIJN

Mr Bobby McDONAGH

Mr Sven-Olof PETERSSON

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Members of the Convention, Representatives of National Parliaments

Mr Sören LEKBERG

Mr Rihards PIKS

Alternate Members of the Convention, Representatives of National Parliaments

Mr Niels HELVEG-PETERSEN

Mr Krisjanis KARINS

Mr Guntars KRASTS

Incorporation of the Charter in the EU Constitutional treaty

The Charter of Fundamental Rights makes more visible the values from which the Union draws her inspiration and strength. Those values are firmly rooted in the constitutional traditions of the Member State democracies.

It is the compromise on the Charter reached by Working Group II that offers the possibility of a consensus on giving the Charter a formal place in the Union Constitution. But that possible consensus is not based upon matters of political presentation, such as whether the Charter should appear in Part I or Part II of the Constitution or be annexed to it in some way. Such matters are of secondary importance.

Of primary importance, for the citizen and his or her Government, is the concrete meaning of the Charter and any implications for the law of the Union and for the law and constitutions of the Member States. The amendments to the horizontals and other work proposed by Working Group II should help clarify what our citizens may expect, and from whom they may expect it. This work needs to be completed. We must ensure that an incorporated Charter is indeed faithful to the consensus view that it should not change the competences of the Union.

We therefore call for the draft Constitution to clarify precisely that the application of an incorporated Charter would be governed by Part VII of that Charter, as amended by Working Group II; and for the work required on the associated legal explanations to be concluded as soon as possible. A decision on how precisely the Charter should be recognised in the Constitution can logically be made after that work is completed.

THE EUROPEAN CONVENTION**Brussels, 28 April 2003**

THE SECRETARIAT

CONV 703/03**COVER NOTE**

from Secretariat

to The Convention

Subject : Study by the European University Institute, presented by Vice-President Amato:**"Ten reflections on the Constitutional Treaty for Europe"**

The Secretary General of the Convention has received from Mr Giuliano Amato, Vice President of the Convention, the attached contribution concerning a paper by the European University Institute.

The European University Institute has produced a weighty study on the main topics that are currently under the attention of the Convention: preamble, Charter, competences, simplification of instruments, institutions, main policy areas, entry into force and revision. The study has been edited by Prof. Bruno de Witte, and other distinguished scholars have signed each of the chapters.

I do not endorse every single word of this study, but I consider it would be very useful for all the members of the Convention to be able to give it the attention it deserves. To this effect I ask you to kindly circulate it as a contribution presented by me.

G. AMATO

Ten Reflections on the Constitutional Treaty for Europe

Edited by
Bruno de Witte



EUROPEAN UNIVERSITY INSTITUTE
Robert Schuman Centre for Advanced Studies
and
Academy of European Law

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Fundamental Rights and Citizenship

Gráinne de Búrca

1 – Introduction

Given the lack of political agreement over its legal status which followed the proclamation of the Charter of Fundamental Rights in 2000,¹ and given the deadlock which has persisted for decades in relation to the question of accession by the EC to the ECHR, one of the more striking results to have emerged from the Convention process so far has been the overall support both within the Working Group on the Charter (II)² and within the plenary Convention for the legal incorporation of the Charter into the Treaties and for accession of the EU (with single legal personality) to the ECHR. These two issues were considered to be politically difficult, and the broad consensus quickly reached on their resolution has been somewhat surprising.

I will focus in this contribution on what I perceive to be the main issues which now arise in relation to the incorporation of the Charter into the Treaties: first, whether the incorporation of the Charter into a constitutional treaty of this kind could have the effect of altering the ‘fundamental rights *acquis*’; secondly, whether it should be integrated in its entirety into the basic treaty or incorporated by reference and annexed in a protocol or otherwise; third, whether the amendments proposed by Working Group II to the horizontal clauses would affect the substance of the Charter,

¹ OJ C 364 of 18.12.2000, 1

² See the final report of the Working Group, CONV 354/02.

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contrary to the decision taken by the Group not to re-open any substantive questions which had been agreed by the previous Convention which drafted the Charter; and fourth, a number of residual questions including access to justice, the need for a ‘mainstreaming’ or ‘objectives’ clause, and the need for a clause authorising accession to the ECHR will be identified.

Before addressing the topic of the Charter and fundamental rights, the subject of citizenship will briefly be discussed.

2 – Citizenship

At first glance, it seems that the debate on a new constitutional treaty for the Union has not generated any proposals for change in the notion of EU citizenship which has existed for over ten years. No working group dealt specifically with the issue. Presumably this implies that change was not considered vital in this area; or perhaps it simply reflects the more general absence of focus on substantive issues within most of the Convention’s working groups: the only four which could be considered to focus on “substantive” matters were those on justice and home affairs, defence, economic governance, and belatedly, social policy, but even several of these have been preoccupied more with institutional than with substantive issues.

As far as citizenship is concerned, however, the basic framework elaborated by the Praesidium in its draft constitutional treaty of October 2002³ provides essentially that ‘Union citizenship’ should be incorporated in an early Article (currently article 5) of such a new constitutional text. The existing rights and attributes of EU citizenship under the EC Treaty, namely the rights of movement, residence, voting and standing as a candidate in municipal and European Parliament elections etc, are referred to in the draft outline of Article 5. I will argue below, when discussing the substantive provisions of the Charter, that if the Charter is to be incorporated with its substance unchanged, then Article 5 (or equivalent) of the new constitutional treaty should not repeat all of the rights again, but rather should simply introduce the concept of EU citizenship, and should refer to the Charter articles for enumeration of the rights.

3 CONV 369/02

FUNDAMENTAL RIGHTS AND CITIZENSHIP

One curious and undesirable novelty, however, has been proposed in the Preliminary draft constitutional treaty, and this is that EU citizenship should be reconceptualised as ‘dual citizenship’, such that a national of any member state may “use either, as he or she chooses”. The notion of dual citizenship is an unfortunate way of describing the co-existence of national and EU citizenship. If it is intended as a description of the currently existing relationship between EU and national citizenship it is misleading, and if it is intended to define these categories in a new way for the future, under the basic Constitutional Treaty, then it is a regrettable move. The concept of dual citizenship suggests full and competing loyalties/relationships to two different and entirely separate polities, each of which makes similar claims of allegiance on the individual. This could be an undesirable development in a number of ways.

In the first place, EU and national citizenship, from the time of their introduction by the Maastricht Treaty, have been conceptualised as complementary rather than competing, and as mutually reinforcing rather than as alternatives. Each is seen as encompassing a relationship which is distinct from yet connected with the other (just as the Member States are distinct from yet part of the EU), so that neither status in itself should interfere with or challenge the essence of the other. European citizenship reflects the relationship between a member state national and the EU polity, defining the core legal and political rights pertaining to that relationship, but it is not an entirely separate and alternative status to national citizenship. Further, the ‘complementary’ nature of the two citizenships has been reflected not only in understanding and practice since the Maastricht Treaty, but also in the legal texts adopted since then. Thus the citizenship provisions of the Amsterdam Treaty were amended precisely in this way, specifying in Article 17(1) that ‘citizenship of the Union shall complement and not replace national citizenship’. The sentiment underlying this declaration could well be applied to the proposal to introduce a notion of dual citizenship, in the sense that ‘citizenship of the Union should complement and not compete with national citizenship’.

A second criticism of the language of dual citizenship is that it suggests two full and co-equal relationships between citizen and polity, as though the relationship between the individual and the EU were the same as that between the individual and his or her member state of nationality. Yet this is not what is currently represented by EU citizenship. It may reflect an aspiration, a hope that the EU may develop into a fully federal polity, but at present the notion of EU citizenship has neither the same content as, nor is a real alternative to national citizenship, and it does not reflect the substantive relationship of belonging to a full political and social community. Certainly many hope that the notion of EU citizenship will one day evolve into a

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more meaningful status of this kind, but to label it as such at present (which the conceit of dual citizenship suggests) risks painting a glossy veneer of constitutional language on something which remains rather empty in content. Indeed, the current opposition of so many Member States to the provision in the Commission's draft proposal on the right of movement and residence of EU citizens which would grant a permanent right of residence to an EU citizen in another Member State after a five-year residence period,⁴ provides a sharp reminder that EU and national citizenship are far from equal alternatives. And the failure of various Member States and sub-national regions in many cases to facilitate the right of non-nationals to vote or to stand in local and European Parliament elections, as the EC Treaty currently requires them to do, also suggests that the practice of EU citizenship in its present form remains rather thin.⁵

For these reasons, the concept of “dual” citizenship is a problematic one in the context of EU citizenship, and I would recommend against introducing it into the basic constitutional treaty.

3 – The Charter of Fundamental Rights

A. *Maintaining the fundamental rights acquis*

A first question to be addressed is whether the Charter will replace all other references to fundamental rights currently contained in the Treaties such as in Article 6 TEU, and whether it will ‘crystallise’ the fundamental rights jurisprudence of the Court of Justice for the future. While the Charter was drafted on the basis that it would be essentially declaratory of the existing legal situation, and that it would not reduce or restrict the fundamental rights *acquis* built up over the years, it must nevertheless be recognised that the relatively open-ended and non-exhaustive approach adopted by the ECJ could possibly be restricted by the constitutional

4 COM(2001)527.

5 See the Commission's third report on citizenship of the Union COM(2001)506, and also COM(2000)843.

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enactment of the Charter, if the latter is henceforth to be taken as the definitive and closed list of EU rights and values.

On the one hand, the Preamble to the Charter declares that the Charter “reaffirms ... the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States”, including specifically the ECHR and the two Social Charters (of the Council of Europe and the EC respectively). However, this seems merely to suggest that the rights actually specified in the Charter are derived from national constitutions and from these common international obligations, rather than that the EU continues to hold itself bound or at least inspired by international human rights obligations and standards more broadly. Further, while Article 53 of the Charter makes mention of human rights derived from international law and international agreements to which the Member States are party, as well as national constitutions, this is done merely to affirm that the Charter should not be used in such a way as to restrict those rights within their proper sphere of application. What is missing, however, is any equivalent in the Charter or its preamble to the ECJ’s often-repeated statement that “fundamental rights form an integral part of the general principles of law ... for that purpose, the Court draws inspiration from the constitutional traditions common to the Member States and from the guidelines supplied by international treaties for the protection of human rights on which the Member States have collaborated or to which they are signatories”. This assertion of a category of general principles of EU law inspired by international human rights treaties is more fluid and is non-exhaustive (take the example often cited of the rights of minorities, which are protected under the European Framework Convention on the Rights of Minorities and under the ICCPR, but not mentioned in the Charter, although the former are international agreements on which Member States have ‘collaborated’ in accordance with ECJ case law), by comparison with the enumerated rights approach of the Charter, even if the latter are themselves derived from international law and from ECJ case law.

It is possible, of course, that the ECJ will continue to adopt an open approach to human rights protection, and to make references to the general principles of law and to internationally protected rights which are not specifically mentioned in the Charter, even though the Charter will exist as a first and primary reference point. It was indeed an article of faith during the drafting of the Charter that it was not to *change* the existing state of the law, but rather was designed to showcase the fundamental rights *acquis* of the EU. Nonetheless, if the Charter as it stands is incorporated as one of the first articles in a new constitutional document, then there is a danger that it may become the authoritative reference point for EU fundamental

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rights, to the detriment of international human rights norms which are not specifically included.

For this reason, in order to make sure that the normatively open *acquis* is not ‘closed’ by the incorporation of the Charter in a basic constitutional treaty, it would be advisable to include in the new treaty—for example in Article 2 of the preliminary draft constitutional treaty—a clause affirming that openness e.g. by mentioning the general principles of EU law which are inspired by international law.

B. Full incorporation of the text of the Charter or incorporation by reference?

The majority of the Working Group favoured the full incorporation of the text of the Charter articles into the constitutional treaty, rather than incorporating it by reference by one of the other suggested methods. However, the debate in the Convention plenary indicated a range of views, and in the preliminary draft constitutional text, the three main options are set out for consideration: (a) a reference to the Charter (b) a statement of the fact that the Charter is an integral part of the Constitution with the articles of the Charter being set out elsewhere in the treaty or in an annexed protocol (c) full incorporation of all articles of the Charter.

It seems likely that the Working Group favoured the “full incorporation” option (c) primarily for symbolic purposes, in the sense of indicating the central place of these values and principles in the new constitutional text, rather as the Bill of Rights tends to be a central chapter in modern state constitutions. And while this option poses various difficulties due to the way in which the Charter was drafted as a separate and self-standing instrument, yet with complex overlaps and interactions with the existing EC Treaty, it seems nonetheless to be the best way forward for a number of reasons.

Option (a) Incorporation by simple reference

Option (a), to include a reference to the Charter, would presumably be along the lines of the current Article 6 of the EU Treaty, indicating that the Union commits itself to respect fundamental rights as they result from the EU Charter of Fundamental Rights, along with the ECHR and national constitutional traditions. Such a reference would place the Charter outside the constitutional treaty, as a source of inspiration for the fundamental rights recognised by the EU, rather than as an integral part of the new constitutional text, and would identify the Charter as one of the sources of rights alongside others. This would maintain the value of openness of the current position,

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but it seems to be the option less favoured both within the Working Group and also within the Convention's plenary debate. Certainly it would not give the prominence or centrality to the EU's commitment to human rights which the actual incorporation of the Charter into a new constitutional treaty would do. Had the question of the Charter's incorporation into the Treaties arisen at a time when there was no serious discussion of an EU constitution, then the option of incorporation by an additional reference in Article 6 of the EU Treaty would possibly have been the best solution. However, the fact that the current process and the 2004 IGC is likely to produce a basic constitutional text for the EU introduces a fundamental symbolic and substantive change, which would make the omission of the Charter from the new constitution a much more significant exclusion.

For this reason, option (a) of incorporation by reference would not be the best solution in the current context.

Option (b) Incorporation by reference and by inclusion of the Charter in a protocol to the constitutional treaty

Option (b) provides an intermediate solution. On the one hand it would achieve the full incorporation of the Charter into the new constitutional text with equal legal status alongside all other provisions of the latter, rather than leaving it as an external source of inspiration only [as under option (a)]. And on the other hand it would achieve this without the awkwardness of inserting a relatively lengthy and self-standing text such as the Charter, with its own preamble, into the first articles of a new constitutional treaty.

However, this solution has two disadvantages. The first and most important is that it would lack the symbolic commitment of placing the Charter centrally within a new constitutional text, and would seem to relegate it to the less pivotal status of a protocol or annex. Given the importance of the message conveyed by placing the Charter's commitment to human dignity, equality and solidarity at the heart of a new documentary constitution, this would be a very significant loss. Further, while one apparent advantage of the incorporation-by-reference option is that it would seem to avoid some of the problems of duplication and overlap between the provisions of the Charter and those of the existing EC Treaty, that advantage would in fact be one of appearance only. This is because, given the equal legal status of the Charter and the Treaties under option (b), the practical problem of actual legal overlap and duplication would remain, even if the location of the Charter as a separate integral document in an annex or protocol would superficially reduce the degree of textual and visual awkwardness.

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For this reason, option (b) of incorporation by reference combined with inclusion of the Charter in a protocol or annex to the Treaty, should not be the preferred solution.

Option (c) Full incorporation of all of the Charter provisions

Option (c), which would incorporate the full text of the Charter into a constitutional treaty was the choice favoured by most of the Convention Working Group members, and has also been proposed in the ‘Feasibility Study’ draft Constitution recently prepared by the Lamoureux working group for the Commission (published 4 December 2002, and referred to, rather strangely, as Penelope).⁶ The essential value and importance of this approach would be the visibility and symbolism of setting out, at an early point in the new constitutional text, what is effectively a constitutional bill of rights. While this approach presents certain practical and legal problems which will be discussed below, it is nonetheless, in my view, the option to be preferred. In particular, the solution proposed in the Penelope draft of having a separate Part II in the basic constitutional treaty containing the full Charter would be preferable to placing it in the middle of something like Part I of the Praesidium’s October 2002 draft. The detailed policies and legal bases would then be contained in a separate Part III of the constitutional treaty.

A first problem, however—one which has animated most of the political discussion of a constitutional treaty or a constitution for the EU—is arguably that of simplicity and readability. From this perspective, one might doubt the wisdom of incorporating a document of fifty-four articles into a basic constitutional treaty, which, according to the Praesidium’s preliminary draft would contain no more than forty-six articles. However, the prospect of simplifying by reducing the number of articles in the Charter and changing its text in any substantive way (other than by the purely cosmetic change of ‘grouping’ several current Charter articles together under a smaller number of umbrella articles of the new constitutional treaty, as was mooted during the Convention debate on the Working Group’s final draft) would be ill-advised, given the almost unchallenged assumption so far that the substance of the Charter should remain unchanged, in deference to the procedure by which it was drafted and proclaimed in 2000.

⁶ See http://europa.eu.int/futurum/documents/offtext/const051202_en.pdf

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Perhaps a more substantial problem in relation to the feasibility of option (c), however, is that the Charter was drafted as a complete and integral instrument with its own preamble, its own internal coherence and with a set of final horizontal clauses, rather than being designed as one part of a larger text. Further, as a consequence of its having been drafted as a separate and complete instrument by the first Convention, the Charter contains many provisions which either duplicate, partially overlap with, repeat in slightly different form, or are somewhat in tension with provisions of the existing EC Treaty. If all of the Charter's provisions are to be incorporated into the new constitutional treaty in their current form it is inevitable that consequential changes to the substance of the existing EC Treaty will need to be made, and it seems likely that some duplication will in any event persist.

On the basis of the Praesidium's preliminary draft, it seems that the fundamental provisions establishing the single market and all of the legislative bases for action would be contained in a separate part of the constitutional text, which obviously raises the question of the relationship between legal bases such as the current Articles 12, 13 and 141 of the EC Treaty and the 'corresponding' rights contained in provisions of the Charter such as Articles 21 and 23. It seems unlikely, despite the opinion of the Working Group to that effect, that the 'referral clause' in Article 52(2) of the Charter is sufficient to deal with the replications and overlaps which are likely to result from its incorporation into the constitutional Treaty containing much of what currently exists in the EC Treaty. It would seem, on the contrary, that a significant 'cleaning-up' job would need to be done on the remaining provisions of the EC Treaty which intersect or overlap with the provisions of the Charter and which are likely to be included in the new constitutional document.

As an initial step in the direction of this task, annexed at the end of this paper is a table illustrating the various articles of the Charter which correspond in different ways with—whether by overlapping with, repeating, or even potentially contradicting—provisions contained in the current EC Treaty. In some of these instances, it is evident that versions of these EC Treaty provisions would have to be included in the remaining Part of the preliminary draft constitutional treaty. The comments in the third column of the table attempt to indicate those cases where it is possible to envisage the EC Treaty provisions being adapted so as to relate more directly to the corresponding provision in the Charter, e.g. to provide the legal basis and mechanism for implementing or fleshing out the right expressed in the Charter.

In other words, for provisions such as Articles 21 and 23 (discrimination and gender equality), or 27, 28, 30 and 31 (workers' rights), which would have corresponding legal bases in the relevant Part of the constitutional treaty, the latter provisions could

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make direct reference to the Articles of the Charter. These could be expressed in a form such as: ‘the Council, acting under the [co-decision procedure] shall adopt legislation to combat discrimination in accordance with Article [21, 23...] of the Charter of Rights’. A similar and careful coordination of the competence provisions of the constitutional treaty in the field of social policy with the declaration of workers’ rights and other social rights contained in the Charter would need to be undertaken. In other instances, for example the exhortatory provisions concerning cultural diversity, consumer protection and health protection, these could be mentioned in the remaining part of the constitutional treaty by means of an express reference to the relevant Charter provision. In the case of the citizenship provisions, as argued above, it would be advisable for the current draft of Article 5 of the preliminary draft constitutional text only to introduce and assert the basic concept of EU citizenship, rather than listing all of the specific rights pertaining to it. Instead, what is now draft Article 5 should refer to the Charter for a listing of the specific rights and incidents of EU citizenship. Finally, a corresponding legal basis providing power to adopt legislation to implement the citizenship rights contained in the Charter would be needed in the remaining part of the constitutional treaty. Indeed, the Penelope draft included an additional article 57 in the text of the Charter itself conferring competence to adopt measures to implement and facilitate the citizenship rights contained therein. This, however, is not recommended, since there are no other competence provisions in the Charter itself, and corresponding competence provisions for many other Charter rights will in any case need to be contained in the remaining part of the constitutional treaty.

Therefore it is recommended that the Charter (complete with preamble) be incorporated, along the lines indicated in the Penelope draft, in Part II of a three-part Constitutional Treaty, before Part III which would contain the detailed policies and legal bases. It could, if considered necessary, be specified that Part III of the constitutional Treaty should be read in conformity with the more fundamental Parts I and II.

C. Proposed Working Group amendments to the horizontal clauses of the Charter

Article 51(1) and (2)

The amendments proposed by the WG are shown in italics:

"51 (1): The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity

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and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers *and respecting the limits of the powers of the Union as conferred on it by other parts of [this Treaty / the Constitutional Treaty]*.

51 (2): This Charter does not extend the scope of application of Union law beyond the powers of the Union or establish any new power or task for [the Community or] the Union or modify powers and tasks defined by the other [Chapters / parts] of [this Treaty / the Constitutional Treaty]."

A number of commentators had earlier pointed out the tension between the obligation in Article 51(1) on the institutions of the EU to 'promote' the application of the rights contained in the Charter and the assertion in Article 51(2) that the Charter does not modify powers or tasks defined by the Treaty. As a consequence of this, the Working Group has proposed something of a 'belt and braces' approach, supplementing both paragraphs (1) and (2) with limiting clauses designed to further underscore the intention not to increase, change or extend any of the existing powers under the EC or EU treaties. Arguably, these additional clauses are superfluous, somewhat ugly to read, and they do not remove the tension in question. It seems simply inevitable (and from the point of view of at least some, desirable) that the existence and incorporation of the Charter will influence the nature and interpretation of EU tasks and powers, although in subtler ways than the bald notion of 'establishing new power' suggests. The explicit articulation for the first time in the basic EU constitutional treaty of an array of fundamental rights seems unlikely not to 'modify' the way other aspects of the EU's powers and tasks are construed, at least by the Court of Justice if not by other actors. The fiction that the Charter of Rights, whether fully legally incorporated or not, 'makes no difference' to anything in the EU legal and political order is not an easy one to maintain, and although no doubt there were strong interests to be appeased within the Working Group which led to the belt and braces approach as a way of maintaining this fiction, the amended Article 51 presents a curious picture. It is of course a feature typical of the way in which the EU operates—in particular at high constitutional moments such as these—that bold and powerful new developments such as the constitutional incorporation of a new Bill of Rights are accompanied by a series of countervailing safeguards and even contradictory limiting provisions. Nevertheless, it seems unlikely that there will be much political opposition to the newly proposed 'double padlock' provision, and on the contrary that there will be clear political support for it as an assertion of the limits of EU competence.

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However, for the reasons just given, it is recommended that the amendments proposed by the Working Group to Article 51 of the Charter be rejected.

Article 52(4)

The amendment proposed by the Working Group in adding this new subparagraph is:

"52(4) Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions."

This proposal seems a useful one. It reads as a direction to the Court of Justice to interpret the rights contained in the Charter in harmony with national constitutional traditions, in so far as the rights in question are derived from those traditions. This direction to strive for 'soft harmony' between national constitutional rights and the expression of those rights contained in the Charter is a more promising constitutional means of addressing the tension between them rather than positing the supremacy of one over the other—quite apart from the fact that political agreement on such a supremacy clause (of either kind) would be virtually impossible to achieve. Like the provision already contained in Article 52(3) concerning the relationship between the Charter and corresponding provisions of the ECHR, this proposed amendment leaves many questions open, but that seems inevitable and appropriate to the complexity of Europe's legal pluralism.

It is recommended that the Working Group's proposed amendment to Article 52(4) of the Charter be accepted.

Article 52(5)

The amendment proposed by the Working Group in adding this new subparagraph is:

"52 (5) The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions and bodies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality."

Article 52(5), like the proposed amendments to Article 51 discussed above, seems to be a legally superfluous and fuzzy political compromise. This is the one amendment proposed by the Working Group which seems to be an attempt—or perhaps better described as a compromise proposal in response to such an attempt—to revisit the substance and content of

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the Charter, despite the Group's assertion that it proceeded on the basis that the content of the Charter which had been proclaimed at the Nice European Council should not be re-opened. If the 'integrity' of the Charter as a whole, on account of the mechanism by which it was drafted and proclaimed is to be taken seriously, then this in itself provides a clear argument against including the proposed amendment in Article 52(5).

The amendment seems likely to have been pressed by one of the UK members of the Working Group—although a large majority of the Working Group supported it—in particular since the UK government's previous representative on the Convention which drafted the Charter in 2000, Tony Goldsmith, had fought hard for a distinction between rights and principles to be made in the text, but had been defeated in this attempt at an early stage of the Charter drafting process.⁷ The main thrust behind this position seems to be the wish not to render many of the so-called economic and social rights (which are considered to require positive action and social expenditure) justiciable, and therefore to reclassify them as 'principles', while maintaining the more traditional and often negatively framed civil and political rights (which are considered to require only non-interference) as justiciable individual rights. According to the proposed amendment, Charter provisions "which contain principles ... shall be judicially cognisable only in the interpretation of [acts which implement these principles] and in ruling on their legality".

Without needing to engage in the longstanding academic and policy debate on the distinction between economic/social and civil/political rights, and on their alleged indivisibility under international law,⁸ the likelihood of the proposed amendment rendering all 'social rights' contained in the Charter non-justiciable seems in any case extremely slight. This is partly because the distinction which the amendment introduces between 'principles' and 'subjective rights'—to use the language of the Working Group's explanatory note on the proposed amendment⁹—is extremely hazy, and partly because there is no clear division between economic/social and

7 For an account of the Charter from his perspective, see T. Goldsmith, 'A Charter of Rights, Freedoms and Principles' (2001) 38 *Common Market Law Review* 1201

8 See H. Steiner and P. Alston, *International Human Rights in Context* (2nd edn., OUP, 2000), Chap. 4; C. Fabre, 'Constitutionalising Social Rights' (1998) 6 *Journal of Political Philosophy* 263.

9 See WD 023.

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civil/political rights in the Charter. The latter division does not in any case map neatly onto a distinction between ‘rights requiring positive action or expenditure’ and rights which require only non-interference for their protection.

Further, the polarisation of the notions of justiciability and non-justiciability underlying the proposed amendment reflects a simplistic and legally unsophisticated understanding of the function and operation of a Charter of Rights such as this. It is unlikely that the rights and values set out in the Charter will be used in any significantly different way from the way in which fundamental rights and provisions of the ECHR have until now been used in litigation before the ECJ. The legal and constitutional culture within which the ECJ has operated over the past four decades, and the approach it has adopted to fundamental rights adjudication has shown no indicating of following the strong paradigm associated with the US legal system of rights as weapons used to ‘trump’ legislation. Indeed the complaint has more usually been that the ECJ does not ‘take rights seriously’ in the sense that it has only extremely rarely struck down any provision of EU law, other than individual administrative or staff actions, for violation of human rights.¹⁰ Instead, the articulation of legal rights in a text such as the ECHR and now the EU Charter is much more likely to continue to function as a source of values and norms other than those set out in the other Treaties, to influence the interpretation of EU legislative and other measures, and to feed into policy-making and into EU activities more generally. And it is unlikely that the ECJ’s role and approach in relation to these values and norms will change very much from the approach it has demonstrated to date with other fundamental rights and norms derived from the ECHR and national constitutional law.

There is therefore a range of arguments in favour of abandoning the Working Group’s proposed amendment to Article 52(5) (which, incidentally, was accepted in the Penelope draft). It represents an attempt to re-open the substance of the Charter as agreed by the previous Convention by consensus; it is premised on a very unclear distinction between ‘principles’ and everything else; it is based on a rather crude understanding of the notion of justiciability; and it reflects a lack of awareness of the

10 See J. Coppel and A. O’Neill, ‘The European Court of Justice: Taking Rights Seriously?’ (1992) 29 *Common Market Law* 669, and the response in J. Weiler and N. Lockhart ‘“Taking Rights Seriously” Seriously: The European Court and its Fundamental Rights Jurisprudence’ (1995) 32 *Common Market Law Review* 51, 579.

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role and approach which has over the years been adopted by the ECJ (and CFI) in cases raising fundamental rights issues. The best that can be said about the proposed amendment is that the ECJ can decide for itself what constitutes a 'principle', and that this language is unlikely to restrict it in drawing on the range of values and norms expressed in the Charter in its adjudicative role.

It is recommended that the Working Group's proposed amendment to Article 52(5) of the Charter be rejected.

Article 52(6)

The amendment proposed by the Working Group in adding this new subparagraph is:

"52 (6) Full account shall be taken of national laws and practices as specified in this Charter."

This seems to be an exhortatory and fairly uncontroversial amendment encouraging those who apply and interpret the Charter to pay full account to national laws and practices when the Charter specifies this.

It is recommended that the Working Group's proposed amendment to Article 52(6) of the Charter be accepted.

D. Some remaining questions

(1) Is there a need, in particular because of Opinion 2/94 of the ECJ, for a special clause to be inserted in the new treaty authorising the EU to accede to the ECHR? Some have argued that, for the sake of legal certainty and clarity, such a clause does need to be included, and this is certainly the view taken by the Working Group. It seems unlikely that such a provision would be legally or constitutionally necessary, however, given that the circumstances in which Opinion 2/94 was written will have radically changed if a new constitutional treaty along the lines which are currently emerging comes into force. In the first place, a Charter of Rights will be incorporated into the treaty; secondly, the EU will have legal personality; and more generally the institutional and constitutional architecture which existed at the time of the 1996 Opinion will have altered in many significant ways. Arguably such a clause is not strictly necessary, but the Working Group recommendation to include a legal basis in the new Treaty may well be sensible for the avoidance of doubt and to help provide political impetus at a later stage to accede. The Penelope draft has included such a clause in a new Article 55(1) of the Charter, which would be incorporated into Part II of a new EU Constitution.

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It is recommended that a provision be included in the constitutional treaty containing an explicit legal basis for accession by the EC/EU to the European Convention on Human Rights.

(2) Should there be a reform of Article 230 to complement the incorporation of the Charter of Rights? The Charter Working Group did not wish to make a recommendation on this issue, on the basis that it was not properly within their mandate, and that it should be addressed either by the Working Group on Justice and Home Affairs together with other questions of judicial control by the ECJ, or as part of the work on judicial control of subsidiarity. There are few questions on which the EU law academic world (not to mention the CFI and the Advocates General of the ECJ) is so united as that the right of individuals to seek judicial review by the ECJ under Article 230 is excessively restrictive, and that it undermines respect for the principle of access to justice in the EU. The adoption of the Charter of Rights only heightens this sense (and not only because of the content of Article 57 of the Charter itself on access to court), and the response that the ECJ is already overburdened simply cannot provide an answer to the criticisms of *locus standi* under Article 230. The problem of overburdening is a significant one which must be addressed in the reflections on reform of the judicial system after the introduction of the Nice Treaty changes, but it cannot be addressed entirely at the expense of individual access to justice. There are very strong arguments for introducing a reform to Article 230, and the incorporation of the Charter into a new constitutional treaty provides a forceful new reason for doing so.

It is recommended that the current Article 230 of the EC Treaty be amended to provide for less restrictive *locus standi* for individuals before the Court of Justice.

(3) Should there be a human rights mainstreaming clause, along the lines of the 'environmental' and 'gender equality' integration clauses of the current EC Treaty? There are strong arguments to be made in favour of such a clause, in particular because the Council has asserted in its Annual Reports on Human Rights in the Union that it is committed to mainstreaming human rights concerns into all EU internal and external policies. However, given the extreme caution displayed in the 'horizontal articles' of the Charter in relation to any possible change in the nature of EU powers, it seems likely that a mainstreaming article would be viewed with political suspicion in various quarters as a possible Trojan horse for smuggling a more positive or proactive human rights dimension into EU policy. Nonetheless, a new constitutional Treaty which places protection for human rights in a central

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position and which incorporates a Charter of Fundamental Rights, would be enhanced by a human rights mainstreaming clause which should not, if the Council's annual reports are to be believed, bring about any major change in current practice.

It is recommended that a human rights integration clause, along the lines of the current Articles 3(2) and 6 of the EC Treaty on gender equality and environmental protection, be included in the constitutional treaty.

(4) Should there be a clause in the constitutional treaty which makes protection of human rights an explicit objective of the Union? Since the ECJ handed down its Opinion 2/94 on accession to the ECHR,¹¹ the question whether the EU legislature could act under Article 308 on the basis that protection of human rights is an objective of the Union has remained unclear. Some have taken the view that the Court's opinion indicated a negative answer, while others have taken the opposite view.¹² Joseph Weiler has recently argued, in the context of the current constitutional debate, that the opportunity should be taken now to insert an express objective of this kind into the reformed treaty.¹³ This would constitute a positive step in favour of a more proactive human rights policy, but it seems unlikely to have political support in view of the opposite tendency displayed in relation to Article 51(1) and (2) of the Charter.

It is recommended that protection for human rights be specified as an objective of the EC/EU.

(5) Should there be a provision for establishing a mechanism to enforce the 'suspension of rights' provision of the Treaty where there is a 'serious and persistent breach' of fundamental rights by a member state—currently Article 45 of the

11 [1996] ECR I-1759

12 See the range of views expressed in the commentaries on the case: J.H.H. Weiler and S. Fries, "A Human Rights Policy for the European Community and Union: the Question of Competences" in P. Alston, M. Bustelo and J. Heenan (eds), *The EU and Human Rights* (OUP, 1999), N. Burrows (1997) 22 *European Law Review* 58; G. Gaja (1996) 33 *Common Market Law Review* 973; S. Peers (1998) 35 *Common Market Law Review* 539; A. Dasiwood and A. Arnall in *C.E.L.S. Occasional Paper* no. 1, and C. Vedder, *Europarecht* (1996) 309.

13 'A Constitution for Europe: Some Hard Choices' (2002) 40 *Journal of Common Market Studies* 563

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preliminary draft constitutional treaty? The absence of such a mechanism is a fact to which a number of commentators have drawn attention, but some would treat it as a matter of implementing detail rather than a central constitutional issue. Further, it is also an issue which would raise the same ‘increased competences/powers’ fears as demonstrated in Article 51 of the Charter, since an enforcement mechanism would probably entail a monitoring procedure, and hence a degree of supervision of Member State activities. From this perspective, it may be better at least initially to allow a process to evolve in an organic way, as seems to be suggested by the approach adopted in the European Parliament’s most recent Annual reports on human rights within the Union.¹⁴

14 See A5-0223/2001 and A5-0451/2002.

Appendix

“Corresponding” Provisions of the Charter and the current EC Treaty

Charter	EC	Comment
<p><i>Article 14</i> <i>Right to education</i></p> <p>1. Everyone has the right to education and to have access to vocational and continuing training.</p> <p>...</p>	<p><i>Article 150 (ex Article 127)</i></p> <p>...</p> <p>2. Community action shall aim to:</p> <ul style="list-style-type: none"> - facilitate adaptation to industrial changes, in particular through vocational training and retraining; - improve initial and continuing vocational training in order to facilitate vocational integration and reintegration into the labour market; - facilitate access to vocational training and encourage mobility of instructors and trainees and particularly young people; - stimulate cooperation on training between educational or training establishments and firms; - develop exchanges of information and experience on issues common to the training systems of the Member States. <p>...</p>	<p>Article 14.1 Charter and Article 150(2) EC (access to vocational training)</p> <ul style="list-style-type: none"> ▪ Likely interaction: EC Treaty provision could be adapted to provide that Community/ Union action shall aim also to implement the right contained in Article 14 of the Charter



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
<p>Article 15 <i>Freedom to choose an occupation and right to engage in work</i></p> <p>...</p> <p>2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.</p> <p>...</p> <p>Article 16 <i>Freedom to conduct a business</i></p> <p>The freedom to conduct a business in accordance with Community law and national laws and practices is recognised.</p>	<p>Article 39 (ex Article 48)</p> <p>...</p> <p>3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:</p> <p>(a) to accept offers of employment actually made;</p> <p>(b) to move freely within the territory of Member States for this purpose;</p> <p>(c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;</p> <p>(d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in implementing regulations to be drawn up by the Commission.</p> <p>4. ...</p> <p>Article 43 (ex Article 52)</p> <p>Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State. Freedom of establishment shall include the right to take up and pursue</p>	<p>Articles 15(2) and 16 Charter and Articles 39(3), 43 and 49 EC Treaty (rights to work, establish, provides services):</p> <ul style="list-style-type: none"> There is some overlap and duplication here; while this is not particularly problematic, greater coherence could be introduced by making reference to the rights contained in Arts 15 & 16 of the Charter in Arts 39, 43 & 49 EC Treaty which elaborate on those rights.
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	<p>activities as selfemployed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 48, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital.</p> <p><i>Article 49 (ex Article 59)</i> Within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be prohibited in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended. The Council may, acting by a qualified majority on a proposal from the Commission, extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Community.</p>	
<p><i>Article 21</i> Non-discrimination 1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.</p>	<p><i>Article 12 (ex Article 6)</i> Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited. The Council, acting in accordance with the procedure referred to in Article 251, may adopt rules designed to prohibit such discrimination.</p>	<p>Article 21 Charter, and Articles 12 and 13 EC (freedom from discrimination):</p> <ul style="list-style-type: none"> ▪ There is considerable overlap here : the EC Treaty

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<p>2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.</p>	<p><i>Article 13 (ex Article 64)</i> Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.</p>	<p>provisions (12-13) could refer to the Charter provisions and should provide a legal basis also for the additional grounds of discrimination covered in Art 21.</p>
<p><i>Article 22</i> <i>Cultural, religious and linguistic diversity</i> The Union shall respect cultural, religious and linguistic diversity.</p>	<p><i>Article 151 (ex Article 128)</i> 1. The Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore. 2. Action by the Community shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas: - improvement of the knowledge and dissemination of the culture and history of the European peoples; - conservation and safeguarding of cultural heritage of European significance; - non-commercial cultural exchanges; - artistic and literary creation, including in the audiovisual sector.</p>	<p>Article 22 Charter and Article 151 EC (respect for cultural diversity):</p> <ul style="list-style-type: none"> ▪ Some overlap here: reference to the Charter provision could be made in the EC Treaty article.

	<p>3. The Community and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of culture, in particular the Council of Europe.</p> <p>4. The Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures.</p> <p>5. In order to contribute to the achievement of the objectives referred to in this Article, the Council:</p> <ul style="list-style-type: none"> - acting in accordance with the procedure referred to in Article 251 and after consulting the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States. The Council shall act unanimously throughout the procedure referred to in Article 251; - acting unanimously on a proposal from the Commission, shall adopt recommendations. 	
<p><i>Article 23</i> <i>Equality between men and women</i></p> <p>Equality between men and women must be ensured in all areas, including employment, work and pay. The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.</p>	<p><i>Article 141 (ex Article 119)</i></p> <ol style="list-style-type: none"> 1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied. 2. For the purpose of this Article, "pay" means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the 	<p>Article 23 Charter and Article 141 EC (equality between men and women):</p> <ul style="list-style-type: none"> ▪ There is considerable overlap here: reference should be

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	<p>worker receives directly or indirectly, in respect of his employment, from his employer. Equal pay without discrimination based on sex means:</p> <p>(a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;</p> <p>(b) that pay for work at time rates shall be the same for the same job.</p> <p>3. The Council, acting in accordance with the procedure referred to in Article 251, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value.</p> <p>4. With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.</p>	<p>made to the Charter provision, esp. in paras 3 and 4 of Art 141.</p>
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<p><i>Article 27</i> Workers' right to information and consultation within the undertaking</p> <p>Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices.</p> <p><i>Article 28</i> Right of collective bargaining and action</p> <p>Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.</p> <p><i>Article 30</i> Protection in the event of unjustified dismissal</p> <p>Every worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices.</p> <p><i>Article 31</i> Fair and just working conditions</p> <p>1. Every worker has the right to working conditions which respect his or her health, safety and dignity.</p>	<p><i>Article 137 (ex Article 118)</i></p> <p>1. With a view to achieving the objectives of Article 136, the Community shall support and complement the activities of the Member States in the following fields:</p> <ul style="list-style-type: none"> - improvement in particular of the working environment to protect workers' health and safety; - working conditions; - the information and consultation of workers; - the integration of persons excluded from the labour market, without prejudice to Article 150; - equality between men and women with regard to labour market opportunities and treatment at work. <p>2. To this end, the Council may adopt, by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings. The Council shall act in accordance with the procedure referred to in Article 251 after consulting the Economic and Social Committee and the Committee of the Regions. The Council, acting in accordance with the same procedure, may adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating</p>	<p>Articles 27, 28, 30, 31 Charter and Articles 137 and 140 EC (rights of workers):</p> <ul style="list-style-type: none"> ▪ There is evidently some overlap here. Appropriate reference to the various Charter rights could be made in the EC Treaty provisions; There is however some tension between Article 28 Charter and Article 137(5), the latter excluding EC legislative competence in the field of strike action while the former recognises the right to engage in strike action as an EU right.
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<p>2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.</p>	<p>experiences in order to combat social exclusion.</p> <p>3. However, the Council shall act unanimously on a proposal from the Commission, after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions in the following areas:</p> <ul style="list-style-type: none"> - social security and social protection of workers; - protection of workers where their employment contract is terminated; - representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 6; - conditions of employment for third-country nationals legally residing in Community territory; - financial contributions for promotion of employment and jobcreation, without prejudice to the provisions relating to the Social Fund. <p>4. A Member State may entrust management and labour, at their joint request, with the implementation of directives adopted pursuant to paragraphs 2 and 3. In this case, it shall ensure that, no later than the date on which a directive must be transposed in accordance with Article 249, management and labour have introduced the necessary measures by agreement, the Member State concerned being required to take any necessary measure enabling it at any time to be in a position to guarantee the results imposed by that directive.</p> <p>5. The provisions adopted pursuant to this Article shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with this Treaty.</p>	
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	<p>6. The provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs.</p> <p><i>Article 140 (ex Article 118e)</i></p> <p>With a view to achieving the objectives of Article 136 and without prejudice to the other provisions of this Treaty, the Commission shall encourage cooperation between the Member States and facilitate the coordination of their action in all social policy fields under this chapter, particularly in matters relating to:</p> <ul style="list-style-type: none"> - employment; - labour law and working conditions; - basic and advanced vocational training; - social security; - prevention of occupational accidents and diseases; - occupational hygiene; - the right of association and collective bargaining between employers and workers. <p>To this end, the Commission shall act in close contact with Member States by making studies, delivering opinions and arranging consultations both on problems arising at national level and on those of concern to international organisations. Before delivering the opinions provided for in this Article, the Commission shall consult the Economic and Social Committee.</p>	
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<p>Article 35 Health care</p> <p>Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.</p>	<p>Article 152 (ex Article 129)</p> <p>1. A high level of human health protection shall be ensured in the definition and implementation of all Community policies and activities. Community action, which shall complement national policies, shall be directed towards improving public health, preventing human illness and diseases, and obviating sources of danger to human health. Such action shall cover the fight against the major health scourges, by promoting research into their causes, their transmission and their prevention, as well as health information and education. The Community shall complement the Member States' action in reducing drugs-related health damage, including information and prevention</p> <p>...</p>	<p>Article 35 Charter and Article 152(1) EC (integration of high level of health protection):</p> <ul style="list-style-type: none"> • The duplication here ('high level.. etc') could be reduced by amending the EC Treaty provision so as to make reference to the Charter's guarantee instead
<p>Article 36 Access to services of general economic interest</p> <p>The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union.</p>	<p>Article 16 (ex Article 7d)</p> <p>Without prejudice to Articles 73, 86 and 87, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Community and the Member States, each within their respective powers and within the scope of application of this Treaty, shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions.</p>	<p>Article 36 Charter and Article 16 EC (services of general economic interest):</p> <ul style="list-style-type: none"> • Same as the previous column:

<p><i>Article 37</i> <i>Environmental protection</i></p> <p>A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.</p>	<p><i>Article 6 (ex Article 3c)</i></p> <p>Environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities referred to in Article 3, in particular with a view to promoting sustainable development.</p>	<p>Article 37 Charter and Article 6 EC</p> <ul style="list-style-type: none"> • Same as previous column;
<p><i>Article 38</i> <i>Consumer protection</i></p> <p>Union policies shall ensure a high level of consumer protection.</p>	<p><i>Article 153 (ex Article 129a)</i></p> <p>1. In order to promote the interests of consumers and to ensure a high level of consumer protection, the Community shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.</p> <p>2. Consumer protection requirements shall be taken into account in defining and implementing other Community policies and activities.</p> <p>3. The Community shall contribute to the attainment of the objectives referred to in paragraph 1 through:</p> <p>(a) measures adopted pursuant to Article 95 in the context of the completion of the internal market;</p> <p>(b) measures which support, supplement and monitor the policy pursued by the Member States.</p>	<p>Article 38 Charter and Article 153 EC (consumer protection):</p> <ul style="list-style-type: none"> • Same as previous column

	<p>4. The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, shall adopt the measures referred to in paragraph 3(b).</p> <p>5. Measures adopted pursuant to paragraph 4 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with this Treaty. The Commission shall be notified of them.</p>	
<p>Article 39 <i>Right to vote and to stand as a candidate at elections to the European Parliament</i></p> <p>1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.</p> <p>2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.</p> <p>Article 40 <i>Right to vote and to stand as a candidate at municipal elections</i></p> <p>Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.</p>	<p>Article 18 (ex Article 8a)</p> <p>1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect.</p> <p>2. The Council may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1; save as otherwise provided in this Treaty, the Council shall act in accordance with the procedure referred to in Article 251. The Council shall act unanimously throughout this procedure.</p> <p>Article 19 (ex Article 8b)</p> <p>1. Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same</p>	<p>Articles 39, 40, 43, 44, 45, 46 Charter and Articles 18, 19, 20, 21, 190 and 194 EC (citizenship rights):</p> <ul style="list-style-type: none"> • This extensive duplication could be avoided by introducing only the basic concept of citizenship in the EC Treaty provision and making reference to the Charter provision for a listing of the

<p>Article 43 Ombudsman</p> <p>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 refer to the Ombudsman of the Union cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.</p> <p>Article 44 Right to petition</p> <p>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.</p> <p>Article 45 Freedom of movement and of residence</p> <p>1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.</p> <p>2. Freedom of movement and residence may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.</p> <p>Article 46 Diplomatic and consular protection</p> <p>Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the</p>	<p>conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.</p> <p>2. Without prejudice to Article 190(4) and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.</p> <p>Article 20 (ex Article 8c)</p> <p>Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State. Member States shall establish the necessary rules among themselves and start the international negotiations required to secure this protection.</p>	<p>specific rights; the legal basis provision would also refer to the implementation of the Charter rights.</p>
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<p>diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.</p>	<p><i>Article 21 (ex Article 8d)</i></p> <p>Every citizen of the Union shall have the right to petition the European Parliament in accordance with Article 194. Every citizen of the Union may apply to the Ombudsman established in accordance with Article 195. Every citizen of the Union may write to any of the institutions or bodies referred to in this Article or in Article 7 in one of the languages mentioned in Article 314 and have an answer in the same language.</p> <p><i>Article 190 (ex Article 138)</i></p> <p>1. The representatives in the European Parliament of the peoples of the States brought together in the Community shall be elected by direct universal suffrage.</p> <p>2. The number of representatives elected in each Member State shall be as follows:</p> <p>Belgium 25 Denmark 16 Germany 99 Greece 25 Spain 64 France 87 Ireland 15 Italy 87 Luxembourg 6 Netherlands 31 Austria 21 Portugal 25 Finland 16</p>	
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	<p>Sweden 22 United Kingdom 87.</p> <p>In the event of amendments to this paragraph, the number of representatives elected in each Member State must ensure appropriate representation of the peoples of the States brought together in the Community.</p> <p>3. Representatives shall be elected for a term of five years.</p> <p>4. The European Parliament shall draw up a proposal for elections by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States. The Council shall, acting unanimously after obtaining the assent of the European Parliament, which shall act by a majority of its component members, lay down the appropriate provisions, which it shall recommend to Member States for adoption in accordance with their respective constitutional requirements.</p> <p>5. The European Parliament shall, after seeking an opinion from the Commission and with the approval of the Council acting unanimously, lay down the regulations and general conditions governing the performance of the duties of its Members.</p> <p><i>Article 194 (ex Article 138d)</i></p> <p>Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have the right to address, individually or in association with other citizens or persons, a petition to the European Parliament on a matter which comes within the</p>	
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	Community's fields of activity and which affects him, her or it directly.	
<p><i>Article 42</i> Right of access to documents Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.</p>	<p><i>Article 255 (ex Article 191a)</i> 1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents, subject to the principles and the conditions to be defined in accordance with paragraphs 2 and 3. 2. General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the Council, acting in accordance with the procedure referred to in Article 251 within two years of the entry into force of the Treaty of Amsterdam. 3. Each institution referred to above shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents.</p>	<p>Article 42 Charter and Article 255 EC (access to documents):</p> <ul style="list-style-type: none"> The EC Treaty provision should make reference to the Charter right.

THE EUROPEAN CONVENTION

THE SECRETARIAT

Brussels, 13 May 2003**CONV 736/03****COVER NOTE**

from : Secretariat

to : The Convention

**Subject : Copy of a letter by M. P. Hain, member of the Convention to President
Giscard d'Estaing concerning the Charter**

Members of the Convention will find attached copy of a letter that M. Peter Hain, member of the Convention, has addressed to President Giscard d'Estaing.

ANNEX

Valery Giscard D'Estaing
President
Convention on the Future of Europe
Justus Lipsius
175 Rue de la Loi
1048 Brussels
Belgium

12 May 2003

Thank you for your welcome letter setting out how we might approach the challenges of the last few weeks of the Convention. I agree that your proposals will help us to make the best use of the short time we have left for our endeavours.

I hope you will forgive me for raising one point. Your letter suggests that it is now settled that the Charter should form Part II of the Constitution. As you know, our Government has always held the view that we could make no commitment to the incorporation of the Charter until we had sight of the whole package outlined in the recommendations of the Working Group.

The UK, with Denmark, Ireland, Latvia, the Netherlands and Sweden, set out a common position on this as recently as 14 April (Contrib. 659/03). We made it clear that we could not agree a specific method of incorporation without seeing the whole technical package. That remains the case, and I would therefore be most grateful if you could confirm the position set out by the Working Group, and endorsed by the Plenary, that decisions on the placement of the Charter will be taken after the additional work has been completed and agreed.

The challenge is to find ways to give our citizens legal certainty and clarity in relation to the Charter's ambiguous or conflicting texts. I hope and believe that a completed package from the Working Group may help us find an answer on the Charter's status on which we can all soon agree.

I should be grateful if you would circulate this to fellow members of the Convention.

Peter Hain

Editors' note to CONV 726/03,
Draft text of Part II with comments:

See also CONV 725/03 (27 May 2003) and CONV 802/03 (12 June 2003).

THE EUROPEAN CONVENTION**Brussels, 26 May 2003**

THE SECRETARIAT

CONV 726/03**COVER NOTE**

from: The Praesidium

to: The Convention

Prev. doc. no.: Charter of Fundamental Rights, JO C 364 of 18.12.2000

Subject : **Draft text of Part II with comments**

Members of the Convention will find hereafter the draft text of Part II of the Constitution (Charter of Fundamental Rights), with some technical modifications suggested, highlighted, and preceded by an explanatory note.

Explanatory Note

Subject: Incorporation of the Charter of Fundamental Rights as Part II of the Constitution

1. Members of the Convention will find attached the text of the Charter of Fundamental Rights of the Union, incorporated into the Constitution as its Part II. The Praesidium draws the attention of the members of the Convention to the following:

- a) The text reproduces the wording of the Charter as proclaimed in December 2000, except for the amendments to the Charter's general provisions on which Working Group II reached consensus and for some purely technical adaptations as explained in d) below. This is in line with the recommendation of the Working Group, followed by the Plenary, to refrain from any changes to the substance of the Charter. The drafting amendments to the text proclaimed at Nice in December 2000 are highlighted.
- b) Concerning the amendments to the Charter's general provisions in Articles 51 and 52, the text takes over faithfully the wording suggested by Working Group II on which a large consensus emerged in the Plenary. The only slight drafting change to the language agreed by the Working Group is that the text now refers to powers and tasks conferred / defined "*in*", rather than "*by*", the Constitution; this corresponds to the general line the Convention takes in Part I Articles that the competences are conferred *by the Member States*, not by the Constitution itself.

In the particular case of Article 52 § 2 of the Charter (i.e. the clause referring, for rights in the Charter based on the existing Treaties, to the conditions and limits defined by those Treaties), the Working Group concluded that there continues to be a need for such a referral clause, recognising however that Article 52 § 2 will logically need a drafting adjustment, which the Group could not undertake given that it would depend on the exact overall architecture of the Constitutional Treaty, which was still unknown at the time. In the Praesidium's view, the adjustment of Article 52 § 2 suggested in the annex (based on a drafting suggestion made by Sir Neil MacCormick within the Working Group), would be the most appropriate formula for such a referral clause, ensuring legal certainty and continuity as intended by original Article 52 § 2: It would ensure that those Charter rights which merely "restated" rights already enshrined in the EC Treaty (notably the rights of EU citizens) are subject to the conditions and limits which so far figured in the EC Treaty and will now be taken over in Part III or, in some cases ¹, in Part I of the Constitution.

- c) Article 42 Charter on access to documents is the only case in which an amendment in substance to a right in the Charter has become necessary in the light of this Convention's work. This right was merely restated in the Charter with the scope approved by the Treaty of Amsterdam; however, as reflected in draft Article [36], Part I, this Convention now wishes to go further, extending the right to documents of the institutions, bodies and agencies generally.

¹ Article I-49 § 3 on access to documents, Article I-50 on data protection.

- d) The following technical adaptations have been made to the Charter text:
- i) the terms "Community" and "Treaty establishing the European Community" / "Treaty on European Union" have been replaced with "Union" and with "Constitution".
 - ii) the 7 "Chapters" of the Charter now become the 7 "Titles" of Part II of the Constitution.
 - iii) the heading of Title 7 has been expanded and now reads "general provisions governing the interpretation and application of the Charter". This appears appropriate in order to clarify - as was requested in a contribution from several Convention members² - that, following insertion of the Charter as Part II, the general provisions found in that Title govern the interpretation and application of the Charter as a whole, and that they apply only to this Part of the Constitution.
 - iv) where the current Charter text refers to the "institutions and bodies of the Union", the formula "institutions, bodies and agencies of the Union" must now be used³.

2. The Praesidium examined the question, raised in several amendments of Convention members, whether certain fundamental rights should be repeated in Part I of the Constitution although, by virtue of the incorporation of the Charter, they will also appear in Part II of the Constitution, or whether these duplications should be eliminated by deleting the respective provisions in Part I.

In this respect, the Praesidium reached the conclusion that the reference to the rights of EU citizens (as well as that to non discrimination on the basis of nationality) both in Part I and the Charter is justified in that these rights are *constitutive* of the very notion of European citizenship as introduced by the Treaty of Maastricht. They (or at least some of them, such as freedom of movement or voting rights of EU citizens in the country of residence) are special to the Union, and, by definition, cannot be guaranteed at national level. That distinguishes them from the other Charter rights, such as freedom of expression, of religion, etc., which are analogous to fundamental rights protected in national constitutions.

As to the rights of the Charter repeated in the Title on "Democratic Life" of Part I, the Praesidium considered that the right of access to documents as well as that of protection of personal data (two rights which are complementary in a sense), are seen, at least by many members of the Convention, as key components of the Union's particular mode of democratic life at supranational level. For these convention members, Articles I-49 § 3 and I-50 of Part I, would look incomplete if containing only rules on modalities, limits and legal bases on transparency and data protection, but not the statement of the right itself. At the same time, it would not be illogical to see these two rights reappearing in the Charter (Part II of the Constitution), which would stress that they also belong to the genuinely *fundamental* rights of the Union⁴.

² See Doc CONV 659/03 CONTRIB 292 Christophersen, de Vries, Hain, Roche, Hjelm-Wallén.

³ As the previous Convention's Praesidium stated in its Explanations, the formula "institutions and bodies of the Union" was used in the Charter with the intent of "*referring to all the authorities set up by the Treaties or by secondary legislation (see Article 286(1) TCE)*". Given that now the draft Constitution now consistently refers to "institutions, bodies and agencies" - cf. Articles I-49 § 3 and I-50 of Part I, and the Articles on the Court of Justice in Part III -, the same formula must be used in the Charter.

⁴ Precisely that argument was already made by Advocate-General Léger (in Case 353/99 P, Council v. Hautala) with respect to the Charter article on right of access to documents.

3. Working Group II stressed that the "Explanations" to the Charter, which had been drawn up at the instigation of the Praesidium of the Charter Convention (and which, although not submitted to the Plenary of the previous Convention, played a role in securing consensus on the Charter text within that Convention), are one important tool of interpretation ensuring a correct understanding of the Charter. It recommended that its own explanations on the drafting adjustments to the horizontal clauses of the Charter should be fully integrated with the original Explanations. The Group furthermore recommended that, upon possible incorporation of the Charter, attention should then be drawn in an appropriate manner to the Explanations which, though they state that they have no legal value, are intended to clarify the provisions of the Charter; in particular, it would be important to publicise them more widely.

Following that recommendation, the Praesidium agreed that the technical work of producing such an updated and consolidated version of the Explanations of 2000 should be carried out under the authority of the Chairman of Working Group II who would consult with members of that Working Group and then submit the product to the Praesidium for endorsement, before the end of the Convention. This work is under way.

PART II: THE CHARTER OF FUNDAMENTAL RIGHTS OF THE UNION

PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of ~~the Community and~~ the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, ~~the Treaty on European Union, the Community Treaties,~~ the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the ~~Community Union~~ and by the Council of Europe and the case law of the Court of Justice of the European ~~Communities~~ Union and of the European Court of Human Rights.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

CHAPTER TITLE I. DIGNITY**Article 1: Human dignity**

Human dignity is inviolable. It must be respected and protected.

Article 2: Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Article 3: Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - a) the free and informed consent of the person concerned, according to the procedures laid down by law,
 - b) the prohibition of eugenic practices, in particular those aiming at the selection of persons,
 - c) the prohibition on making the human body and its parts as such a source of financial gain,
 - d) the prohibition of the reproductive cloning of human beings.

Article 4: Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5: Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

CHAPTER TITLE II. FREEDOMS**Article 6: Right to liberty and security**

Everyone has the right to liberty and security of person.

Article 7: Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8: Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Article 9: Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article 10: Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Article 11: Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Article 12: Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article 13: Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article 14: Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article 15: Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article 16: Freedom to conduct a business

The freedom to conduct a business in accordance with ~~Community~~ Union law and national laws and practices is recognised.

Article 17: Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

Article 18: Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Constitution~~Treaty establishing the European Community~~.

Article 19: Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

CHAPTER TITLE III. EQUALITY

Article 20: Equality before the law

Everyone is equal before the law.

Article 21: Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Constitution and without prejudice to any of its specific provisions, Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

Article 22: Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article 23: Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article 24: The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article 25: The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article 26: Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

~~CHAPTER TITLE IV.~~ SOLIDARITY

Article 27: Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by ~~Union~~Community law and national laws and practices.

Article 28: Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with ~~Community~~Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Article 29: Right of access to placement services

Everyone has the right of access to a free placement service.

Article 30: Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with ~~Community~~Union law and national laws and practices.

Article 31: Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article 32: Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article 33: Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article 34: Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by ~~Community~~Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with ~~Community~~Union law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by ~~Community~~Union law and national laws and practices.

Article 35: Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Article 36: Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the ~~Constitution~~Treaty establishing the European ~~Community~~, in order to promote the social and territorial cohesion of the Union.

Article 37: Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article 38: Consumer Protection

Union policies shall ensure a high level of consumer protection.

CHAPTER-TITLE V. CITIZENS' RIGHTS

Article 39: Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Article 40: Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article 41: Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, ~~and bodies~~ and agencies of the Union.
2. This right includes:
 - a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - c) ~~the~~ obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the ~~Community-Union~~ make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the official languages of the ~~Treaties~~ Union and must have an answer in the same language.

Article 42: Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to ~~European Parliament, Council and Commission~~ documents of the institutions, bodies and agencies of the Union, in whatever form they are produced.

Article 43: Ombudsman

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 refer to the Ombudsman of the Union cases of maladministration in the activities of the ~~Community~~ institutions, or bodies or agencies of the Union, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Article 44: Right to petition

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.

Article 45: Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the ~~Constitution Treaty establishing the European Community~~, to nationals of third countries legally resident in the territory of a Member State.

Article 46: Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

CHAPTER TITLE VI. JUSTICE

Article 47: Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Article 48: Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Article 49: Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

Article 50: Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

CHAPTER-TITLE VII. GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

Article 51: Scope

1. The provisions of this Charter are addressed to the institutions, ~~and~~ bodies and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the other Parts of the Constitution.
2. This Charter does not extend the scope of application of Union law beyond the powers of the Union or establish any new power or task for ~~the Community or the Union~~, or modify powers and tasks defined ~~by~~ in the other Parts of the Constitution ~~Treaties~~.

Article 52: Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter for which provision is made in other Parts of the Constitution ~~which are based on the Community Treaties or the Treaty on European Union~~ shall be exercised under the conditions and within the limits defined by these relevant parts ~~by those Treaties~~.
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions and bodies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.
6. Full account shall be taken of national laws and practices as specified in this Charter.

Article 53: Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, ~~the Community~~ or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article 54: Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

Editors' note to CONV 724/03,
**Draft Constitution, Volume I – Revised text of
Part One:**

CONV 724/1/03 REV 1 (28 May 2003) did not include any material changes to these extracts.

THE EUROPEAN CONVENTION
THE SECRETARIAT

Brussels, 26 May 2003
(OR. fr)

CONV 724/03

VOLUME 1

COVER NOTE

from :	Praesidium
to :	Convention
Nos prev. docs :	CONV 528/03, CONV 571/03, CONV 579/03, CONV 602/03, CONV 614/03, CONV 648/03, CONV 649/03, CONV 650/03, CONV 685/03, CONV 691/03, CONV 723/03
Subject :	Draft Constitution, Volume I – Revised text of Part One

Members of the Convention will find attached the draft text of Part One of the Treaty establishing the Constitution together with that of the Protocols on the application of the principles of subsidiarity and proportionality and the role of the national Parliaments, as revised by the Praesidium in the light of the comments and amendments received and the discussions in plenary.

The Articles in Title IV "The institutions" are the only ones to be sent to the members of the Convention without change from the original version contained in CONV 691/03 of 23 April 2003. The very numerous amendments received and the comments made at the plenary on these Articles often go in opposing directions, particularly on central questions, including the three linked questions highlighted in the note of 23 April (representation in the European Parliament, definition of the qualified majority, and composition of the Commission). The Praesidium therefore thinks it would be appropriate to devote more time to discussion and thought on those subjects.

At a later stage, as these thoughts mature, the Praesidium will submit a revised version of Title IV to the Convention.

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Members' attention is drawn to the fact that the Articles in Part I are numbered consecutively. The references to the Articles in Part III will be specified when they have been finalised.

ANNEX 1**DRAFT TEXT – PART ONE****TITLE I: DEFINITION AND OBJECTIVES OF THE UNION****Article I-1: Establishment of the Union**

1. Reflecting the will of the citizens and States of Europe to build a common future, this Constitution establishes the European Union, on which the Member States confer competences to attain objectives they have in common. The Union shall coordinate the policies by which the Member States aim to achieve these objectives, and shall exercise in the Community way the competences they confer on it.
2. The Union shall be open to all European States which respect its values and are committed to promoting them together.

Article I-2: The Union's values

The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, equality, solidarity and non-discrimination.

Article I-3: The Union's objectives

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, and a single market where competition is free and undistorted.
3. The Union shall work for a Europe of sustainable development based on balanced economic growth, with a social market economy aiming at full employment and social progress.

It shall aim at a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of children's rights.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

The Union shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

4. In its relations with the wider world, the Union shall uphold and promote its values and interests. It shall contribute to peace, security, the sustainable development of the earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and protection of human rights and in particular children's rights, as well as to strict observance and development of international law, including respect for the principles of the United Nations Charter.
5. These objectives shall be pursued by appropriate means, depending on the extent to which the relevant competences are attributed to the Union in this Constitution.

Article I-4: Fundamental freedoms and non-discrimination

1. Free movement of persons, goods, services and capital, and freedom of establishment shall be guaranteed within and by the Union, in accordance with the provisions of this Constitution.
2. In the field of application of this Constitution, and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

Article I-5: Relations between the Union and the Member States

1. The Union shall respect the national identities of its Member States, inherent in their fundamental structures, political and constitutional, including for regional and local self government. It shall respect their essential State functions, including for ensuring the territorial integrity of the State, and for maintaining law and order and safeguarding internal security.
2. Following the principle of loyal cooperation, the Union and the Member States shall, in full mutual respect, assist each other to carry out tasks which flow from the Constitution.

The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the objectives set out in the Constitution.

Article I-6: Legal personality

The Union shall have legal personality.

TITLE II: FUNDAMENTAL RIGHTS AND CITIZENSHIP OF THE UNION

Article I-7: Fundamental rights

1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes the Second Part of this Constitution.
2. The Union shall seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined in this Constitution.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Article I-8: Citizenship of the Union

1. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship; it shall not replace it.
2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in this Constitution. They shall have:
 - the right to move and reside freely within the territory of the Member States;
 - the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;

- the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;
 - the right to petition the European Parliament, to apply to the Union Ombudsman, and to write to the Institutions and advisory bodies of the Union in any of the Union's languages and to obtain a reply in the same language.
3. These rights shall be exercised in accordance with the conditions and limits defined by this Constitution and by the measures adopted to give it effect.

TITLE III: UNION COMPETENCES AND ACTIONS

Article I-9: Fundamental principles

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.
2. Under the principle of conferral, the Union shall act within the limits of the competences conferred upon it by the Member States in the Constitution to attain the objectives set out in the Constitution. Competences not conferred upon the Union in the Constitution remain with the Member States.
3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

Comments

Article unchanged, as it has already been approved.

TITLE II: FUNDAMENTAL RIGHTS AND CITIZENSHIP OF THE UNION

Article I-7: Fundamental rights

1. ~~The Charter of Fundamental Rights shall be an integral part of this Constitution. The Charter is set out [in the second part of/in a Protocol annexed to] this Constitution.~~
The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes the Second Part of this Constitution.
2. The Union ~~may accede~~ **shall seek accession** to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined ~~by~~ **in** this Constitution.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Comments:

1. *In the light of the positions expressed by a large majority of Convention members, the solution of incorporation of the Charter in a new Part Two appears to be the one likely to meet broad consensus within the Convention.*

The wording of the first paragraph fits in better with that solution than did the previous draft. It is based on amendments by Costa, Eduarda Azevedo, d'Oliveira Martins, Nazaré Pereira, Duhamel + 8; Teufel, Schlüter, Palacio, and corresponds exactly to the last sentence of the Charter preamble.

2. *On accession to the ECHR, there was general support at the additional meeting on 26 March for the wording adopted: "...the Union shall seek accession ..." (see also am. Kiljunen and Vanhanen, Svensson, Hjelm-Wallén + 4, Van der Linden+ 3, Tiilikainen, Brok + 15).*
3. *As for the amendments aiming at including other international agreements in the area of human rights (Söderman, Michel + 5, Paciotti, Kaufmann, Voggenhuber, Lichtenberger, MacCormick, Duff + 6, Spini, Nagy), it is clear that this paragraph, as amended by the Praesidium, cannot be interpreted as ruling out the possibility of accession to other human rights conventions, a possibility which is opened up pursuant to other legal bases laid down in the Constitution (namely the various policies linked to such conventions, and even the flexibility clause in Article I-17). This paragraph may ask that the Union seek accession only in the specific case of the ECHR; however this particular formula is not in any way intended to rule out the possibility of accession to other conventions. As the Praesidium has already pointed out, only the European Convention on Human Rights is mentioned in this paragraph because of the fact that a Court of Justice opinion in 1996 had rejected Community competence to accede to that Convention on the basis of considerations specific to it.*

THE EUROPEAN CONVENTION
THE SECRETARIAT

Brussels, 3 June 2003

WG II 27

Note for the Members of Working Group II

Subject: Consultation on the updated and consolidated version of the Explanations on the Charter

1. As you will remember, our Working Group stressed in its final report that the "Explanations" to the Charter, which had been drawn up at the instigation of the Praesidium of the Charter Convention (and which, although not submitted to the Plenary of the previous Convention, played a role in securing consensus on the Charter text within that Convention), are one important tool of interpretation ensuring a correct understanding of the Charter. It recommended that its own explanations on the drafting adjustments to the horizontal clauses of the Charter should be fully integrated with the original Explanations. The Group furthermore recommended that, upon possible incorporation of the Charter, attention should then be drawn in an appropriate manner to the Explanations which, though they state that they have no legal value, are intended to clarify the provisions of the Charter; in particular, it would be important to publicise them more widely.

Following that recommendation, the Praesidium agreed that the technical work of producing such an updated and consolidated version of the Explanations of 2000 should be carried out under my authority, and that I should consult you, as members of Working Group II, on this technical work and then submit the product to the Praesidium for endorsement, before the end of the Convention.

I therefore herewith send you a draft updated and consolidated version of these Explanations and kindly ask you to send me your comments or suggestions on them by 10 June, noon, at the latest (to be sent to the Secretariat: clemens.ladenburger@consilium.eu.int).

2. My general approach to this technical exercise, as explained in more detail below, is to leave intact as much as possible the original Explanations of 2000, and to amend them only to the extent strictly necessary in order to reflect the work done by our Working Group and this Convention as a whole, without changing the original Explanations in substance.

I have therefore limited myself to:

- a) adding, to the Explanations under Articles 51 and 52, language reflecting the work done by our Working Group on these horizontal clauses, and making some necessary consequential adaptations in the remaining Explanations;
- b) adapting the references made to the EC or EU Treaty by inserting references to the appropriate provisions in Parts I and III of the Constitution and by taking into account the progress achieved by this Convention in certain areas;
- c) amending the references made to secondary Union law, and adding a few citations of important recent case law of the Court of Justice;
- d) correcting a few misprints or erroneous citations in the original Explanations.

3. As to the point a) above, I have, firstly, added some language to the Explanations under Article 51, so as to reflect fully the important clarification we have consensually reached in the Working Group, that incorporation of the Charter does not in any way lead to an extension of the Union's competences as defined by the other Parts of the Constitution. I felt it would be particularly appropriate to stress this same point again more specifically in connection with Article 21 (non-discrimination) and its relation to Article III-5 (ex-Article 13 TEC), in the light of the statements made by the representatives of the Legal Services to our Working Group.

4. On Article 52 § 3 (rights corresponding to ECHR rights), I have added a passage from our Working Group report which, although we convened that the clause itself should not be amended, does provide additional clarification on its interpretation, as requested by some members of our Group. In that connection, I have also added to that passage the sentence, currently found in the explanations under Article 53, on the ECHR as a minimum standard to be respected in any instance. The crucial importance of this rule - which is special to the ECHR - in particular for the regime of limitations of rights corresponding to the ECHR, was stressed in our hearings of Judges Skouris and Fischbach and of the 3 Legal Services, this is why I feel that point must be made under Article 52, not Article 53.

5. On Article 52 § 4, I have added language from the Working Group report on the rights resulting from common constitutional traditions.

6. Under Article 52 § 5, I have included language drawn from the Working Group report in order to explain the distinction between rights and principles.

I do not however intend to enter into an attempt of attributing the various individual Charter articles to the category of "right" or that of "principle". Rather, I wish to respect the spirit of the Charter Convention, confirmed by our Working Group, that the character as a right or a principle of individual articles is expressed as clearly as possible in the wording of the respective articles, which should permit future jurisprudence to rule on the exact attribution, taking into account the guidance provided by the Explanations. I also wish to respect the status quo of the existing Explanations which do qualify a number of Articles as principles.

Therefore, I have merely cited, for illustration, two examples of Articles which, in the light of their wording, are clearly principles and *already expressly qualified as such* in the existing Explanations (i.e., Article 26, starting with the words: "*The Union recognises and respects...*"; Article 37: "*A high level of environmental protection and the improvement of the quality of the environment must be integrated....*"). At the same time, I personally deem it important to stress that in some cases a Charter Article may actually contain *both* elements of a right and of a principle, and to give two further examples for that phenomenon (which in my personal view the judges might encounter even in relation to more Charter articles than the ones cited).

Finally, having enshrined a legal distinction between "rights" and "principles" in Article 52 § 5, we must be consequent and eliminate here and there in the Explanations a purely colloquial use - inconsistent with Article 52 § 5 - of the word "principle", i.e. as synonymous for "rule" or for "general principle of law", if we want to avoid that Article 52 § 5 is discredited and the reader of the Explanations confused. The most striking example for this use can be found in the Explanations to Article 1 (Human Dignity), but it also occurs under Articles 20, 41, 47, 49 and 50 - articles which correspond to "general principles of law" or come from the ECHR - and indeed in some explanations to the horizontal clauses themselves. As you will see, I have exercised care to replace the term "principle" in these cases by a *neutral* expression. In one case (Article 14), I have, following precisely the same logic, replaced the word "right" by a neutral wording, because it is in fact the *whole* article 14 (which contains both elements of a right and of a principle, as reflected already in the Explanations) that is extended to access to vocational and continuing training.

7. Finally, I have put a sentence of explanation for Article 52 § 6, equally taken from our Working Group report.

8. On item b) above (references to the Treaties), you will, first, note the slightly adapted wording of the Explanations under the referral clause in amended Article 52 § 2. Moreover, you will see that I have inserted, throughout the text, references to the new Articles of the Constitution replacing the TEC / TEU articles cited in the current Explanations. Where the Explanations of 2000 used the wording "this Article *is based on*...", I have put "*has been based on*..." (the respective TEC / TEU article), and added the indication of the new Constitution article replacing or amending the old article, in order to make the origin of the respective Charter article clear.

I also amended those passages of the Explanations touching on areas where our Convention, in drafting Part I or III articles, is likely to make progress in substance as compared to the situation of 2000. This concerns notably the right of access to documents (see explanations under Articles 42), the Union's system of judicial review (see explanations under Article 47), and the establishment of the Area of Freedom, Security and Justice for which respect of fundamental rights is particularly relevant (e.g., explanations under Articles 6, 18, 24). Obviously, these amended explanations are preliminary and depend on what the Convention decides with respect to these subject.

9. As regards points c) and d), you will see a number of references to recent secondary law of the Union, adopted notably in the field of social law. I have also included a few citations of new landmark cases of the Court of Justice, which are fundamental to the understanding of certain rights recognised in the Charter (cf. Explanations to Articles 1 and 3, 45, and 50). Finally, I corrected a few erroneous citations made to the European Social Charter or the Revised European Social Charter.

10. Finally, I have adapted the introductory formula of the Explanations in order to take account of this updating exercise.

I also propose to rephrase slightly the sentence about the status of the Explanations, in a way I believe to be faithful to the spirit of our Working Group, which agreed that these Explanations should be an important tool of interpretation and that they should be publicised more widely. I feel that, at least in some languages, the current wording could be misread as an excessively negative statement. For example, in English the words "they have no legal value" might be misunderstood in the sense - certainly unintended by the Praesidium of the former Convention - that the Explanations should have no legal importance or relevance whatsoever. That could of course not be said of any accompanying explanatory text to which the Courts should have due regard when interpreting the law concerned and which, hence, are indeed designed to be of considerable legal relevance. Therefore, it seems to me that we should remedy that misunderstanding in the languages concerned; the formula suggested "*although they do not as such have the status of law, they are a valuable tool of interpretation...*" would appropriately make the point.

DRAFT UPDATED EXPLANATIONS,
RELATING TO THE COMPLETE TEXT OF THE CHARTER OF FUNDAMENTAL
RIGHTS OF THE EUROPEAN UNION (AS AMENDED BY THE EUROPEAN
CONVENTION WITH A VIEW TO ITS INCORPORATION INTO THE
CONSTITUTIONAL TREATY)

N.B.: the original text for this document is doc. CHARTE 4473/00 CONVENT 49 of 11 October 2000 (with a revision of the French version only: doc. CHARTE 4473/1/00 CONVENT 49 REV 1 of 19 Octobre 2000), containing the "explanations" prepared at the instigation of the Praesidium of the Charter Convention. All amendements proposed to that original text are indicated in "track-change" format below.)

These explanations have originally been prepared at the instigation of the Praesidium of the Convention on the Charter of Fundamental Rights of the European Union. They have been updated at the instigation of the Praesidium of the European Convention, in the light of the drafting adjustments made to the text of the Charter by that Convention (notably to Articles 51 and 52) and of further developments of Union law. ~~They have no legal value and are simply~~ Although they do not as such have the status of law, they are a valuable tool of interpretation intended to clarify the provisions of the Charter.

PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of ~~the Community and the Union~~ and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, ~~the Treaty on European Union, the Community Treaties~~, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the ~~Community Union~~ and by the Council of Europe and the case law of the Court of Justice of the European Union ~~Communities~~ and of the European Court of Human Rights.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

CHAPTER-TITLE I. DIGNITY**Article 1****Human dignity**

Human dignity is inviolable. It must be respected and protected.

Explanation

The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights. The 1948 Universal Declaration of Human Rights enshrined ~~this principle~~ human dignity in its preamble: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." In its judgment of 9 October 2001 in case C-377/98 Netherlands v. European Parliament and Council, 2001 ECR 7079, at grounds n° 70 - 77, the Court of Justice confirmed that the fundamental right to human dignity is part of Union law.

It results that none of the rights laid down in this Charter may be used to harm the dignity of another person, and that the dignity of the human person is part of the substance of the rights laid down in this Charter. It must therefore be respected, even where a right is restricted.

Article 2**Right to life**

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Explanation

1. *Paragraph 1 of this Article is based on the first sentence of Article 2(1) of the ECHR, which reads as follows:*

"1. Everyone's right to life shall be protected by law..."

2. *The second sentence of the provision, which referred to the death penalty, was superseded by the entry into force of Article 1 of Protocol No 6 to the ECHR, which reads as follows:*

"The death penalty shall be abolished. No-one shall be condemned to such penalty or executed."

Article 2(2) of the Charter is based on that provision.

3. *The provisions of Article 2 of the Charter correspond to those of the above Articles of the ECHR and its Protocol. They have the same meaning and the same scope, in accordance with Article 52(3) of the Charter. Therefore, the "negative" definitions appearing in the ECHR must be regarded as also forming part of the Charter:*

- (a) *Article 2(2) of the ECHR:*

"Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

- (b) *Article 2 of Protocol No 6 to the ECHR:*

"A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions..."

Article 3

Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:

the free and informed consent of the person concerned, according to the procedures laid down by law,

- the prohibition of eugenic practices, in particular those aiming at the selection of persons,
- the prohibition on making the human body and its parts as such a source of financial gain,
- the prohibition of the reproductive cloning of human beings.

Explanation

1. In its judgment of 9 October 2001 in case C-377/98 Netherlands v. European Parliament and Council, 2001 ECR 7079, at grounds n° 70, 78 - 80, the Court of Justice confirmed that the fundamental right to human integrity is part of Union law and encompasses, in the context of medicine and biology, the free and informed consent of the donor and recipient.

2. The principles of Article 3 of the Charter are already included in the Convention on Human Rights and Biomedicine, adopted by the Council of Europe (ETS 164 and additional protocol ETS 168). The Charter does not set out to depart from those principles, and therefore prohibits only reproductive cloning. It neither authorises nor prohibits other forms of cloning. Thus it does not in any way prevent the legislature from prohibiting other forms of cloning.

32. *The reference to eugenic practices, in particular those aiming at the selection of persons, relates to possible situations in which selection programmes are organised and implemented, involving campaigns for sterilisation, forced pregnancy, compulsory ethnic marriage among others, all acts deemed to be international crimes in the Statute of the International Criminal Court adopted in Rome on 17 July 1998 (see its Article 7(1)(g)).*

Article 4

Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Explanation

The right in Article 4 is the right guaranteed by Article 3 of the ECHR, which has the same wording: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". By virtue of Article 52(3) of the Charter, it therefore has the same meaning and the same scope as the ECHR Article.

Article 5

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

Explanation

1. *The right in Article 5(1) and (2) corresponds to Article 4(1) and (2) of the ECHR, which has the same wording.*

It therefore has the same meaning and scope as the ECHR Article, by virtue of Article 52(3) of the Charter. Consequently:

- no limitation may legitimately affect the right provided for in paragraph 1;*
- in paragraph 2, "forced or compulsory labour" must be understood in the light of the "negative" definitions contained in Article 4(3) of the ECHR:*

"For the purpose of this article the term "forced or compulsory labour" shall not include:

- (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;*
- (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;*
- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;*
- (d) any work or service which forms part of normal civic obligations."*

2. *Paragraph 3 stems directly from ~~the principle of~~ human dignity and takes account of recent developments in organised crime, such as the organisation of lucrative illegal immigration or sexual exploitation networks. The annex to the Europol Convention contains the following definition which refers to trafficking for the purpose of sexual exploitation: "traffic in human beings: means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children". Chapter VI of the Convention implementing the Schengen Agreement, which has been integrated into the "acquis communautaire", in which the United Kingdom and Ireland ~~participates and Ireland has requested to participate~~, contains the following wording in Article 27(1) which refers to illegal immigration networks: " The Contracting Parties undertake to impose appropriate penalties on any person who, for financial gain, assists or tries to assist an alien to enter or reside within the territory of one of the Contracting Parties in breach of that Contracting Party's laws on the entry and residence of aliens." On 19 July*

2002, the Council adopted a framework decision on combating the trafficking in human beings (O.J. L 203/1) whose Article 1 defines in detail the offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation, which the Member States must make punishable by virtue of that framework decision.

CHAPTER TITLE II. FREEDOMS

Article 6

Right to liberty and security

Everyone has the right to liberty and security of person.

Explanation

The rights in Article 6 are the rights guaranteed by Article 5 of the ECHR, and in accordance with Article 52(3) of the Charter, they have the same meaning and scope. Consequently, the limitations which may legitimately be imposed on them may not exceed those permitted by the ECHR, in the wording of Article 5:

- "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:*
- (a) the lawful detention of a person after conviction by a competent court;*
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;*

- (c) *the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*
 - (d) *the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;*
 - (e) *the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*
 - (f) *the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.*
2. *Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.*
 3. *Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.*
 4. *Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*
 5. *Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation."*

~~Since the Charter is to apply within the context of the Union, the rights enshrined in Article 6 must be respected particularly when the European Parliament and the Council adopt laws and framework laws in the area of judicial cooperation in criminal matters, on the basis of Articles [III-166, III-167 and III-169] of the Constitution, notably, in accordance with Title VI of the Treaty on European Union, the Union is adopting framework decisions to define common minimum~~

provisions as regards the categorisation of offences and punishments and certain aspects of procedural law.

Article 7

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Explanation

The rights guaranteed in Article 7 correspond to those guaranteed by Article 8 of the ECHR. To take account of developments in technology the word "correspondence" has been replaced by "communications".

In accordance with Article 52(3), the meaning and scope of this right are the same as those of the corresponding article of the ECHR. Consequently, the limitations which may legitimately be imposed on this right are the same as those allowed by Article 8 of the ECHR:

- "1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
- 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

Article 8

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.

2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Explanation

This Article ~~is~~ has been based on Article 286 of the Treaty establishing the European Community and Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995) as well as on Article 8 of the ECHR and on the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which has been ratified by all the Member States. Reference is also made to the meanwhile adopted regulation N° 45/2001 of the European Parliament and the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001). This regulation has set up the independent authority mentioned in Article 286 TEC and in paragraph 3 of this Article. –Provision with respect to the conditions of exercise of ~~The~~ the right to protection of personal data is ~~now to be made in Article [I-50] of the Constitution.~~ exercised under the conditions laid down in the above Directive, and may be limited under the conditions set out by Article 52 of the Charter.

Article 9

Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Explanation

This Article is based on Article 12 of the ECHR, which reads as follows: "Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right." The wording of the Article has been modernised to cover cases in which national legislation recognises arrangements other than marriage for founding a family. This Article neither prohibits nor imposes the granting of the status of marriage to unions between people of the same sex. This right is thus similar to that afforded by the ECHR, but its scope may be wider when national legislation so provides.

Article 10

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Explanation

The right guaranteed in paragraph 1 corresponds to the right guaranteed in Article 9 of the ECHR and, in accordance with Article 52(3) of the Charter, has the same meaning and scope. Limitations must therefore respect Article 9(2) of the Convention, which reads as follows: "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

The right guaranteed in paragraph 2 corresponds to national constitutional traditions and to the development of national legislation on this issue.

Article 11

Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Explanation

1. *Article 11 corresponds to Article 10 of the European Convention on Human Rights, which reads as follows:*

- "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
- 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."*

Pursuant to Article 52(3) of the Charter, the meaning and scope of this right are the same as those guaranteed by the ECHR. The limitations which may be imposed on it may therefore not exceed those provided for in Article 10(2) of the Convention, without prejudice to any restrictions which ~~Community~~ competition law of the Union may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR.

2. *Paragraph 2 of this Article spells out the consequences of paragraph 1 regarding freedom of the media. It is based in particular on Court of Justice case law regarding television, particularly in case C-288/89 (judgment of 25 July 1991, Stichting Collectieve Antennevoorziening Gouda and others [1991] ECR I-4007), and on the Protocol on the system of public broadcasting in the Member States annexed to the EC Treaty and now to the Constitution, and on Council Directive 89/552/EC (particularly its seventeenth recital).*

Article 12

Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Explanation

Paragraph 1 of this Article corresponds to Article 11 of the ECHR, which reads as follows:

- "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*

2. *No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."*

The meaning of the provisions of paragraph 1 is the same as that of the ECHR, but their scope is wider since they apply at all levels including European level. In accordance with Article 52(3) of the Charter, limitations on that right may not exceed those considered legitimate by virtue of Article 11(2) of the ECHR.

2. *This right is also based on Article 11 of the Community Charter of the Fundamental Social Rights of Workers.*
3. *Paragraph 2 of this Article corresponds to Article [1-45 § 4] of the Constitution~~191 of the Treaty establishing the European Community~~.*

Article 13

Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Explanation

This right is deduced primarily from the right to freedom of thought and expression. It is to be exercised having regard to Article 1 and may be subject to the limitations authorised by Article 10 of the ECHR.

Article 14

Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Explanation

1. *This Article is based on the common constitutional traditions of Member States and on Article 2 of the Protocol to the ECHR, which reads as follows:*

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

It was considered useful to extend this ~~right~~ article to access to vocational and continuing training (see point 15 of the Community Charter of the Fundamental Social Rights of Workers and Article 10 of the Social Charter) and to add the principle of free compulsory education. As it is worded, the latter principle merely implies that as regards compulsory education, each child has the possibility of attending an establishment which offers free education. It does not require all establishments which provide education, in particular private ones, to be free of charge. Nor does it exclude certain specific forms of education having to be paid for, if the State takes measures to grant financial compensation. Insofar as the Charter applies to the Union,

this means that in its training policies the Union must respect free compulsory education, but this does not, of course, create new powers. Regarding the right of parents, it must be interpreted in conjunction with the provisions of Article 24.

- 2. Freedom to found public or private educational establishments is guaranteed as one of the aspects of freedom to conduct a business but it is limited by respect for democratic principles and is exercised in accordance with the arrangements defined by national legislation.*

Article 15

Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Explanation

Freedom to choose an occupation, as enshrined in Article 15(1), is recognised in Court of Justice case law (see inter alia judgment of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraphs 12 to 14 of the grounds; judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 8 October 1986, Case 234/85 Keller [1986] ECR 2897, paragraph 8 of the grounds).

This paragraph also draws upon Article 1(2) of the European Social Charter, which was signed on 18 October 1961 and has been ratified by all the Member States, and on point 4 of the Community Charter of the Fundamental Social Rights of Workers of 9 December 1989. The expression "working conditions" is to be understood in the sense of Article ~~[III-102+40]~~ of the Constitution of the EC Treaty.

The second paragraph deals with the three freedoms guaranteed by Articles ~~[I-4]~~ and ~~[III-15, III-19 and III-26]~~ of the Constitution ~~39, 43 and 49 et seq~~ of the EC Treaty, namely freedom of movement for workers, freedom of establishment and freedom to provide services.

The third paragraph ~~is~~ has been based on TEC Article 137(3), fourth indent, now replaced by Article ~~[III-99 (1) (g)]~~ of the Constitution, and on Article 19(4) of the European Social Charter signed on 18 October 1961 and ratified by all the Member States. Article 52(2) of the Charter is therefore applicable. The question of recruitment of seamen having the nationality of third States for the crews of vessels flying the flag of a Member State of the Union is governed by ~~Community~~ Union law and national legislation and practice.

Article 16

Freedom to conduct a business

The freedom to conduct a business in accordance with ~~Community~~ Union law and national laws and practices is recognised.

Explanation

This Article is based on Court of Justice case law which has recognised freedom to exercise an economic or commercial activity (see judgments of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraph 14 of the grounds, and of 27 September 1979, Case 230-78 SPA Eridiana and others [1979] ECR 2749, paragraphs 20 and 31 of the grounds) and freedom of contract (see inter alia Sukkerfabriken Nykøbing judgment, Case 151/78 [1979] ECR I, paragraph 19 of the grounds, and judgment of 5 October 1999, C-240/97 Spain v. Commission, ~~[1999] ECR I-6571~~ ~~[not yet published]~~, paragraph 99 of

the grounds) and ~~Articles [I-3 (2)] of the Constitution~~~~TEC Article 4(1) and (2)~~, which recognises free and undistorted competition. Of course, this right is to be exercised with respect for ~~Community~~Union law and national legislation. It may be subject to the limitations provided for in Article 52(1) of the Charter.

Article 17

Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

Explanation

This Article is based on Article 1 of the Protocol to the ECHR:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

This is a fundamental right common to all national constitutions. It has been recognised on numerous occasions by the case law of the Court of Justice, initially in the Hauer judgment (13 December 1979, ECR [1979] 3727). The wording has been updated but, in accordance with Article 52(3), the meaning and scope of the right are the same as those of the right guaranteed by the ECHR and the limitations may not exceed those provided for there.

Protection of intellectual property, one aspect of the right of property, is explicitly mentioned in paragraph 2 because of its growing importance and Community secondary legislation. Intellectual property covers not only literary and artistic property but also patent and trademark rights and associated rights. The guarantees laid down in paragraph 1 shall apply as appropriate to intellectual property.

Article 18

Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Constitution Treaty ~~establishing the European Community~~.

Explanation

The text of the Article ~~has been~~ based on TEC Article 63, now replaced by Article [III-162] of the Constitution, which requires the Union to respect the Geneva Convention on refugees. Reference should be made to the Protocols relating to the United Kingdom and Ireland annexed to the [Treaty of Amsterdam] Constitution and to Denmark to determine the extent to which those Member States implement ~~Community~~ Union law in this area and the extent to which this Article is applicable to them. This Article is in line with the Protocol on Asylum annexed to the ~~EC Treaty~~ Constitution.

Article 19

Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

Explanation

Paragraph 1 of this Article has the same meaning and scope as Article 4 of Protocol No 4 to the ECHR concerning collective expulsion. Its purpose is to guarantee that every decision is based on a specific examination and that no single measure can be taken to expel all persons having the nationality of a particular State (see also Article 13 of the Covenant on Civil and Political Rights).

*Paragraph 2 incorporates case law from the European Court of Human Rights regarding Article 3 of the ECHR (see *Ahmed v. Austria*, judgment of 17 December 1996, [1996] ECR VI-2206 and *Soering*, judgment of 7 July 1989).*

CHAPTER TITLE III. EQUALITY**Article 20**

Equality before the law

Everyone is equal before the law.

Explanation

This Article corresponds to a general principle of law which is included in all European constitutions and has also been recognised by the Court of Justice as a basic principle of Community law (judgment of 13 November 1984, Case 283/83 Racke [1984] ECR 3791, judgment of 17 April 1997, Case 15/95 EARL [1997] ECR I-1961, and judgment of 13 April 2000, Case 292/97 Karlsson, not yet published).

Article 21

Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Constitution and without prejudice to any of its specific provisions, ~~Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties,~~ any discrimination on grounds of nationality shall be prohibited.

Explanation

Paragraph 1 draws on Article 13 of the EC Treaty, now replaced by Article III-5, Article 14 of the ECHR and Article 11 of the Convention on Human Rights and Biomedicine as regards genetic heritage. Insofar as this corresponds to Article 14 of the ECHR, it applies in compliance with it.

There is no contradiction or incompatibility between paragraph 1 and Article [III-5] of the Constitution which has a different scope and purpose: Article [III-5] confers power on the Union to adopt legislative acts, including harmonisation of the Member States' laws and regulations, to combat certain forms of discrimination, listed exhaustively in that Article. Such legislation may cover all action of Member State authorities in any area, as well as relations between private individuals. In contrast, the provision in paragraph 1 does not create any power to enact anti-discrimination laws in these areas of Member State or private action, nor does it lay down a sweeping ban of discrimination in such wide-ranging areas. Instead, it only addresses discriminations by the institutions and bodies of the Union themselves, when exercising powers conferred under other articles of Parts I and III the Constitution, and by Member States only when they are implementing Union law. Paragraph 1 therefore does not alter the extent of powers granted under Article [III-5] nor the interpretation given to that Article.

Paragraph 2 corresponds to Article [I-4 (2)] of the Constitution~~Article 12 of the EC Treaty~~ and must be applied in compliance with that Article ~~the Treaty~~.

Article 22**Cultural, religious and linguistic diversity**

The Union shall respect cultural, religious and linguistic diversity.

Explanation

This Article ~~is~~ has been based on Article 6 of the Treaty on European Union and on Article 151(1) and (4) of the EC Treaty, now replaced by Article [III-176 (1) and (4) of the Constitution,

concerning culture. Respect for cultural and linguistic diversity is now also laid down in Article [I-3 (3)] I of the Constitution. The Article-It is also inspired by declaration No 11 to the Final Act of the Amsterdam Treaty on the status of churches and non-confessional organisations, now taken over in Article [I-51] of the Constitution.

Article 23

Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Explanation

The first paragraph has been ~~is~~ based on ~~Articles 2 and 3(2) of the EC Treaty, now replaced by Articles [I-3] and [III-1] of the Constitution~~ which impose the objective of promoting equality between men and women on the ~~Community~~ Union, and on Article 141(3) of the EC Treaty, now replaced by Article [III-103 (1)] of the Constitution. It draws on Article 20 of the revised European Social Charter of 3 May 1996 and on point 16 of the Community Charter on the rights of workers.

It is also based on Article 141(3) of the EC Treaty, now replaced by Article [III-103 (3)] of the Constitution, and Article 2(4) of Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Paragraph 2 takes over in shorter form ~~Article III-103 (4) of the Constitution~~ ~~Article 141(4) of the EC Treaty~~ which provides that the principle of equal treatment does not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in

professional careers. In accordance with Article 52+(2), the present paragraph does not amend Article ~~III-103 (4)+141(4)-EC~~.

Article 24

The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Explanation

This Article is based on the New York Convention on the Rights of the Child signed on 20 November 1989 and ratified by all the Member States, particularly Articles 3, 9, 12 and 13 thereof.

Paragraph 3 takes account of the fact that, as part of the establishment of an area of freedom, security and justice, Union legislation on civil matters having cross-border implications, for which Article III-165 of the Constitution confers power, may include notably visiting rights ensuring that children can maintain on a regular basis a personal and direct contact with both his or her parents.

Article 25

The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Explanation

This Article draws on Article 23 of the revised European Social Charter and Articles 24 and 25 of the Community Charter of the Fundamental Social Rights of Workers. Of course, participation in social and cultural life also covers participation in political life.

Article 26

Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

Explanation

The principle set out in this Article is based on Article 15 of the European Social Charter and also draws on ~~Article 23 of the revised Social Charter and~~ point 26 of the Community Charter of the Fundamental Social Rights of Workers.

CHAPTER TITLE IV. SOLIDARITY

Article 27

Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union~~Community~~ law and national laws and practices.

Explanation

This Article appears in the revised European Social Charter (Article 21) and in the Community Charter on the rights of workers (points 17 and 18). It applies under the conditions laid down by ~~Community-Union~~ law and by national laws. The reference to appropriate levels refers to the levels laid down by ~~Community-Union~~ law or by national laws and practices, which might include the European level when ~~Community-Union~~ legislation so provides. There is a considerable ~~Community-Union~~ acquis in this field: Articles [III-100 and III-101 of the Constitution~~138 and 139 of the EC Treaty~~], and Directives 2002/14/EC (general framework for informing and consulting employees in the European Community), 98/59/EC (collective redundancies), ~~77/187/EEC~~ 2001/23/EC (transfers of undertakings) and 94/45/EC (European works councils).

Article 28**Right of collective bargaining and action**

Workers and employers, or their respective organisations, have, in accordance with ~~Community-Union~~ law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Explanation

This Article is based on Article 6 of the European Social Charter and on the Community Charter of the Fundamental Social Rights of Workers (points 12 to 14). The right of collective action was recognised by the European Court of Human Rights as one of the elements of trade union rights laid down by Article 11 of the ECHR. As regards the appropriate levels at which collective negotiation might take place, see the explanation given for the above Article. The modalities and limits for the exercise of ~~C~~collective action, including strike action, comes under national law and practices, including the question of whether it may be carried out in parallel in several Member States.

Article 29

Right of access to placement services

Everyone has the right of access to a free placement service.

Explanation

This Article is based on Article 1(3) of the European Social Charter and point 13 of the Community Charter of the Fundamental Social Rights of Workers.

Article 30

Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with ~~Community~~ Union law and national laws and practices.

Explanation

This Article draws on Article 24 of the revised Social Charter. See also Directive 77/187/EEC 2001/23/EC on the safeguarding of employees' rights in the event of transfers of undertakings, and Directive 80/987/EEC on the protection of employees in the event of the insolvency of their employer, as amended by Directive 2002/74/EC.

Article 31

Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Explanation

1. *Paragraph 1 of tThis Article is based on Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work. It also draws on Article-3 of the Social Charter and point 19 of the Community Charter on the rights of workers, and, as regards dignity at work, on Article 26 of the revised Social Charter. The expression "working conditions" must be understood in the sense of Article III-102 of the Constitution-140 of the EC Treaty.*
2. *Paragraph 2 is based on Directive 93/104/EC concerning certain aspects of the organisation of working time, Article 2 of the European Social Charter and point 8 of the Community Charter on the rights of workers.*

Article 32

Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Explanation

This Article is based on Directive 94/33/EC on the protection of young people at work, Article 7 of the European Social Charter and points 20 to 23 of the Community Charter of the Fundamental Social Rights of Workers.

Article 33

Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Explanation

Article 33(1) is based on Article 16 of the European Social Charter. The second paragraph draws on Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding and Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC. It is also based on Article 8 (protection of maternity) of the European Social Charter and draws on Article 27 (right of workers with family responsibilities to equal opportunities and equal treatment) of the revised Social Charter. "Maternity" covers the period from conception to weaning.

Article 34

Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community-Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community-Union law and national laws and practices.

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by ~~Community~~ Union law and national laws and practices.

Explanation

The principle set out in Article 34(1) ~~is~~ has been based on Articles 137 and 140 of the EC Treaty, now replaced by Articles [III-99 and III-102] and on Article 12 of the European Social Charter and point 10 of the Community Charter on the rights of workers. The Union must respect it when exercising the powers conferred on it by Articles [III-99 and III 102] of the Constitution~~140 of the Treaty establishing the European Community~~. The reference to social services relates to cases in which such services have been introduced to provide certain advantages but does not imply that such services must be created where they do not exist. "Maternity" must be understood in the same sense as in the preceding Article.

The second paragraph is based on Articles 12 (4) and 13(4) of the European Social Charter and point 2 of the Community Charter of the Fundamental Social Rights of Workers and reflects the rules arising from Regulation No 1408/71 and Regulation No 1612/68.

The third paragraph draws on Article 13 of the European Social Charter and Articles 30 and 31 of the revised Social Charter and point 10 of the Community Charter. The Union must respect it in the context of policies based on Article [III-99] of the Constitution~~137(2) of the Treaty establishing the European Community~~, particularly the last subparagraph.

Article 35

Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and

activities.

Explanation

The principles set out in this Article are based on Article ~~[III-174]~~ of the Constitution~~152~~ of the EC Treaty and on Articles 11 and 13 of the European Social Charter. The second sentence of the Article takes over Article III-174 ~~152~~(1).

Article 36

Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Constitution~~Treaty~~ establishing the European ~~Community~~, in order to promote the social and territorial cohesion of the Union.

Explanation

This Article ~~fully respects~~ is fully in line with Article III-3 of the Constitution~~16~~ of the Treaty establishing the European Community and does not create any new right. It merely sets out the principle of respect by the Union for the access to services of general economic interest as provided for by national provisions, when those provisions are compatible with ~~Community~~ Union legislation.

Article 37

Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Explanation

The principles set out in this Article ~~are~~ have been based on Articles 2, 6 and 174 of the EC Treaty, now replaced by Articles I-2, III-2 and III-124. It also draws on the provisions of some national constitutions.

Article 38**Consumer Protection**

Union policies shall ensure a high level of consumer protection.

Explanation

The principles set out in this Article have been~~are~~ based on Article 153 of the EC Treaty, now replaced by Article III-127 of the Constitution.

CHAPTER TITLE V. CITIZENS' RIGHTS**Article 39****Right to vote and to stand as a candidate at elections to the European Parliament**

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.

2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Explanation

Article 39 applies under the conditions laid down in Parts I and III of the Constitution ~~by the Treaty~~, in accordance with Article 52(2) of the Charter. Article 39(1) corresponds to the right guaranteed in Article [I-8 (2)] of the Constitution (cf. also the legal base in Article III-7 for the adoption of detailed arrangements for the exercise of that right)~~19(2) of the EC Treaty~~ and Article 39(2) corresponds to Article [I-19 (2)] of the Constitution~~190(1) of that Treaty~~. Article 39(2) takes over the basic principles of the electoral system in a democratic State.

Article 40**Right to vote and to stand as a candidate at municipal elections**

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Explanation

This Article corresponds to the right guaranteed by Article [I-8 (2)] of the Constitution (cf. also the legal base in Article III-7 for the adoption of detailed arrangements for the exercise of that right)~~19(1) of the EC Treaty~~. In accordance with Article 52(2) of the Charter, it applies under the conditions set out in these Articles of Parts I and III of the Constitution~~the Treaty~~.

Article 41**Right to good administration**

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, ~~and bodies~~ and agencies of the Union.

2. This right includes:
- the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the ~~Community~~ Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the official languages of the ~~Treaties~~ Union and must have an answer in the same language.

Explanation

*Article 41 is based on the existence of the Union as a Community subject to the rule of law whose characteristics were developed in the case law which enshrined inter alia ~~the principle of good administration as a general principle of law~~ (see inter alia Court of Justice judgment of 31 March 1992 in Case C-255/90 P, *Burban* [1992] ECR I-2253, and Court of First Instance judgments of 18 September 1995 in Case T-167/94 *Nölle* [1995] ECR II-2589, and 9 July 1999 in Case T-231/97 *New Europe Consulting and others* [1999] ECR II-2403). The wording for that right in the first two paragraphs results from the case law (Court of Justice judgment of 15 October 1987 in Case 222/86 *Heylens* [1987] ECR 4097, paragraph 15 of the grounds, judgment of 18 October 1989 in Case 374/87 *Orkem* [1989] ECR 3283, judgment of 21 November 1991 in Case C-269/90 *TU München* [1991] ECR I-5469, and Court of First Instance judgments of 6 December 1994 in Case T-450/93 *Lisrestal* [1994] ECR II-1177, 18 September 1995 in Case T-167/94 *Nölle* [1995] ECR II-258), and the wording regarding the obligation to give reasons comes from Article 253 of the EC Treaty, now replaced by Article [I-37(2)] of the Constitution.*

Paragraph 3 reproduces the right guaranteed by Article ~~[III-333] of the Constitution~~²⁸⁸ of the EC Treaty. Paragraph 4 reproduces the right guaranteed by Articles [I-8, fourth indent, and III-9] of the Constitution~~the third paragraph of Article 21 of the EC Treaty~~. In accordance with Article 52(2) of the Charter, those rights are to be applied under the conditions and within the limits defined by Part III of the Constitution~~the Treaties~~.

The right to an effective remedy, which is an important aspect of this question, is guaranteed in Article 47 of this Charter.

Article 42

Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to ~~European Parliament, Council and Commission~~ documents of the institutions agencies and bodies of the Union, in whatever form they are produced.

Explanation

The right guaranteed in this Article has been taken over from ~~is the right guaranteed by~~ Article 255 of the EC Treaty. The European Convention has extended this right to documents of institutions, bodies and agencies generally, regardless of their form, see Article [I-49 (3)] of the Constitution. In accordance with Article 52(2) of the Charter, ~~the right of access to documents is exercised under the conditions and within the limits for which provision is made in Article [I-49 (3)]~~ applies under the conditions defined by the Treaty.

Article 43

Ombudsman

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 refer to the Ombudsman of the Union cases of maladministration in the activities of the ~~Community~~ institutions, or bodies or agencies of the Union, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Explanation

The right guaranteed in this Article is the right guaranteed by Articles [I-8 and III-232 of the Constitution]~~21 and 195 of the EC Treaty~~. In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these two Articles~~by the Treaty~~.

Article 44

Right to petition

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.

Explanation

The right guaranteed in this Article is the right guaranteed by Articles [I-8 and III-231] of the Constitution~~21 and 194 of the EC Treaty~~. In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these two Articles~~by the Treaty~~.

Article 45

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Constitution~~Treaty~~ ~~establishing the European Community~~, to nationals of third countries legally resident in the territory of a Member State.

Explanation

*The right guaranteed by paragraph 1 is the right guaranteed by Article [I-8, first indent] of the Constitution~~18 of the EC Treaty~~ (cf. also the legal base in Article [III-6]; and the judgement of the Court of Justice of 17 September 2002, C-413-99 *Baumbast*, [2002] ECR 709). In accordance with Article 52(2) of the Charter, it applies under the conditions and within the limits defined for which provision is made in Part III of the Constitution~~by the Treaty~~.*

Paragraph 2 refers to the power granted to the ~~Community~~ Union by Articles [III-161 to III-163] of the Constitution ~~62(1) and (3) and Article 63(4) of the EC Treaty~~. Consequently, the granting of this right depends on the institutions exercising that power.

Article 46

Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

Explanation

The right guaranteed by this Article is the right guaranteed by Article [I-8] of the Constitution; cf. also the legal base in Article [III-8] ~~20~~ of the EC Treaty. In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these Articles ~~by the Treaty~~.

CHAPTER TITLE VI. JUSTICE**Article 47****Right to an effective remedy and to a fair trial**

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Explanation

The first paragraph is based on Article 13 of the ECHR:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

However, in ~~Community~~ Union law the protection is more extensive since it guarantees the right to an effective remedy before a court. The Court of Justice enshrined ~~the principle that right~~ in its judgment of 15 May 1986 (Case 222/84 Johnston [1986] ECR 1651; see also judgment of 15 October 1987, Case 222/86 Heylens [1987] ECR 4097 and judgment of 3 December 1992, Case C-97/91 Borelli [1992] ECR I-6313. According to the Court, ~~this principle that right~~ also applies to the Member States when they are implementing ~~Community~~ Union law. The inclusion of this precedent in the Charter ~~is~~ has not been intended to change the appeal system laid down by the Treaties, and particularly the rules relating to admissibility for direct actions before the Court of Justice of the European Union. The European Convention has considered the Union's system of judicial review including the rules on admissibility, and confirmed them while amending them as to certain aspects, as reflected in Articles [III-254 to III-285] of the Constitution, and in particular in Article [III-266 (4)]. ~~This principle is therefore to be implemented according to the procedures laid down in the Treaties. It~~ Article 47 applies to the institutions of the Union and of Member States when they are implementing Union law and does so for all rights guaranteed by Union law.

The second paragraph corresponds to Article 6(1) of the ECHR which reads as follows:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

In ~~Community~~ Union law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations. That is one of the consequences of the fact that the ~~Community~~ Union is a community based on the rule of law as stated by the Court in Case 294/83, "Les Verts" v. European Parliament (judgment of 23 April 1986, [1988] ECR 1339). Nevertheless, in all respects other than their scope, the guarantees afforded by the ECHR apply in a similar way to the Union.

With regard to the third paragraph, it should be noted that in accordance with the case law of the European Court of Human Rights, provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy (ECHR Judgment of 9.10.1979,

Airey, Series A, Volume 32, 11). There is also a system of legal assistance for cases before the Court of Justice of the European Union ~~Communities~~.

Article 48

Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Explanation

Article 48 is the same as Article 6(2) and (3) of the ECHR, which reads as follows:

- "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
3. *Everyone charged with a criminal offence has the following minimum rights:*
- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
 - (b) to have adequate time and facilities for the preparation of his defence;*
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."*

In accordance with Article 52(3), this right has the same meaning and scope as the right guaranteed by the ECHR.

Article 49

Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.

3. The severity of penalties must not be disproportionate to the criminal offence.

Explanation

This Article follows the traditional rule principle of the non-retroactivity of laws and criminal sanctions. There has been added the principle rule of the retroactivity of a more lenient penal law, which exists in a number of Member States and which features in Article 15 of the Covenant on Civil and Political Rights.

Article 7 of the ECHR is worded as follows:

- "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.*

- 2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."*

In paragraph 2, the reference to "civilised" nations has been deleted; this does not change the meaning of this paragraph, which refers to crimes against humanity in particular. In accordance with Article 52(3), the right guaranteed here therefore has the same meaning and scope as the right guaranteed by the ECHR.

Paragraph 3 states the general principle of proportionality between penalties and criminal offences which is enshrined in the common constitutional traditions of the Member States and in the case law of the Court of Justice of the Communities.

Article 50

Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

Explanation

Article 4 of Protocol No 7 to the ECHR reads as follows:

- "1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.*
- 2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and the penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.*
- 3. No derogation from this Article shall be made under Article 15 of the Convention."*

The "non bis in idem" ~~principle~~-rule applies in ~~Community~~-Union law (see, among the many precedents, the judgment of 5 May 1996, Cases 18/65 and 35/65, *Gutmann v. Commission* [1966] ECR 103 and a recent case, the decision of the Court of First Instance of 20 April 1999, *Joined Cases T-305/94 and others, Limburgse Vinyl Maatschappij NV v. Commission* [1999] ECR II-931). The rule prohibiting cumulation refers to cumulation of two penalties of the same kind, that is to say criminal law penalties.

In accordance with Article 50, the "non bis in idem" ~~principle~~-rule applies not only within the jurisdiction of one State but also between the jurisdictions of several Member States. That corresponds to the *acquis* in Union law; see Articles 54 to 58 of the Schengen Convention and the judgment of the Court of Justice of 11 February 2003, C-187/01 Gözütok (not yet published), Article 7 of the Convention on the Protection of the European Communities' Financial Interests and Article 10 of the Convention on the fight against corruption. The very limited exceptions in those Conventions permitting the Member States to derogate from the "non bis in idem" ~~rule~~principle are covered by the horizontal clause in Article 52(1) of the Charter concerning limitations. As regards the situations referred to by Article 4 of Protocol No 7, namely the application of the principle within the same Member State, the guaranteed right has the same meaning and the same scope as the corresponding right in the ECHR.

CHAPTER TITLE VII. GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

Article 51

Scope

1. The provisions of this Charter are addressed to the institutions, ~~and~~ bodies and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it by other Parts of the Constitution.

2. This Charter does not extend the scope of application of Union law beyond the powers of the Union or establish any new power or task for the Community or the Union, or modify powers and tasks defined by the other Parts of the Constitution~~Treaties~~.

Explanation

The aim of Article 51 is to determine the scope of the Charter. It seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union, in compliance with the principle of subsidiarity. This provision ~~is~~ has been drafted in keeping with Article 6(2) of the Treaty on European Union, which requires the Union to respect fundamental rights, and with the mandate issued by Cologne European Council. The term "institutions" is enshrined in ~~the EC Treaty, Part I of the Constitution, Article [I-18(2)]~~⁷ of which lists the institutions. The expression "bodies and agencies" term "body" is commonly used in the Constitution to refer to all the authorities set up by the ~~Treaties~~ Constitution or by secondary legislation (see, e.g., Article [I-49 or I-50] of the Constitution^{286(1) of the Treaty establishing the European Community}).

As regards the Member States, it follows unambiguously from the case law of the Court of Justice that the requirement to respect fundamental rights defined in a Union context is only binding on the Member States when they act in the ~~context~~ scope of Community Union law (judgment of 13 July 1989, Case 5/88 Wachauf [1989] ECR 2609; judgment of 18 June 1991, ERT [1991] ECR I-2925); judgment of 18 December 1997 (C-309/96 Annibaldi, [1997] ECR I-7493). The Court of Justice recently confirmed this case law in the following terms: "In addition, it should be remembered that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they implement Community rules..." (judgment of 13 April 2000, Case C-292/97, [2000] ECR 2737, paragraph 37 of the grounds, ~~not yet published~~). -Of course this ~~principle~~ rule, as enshrined in this Charter, applies to the central authorities as well as to regional or local bodies, and to public organisations, when they are implementing Union law.

Paragraph 2, together with the second sentence of paragraph 1, confirms that the Charter may not have the effect of extending the competences and tasks which the other Parts of the Constitution Treaties confer on the ~~Community and the~~ Union. Explicit mention is made here of the logical consequences of the principle of subsidiarity and of the fact that the Union only has those powers which have been conferred upon it. The fundamental rights as guaranteed in the Union do not have any effect other than in the context of the powers determined by [Parts I and III of the Constitution]the Treaty. Consequently, an obligation, pursuant to the second sentence of paragraph 1, for the Union's institutions to promote principles laid down in the Charter, may arise only within the limits of these same powers.

Paragraph 2 also confirms that the Charter may not have the effect of extending the scope of application of Union law beyond the powers of the Union as established in the other Parts of the Constitution. The Court of Justice has already established this rule with respect to the fundamental rights recognised as part of Union law (judgment of 17 February 1998, C-249/96 Grant, 1998 ECR I-621, paragraph 45 of the grounds). In accordance with this rule, it goes without saying that the incorporation of the Charter into the Constitution cannot be understood as extending by itself the range of Member State action considered to be "implementation of Union law" (within the meaning of paragraph 1 and the above-mentioned case law).

Article 52

Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter ~~which are based on the Community Treaties or the Treaty on European Union~~ for which provision is made in other Parts of the Constitution shall be exercised under the conditions and within the limits defined by these relevant Parts ~~by those Treaties~~.

3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

4. Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.

5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions and bodies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.

6. Full account shall be taken of national laws and practices as specified in this Charter.

Explanation

The purpose of Article 52 is to set the scope of the rights guaranteed. Paragraph 1 deals with the arrangements for the limitation of rights. The wording is based on the case law of the Court of Justice: "...it is well established in the case law of the Court that restrictions may be imposed on the exercise of fundamental rights, in particular in the context of a common organisation of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights" (judgment of 13 April 2000, Case C-292/97, paragraph 45 of the grounds). The reference to general interests recognised by the Union covers both the objectives mentioned in Article [I-2] of the Constitution and other interests protected by specific ~~Treaty~~ provisions of the Constitution such as Articles [I-5 (1), III-15, III-40, III-339]30 or 39(3) of the EC Treaty.

Paragraph 2 ~~clarifies~~ specifies that where a rights were already expressly enshrined in the Treaty establishing the European Community and have merely been restated in the Charter (notably the rights derived from Union citizenship), ~~results from the Treaties~~ it they remain is subject to the

conditions and limits for which provision was made in that Treaty and is now made in Parts I and III of the Constitution. ~~laid down by them~~. The Charter does not alter the system of rights conferred by the EC Treaty and now taken over by Parts I and III of the Constitution ~~ies~~.

Paragraph 3 is intended to ensure the necessary consistency between the Charter and the ECHR by establishing the ~~principle~~-rule that, insofar as the rights in the present Charter also correspond to rights guaranteed by the ECHR, the meaning and scope of those rights, including authorised limitations, are the same as those laid down by the ECHR. This means in particular that the legislator, in laying down limitations to those rights, must comply with the same standards as are fixed by the detailed limitation arrangements laid down in the ECHR, which are thus made applicable for the rights covered by this paragraph, without thereby adversely affecting the autonomy of ~~Community~~ Union law and of that of the Court of Justice of the European ~~Communities~~ Union.

The reference to the ECHR covers both the Convention and the Protocols to it. The meaning and the scope of the guaranteed rights are determined not only by the text of those instruments, but also by the case law of the European Court of Human Rights and by the Court of Justice of the European ~~Union~~ Communities. The last sentence of the paragraph is designed to clarify ~~allow the Union to guarantee that the Article does not prevent more extensive protection already achieved or which may subsequently be provided for (i) in Union legislation or (ii) in some Articles of the Charter which, although based on the ECHR, go beyond the ECHR because Union law acquis has already reached a higher level of protection (e.g., Articles 47 and 50).~~ In any event, the level of protection afforded by the Charter may never be lower than that guaranteed by the ECHR.

The Charter does not affect the possibilities of Member States to avail themselves of Article 15 ECHR, allowing derogations from ECHR rights in the event of war or of other public dangers threatening the life of the nation, when they take action in the areas of national defence in the event of war and of the maintenance of law and order, in accordance with their responsibilities recognised in Articles [I-5 (1), III-13, III-158] of the Constitution.

The list of rights which may at the present stage, without precluding developments in the law, legislation and the Treaties, be regarded as corresponding to rights in the ECHR within the meaning of the present paragraph is given hereafter. It does not include rights additional to those in the ECHR.

1. Articles of the Charter where both the meaning and the scope are the same as the corresponding Articles of the ECHR:

- Article 2 corresponds to Article 2 of the ECHR
- Article 4 corresponds to Article 3 of the ECHR
- Article 5(1) and (2) correspond to Article 4 of the ECHR
- Article 6 corresponds to Article 5 of the ECHR
- Article 7 corresponds to Article 8 of the ECHR
- Article 10(1) corresponds to Article 9 of the ECHR
- Article 11 corresponds to Article 10 of the ECHR without prejudice to any restrictions which ~~Community~~ Union law may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR
- Article 17 corresponds to Article 1 of the Protocol to the ECHR
- Article 19(1) corresponds to Article 4 of Protocol No 4
- Article 19(2) corresponds to Article 3 of the ECHR as interpreted by the European Court of Human Rights
- Article 48 corresponds to Article 6(2) and(3) of the ECHR
- Article 49(1) (with the exception of the last sentence) and (2) correspond to Article 7 of the ECHR

2. Articles where the meaning is the same as the corresponding Articles of the ECHR, but where the scope is wider:

- Article 9 covers the same field as Article 12 of the ECHR, but its scope may be extended to other forms of marriage if these are established by national legislation
- Article 12(1) corresponds to Article 11 of the ECHR, but its scope is extended to European Union level
- Article 14(1) corresponds to Article 2 of the Protocol to the ECHR, but its scope is extended to cover access to vocational and continuing training
- Article 14(3) corresponds to Article 2 of the Protocol to the ECHR as regards the rights of parents
- Article 47(2) and (3) correspond to Article 6(1) of the ECHR, but the limitation to the determination of civil rights and obligations or criminal charges does not apply as regards Union law and its implementation
- Article 50 corresponds to Article 4 of Protocol No 7 to the ECHR, but its scope is extended to

European Union level between the Courts of the Member States.

- *Finally, citizens of the European Union may not be considered as aliens in the scope of the application of ~~Community~~ Union law, because of the prohibition of any discrimination on grounds of nationality. The limitations provided for by Article 16 of the ECHR as regards the rights of aliens therefore do not apply to them in this context.*

The rule of interpretation contained in paragraph 4 has been based on the wording of Article 6 § 2 of the Treaty on European Union and takes due account of the approach to common constitutional traditions followed by the Court of Justice (e.g., judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 18 May 1982, Case 155/79, AM&S, [1982] ECR 1575.. Under that rule, rather than following a rigid approach of "a lowest common denominator", the Charter rights concerned should be interpreted in a way offering a high standard of protection which is adequate for the law of the Union and in harmony with the common constitutional traditions.

Paragraph 5 clarifies the distinction between "rights" and "principles" set out in the Charter. According to that distinction, subjective rights shall be respected, whereas principles shall be observed (Article 51 § 1). Principles are implemented through legislative or executive acts; accordingly, they become significant for the Courts when such acts are interpreted or reviewed. They do not however give rise to direct claims for positive action by the Union's institutions or Member States authorities. This is consistent both with case law of the Court of Justice (Cf. notably recent case law on the "precautionary principle" in Article 174 § 2 TEC: judgment of the CFI of 11 September 2002, T-13/99, Pfizer vs. Council, with numerous references to earlier case law; and a series of judgments on Article 33 (ex-39) on the principles of agricultural law, e.g. judgment of the Court of Justice C-265/85, Van den Berg, 1987 ECR 1155: scrutiny of the principle of market stabilisation and of reasonable expectations) and with the approach of the Member States' constitutional systems to "principles" particularly in the field of social law. For illustration, examples for principles recognised in the Charter include e.g. Articles 26 and 37. In some cases, an Article of the Charter may contain both elements of a right and of a principle, e.g., Articles 23 and 33.

Paragraph 6 refers to the various Articles in the Charter which, in the spirit of subsidiarity, make reference to national laws and practices.

Article 53

Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, ~~the Community~~ or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Explanation

This provision is intended to maintain the level of protection currently afforded within their respective scope by Union law, national law and international law. Owing to its importance, mention is made of the ECHR. ~~The level of protection afforded by the Charter may not, in any instance, be lower than that guaranteed by the ECHR, with the result that the arrangements for limitations may not fall below the level provided for in the ECHR.~~ [transferred to the explanations under Article 52 § 3].

Article 54

Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

Explanation

This Article corresponds to Article 17 of the ECHR:

"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

THE EUROPEAN CONVENTION
THE SECRETARIAT

Brussels, 4 June 2003
(OR. fr,en)

CONV 779/03

COVER NOTE

from : Secretariat

to : Convention

Subject : **Reactions to the draft Articles of the revised text of Part One (Volume I)**
– Analysis

Convention members will find attached summary sheets of proposed amendments to the Articles of Volume I (CONV 724/1/03 REV 1).

TITLE I: DEFINITION AND OBJECTIVES OF THE UNION

Article I-1: Establishment of the Union

With regard to paragraph 1, some amendments call for the term "citizens" to be replaced by "peoples" (am. 2 Lopes), or for the latter term to be added (am. 1 Balázs). There is also a suggestion to begin the second sentence with "in accordance with this Constitution" (am. 2 Hain), and to delete the reference to the Union's coordinating role (am. 4 Wuermeling) or state that certain policies of the Member States are coordinated, without mentioning the Union as the subject (am. 9 Teufel). Some would like the sentence to be reformulated avoiding the expression "Community way" (am. 5 Kohout) or wish to return to the expression "federal basis" (am. 8 Duff + 3).

As for paragraph 2, am. 1 Balázs wishes to return to the previous Praesidium version (requiring that values also be shared by peoples). Am. 6 Kaufmann proposes deleting the paragraph, on the grounds that Article I-57(1) is sufficient.

Furthermore, the insertion of a new paragraph referring to the "Community acquis" as a foundation of the Union is requested by am. 3 Lopes. Am. 7 by Hjelm-Wallén + 5 seeks another paragraph providing for decisions to be taken as openly and as close to citizens as possible.

Articles I-2: The Union's values

A number of amendments request the addition of equality to the list in the first sentence (am. 1 Dybkjaer, am. 4 Kaufmann, am. 8 Hjelm-Wallén + 3, am. 10 Duff + 4, am. 11 Michel + 4, am. Fischer 9: equality, including between women and men). Others propose a reference to respect for minority rights in this sentence (am. 3 Balázs + 10, am. 7 Bonde). One amendment proposes saying "fundamental rights" instead of "human rights" (am. 6 Berès + Duhamel).

TITLE II: FUNDAMENTAL RIGHTS AND CITIZENSHIP OF THE UNION

Article I-7: Fundamental rights

On paragraph 1, some are asking for the Charter to be incorporated as a protocol, rather than as Part Two of the Constitution (am. 2 de Vries, am. 3 Hain, am. 6 Kalniete, am. 7 Hjelm-Wallén + 2). One Convention member thought it should be specified that the provisions of the Charter as Part Two would constitute directly applicable law (am. 5 Kaufmann). One amendment suggests that the institutions, bodies and agencies should respect Charter rights on the basis of Articles 51 et seq. of the Charter, "in the spirit" of the comments on it (am. 4 Fini).

On paragraph 2, while some would prefer to weaken the wording concerning the ECHR, proposing "may seek accession ..." (am. 3 Hain), or "may accede" (am. 9 de Villepin), others on the contrary would like it to be strengthened (am. 1 Demiralp). Other amendments would like explicitly to mention the possibility for the Union to accede to other human rights conventions (am. 5 Kaufmann, am. 8 Duff + 5). Some propose adding "to this end, a declaration laying down the conditions of such accession is annexed to the Final Act" (am. 9 de Villepin).

Article I-8: Citizenship of the Union

- Deletion of the list in paragraph 2 is requested by am. 2 Kohout and am. 3 Kaufmann.
- Am. 1 Borrell + 2 and am. 3 Kaufmann propose granting entitlement to European citizenship to third-country nationals residing in the Union on a long-term basis.

AMENDMENT FORM**Suggestion for amendment of Article : 2****By Ms. Dybkjær****Status : - Member X Alternate**

The Union is founded on the values of respect for human dignity, liberty, democracy, **equality, in particular between men and women**, the rule of law and respect for human rights, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity

Explanation (if any) :

It is of utmost importance, that equality between men and women remain among both the values and the objectives of the Union in the future Constitutional Treaty.

The European Union is NOT a discrimination free society. The European Union today is NOT gender equal. Women all over Europe are, on a daily basis, experiencing discrimination in its various forms - be it as concrete as violence or as subtle as the paygap or the glass ceiling which hinders the advancement of women. Gender equality must be a **FUNDAMENTAL PRINCIPLE** of the European Union, which cannot be ignored or negotiated away if Europe is to be a gender equal society.

We cannot speak of any sort of free choice until we have changed the unequal foundation, which is at the moment our starting point.

AMENDMENT FORM**Suggestion for amendment of Article :I-2**

By Mr Péter Balázs, Mr József Szájer, Mr Pál Vastagh, Mr. Hannes Farnleitner, Mr Alain Lamassoure, Mr Jens-Peter Bonde, Mr Kimo Kiljunen Mr Evaripidis S. Styliandis, Mr Péter Gottfried, Mr István Szent-Iványi, Mr António Nazaré Pereira, Mr Jürgen Meyer

Status : - Members - Alternate

Article I-2: The Union's values

The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law, ~~and~~ respect for and protection of human rights and those of minorities. These values are common to the Member States in a society of pluralism, tolerance, justice, equality, solidarity and non-discrimination.

Explanation (if any) :

The proposal adds and refers to the missing element of the Copenhagen criteria, which makes an important part of the acquis.

AMENDMENT FORM**Suggestion for amendment of Article I -2****By Mr Proinsias De Rossa****Status : - Member**

Redraft as follows:

The Union is founded on the values of respect for human dignity, liberty, democracy, **equality**, the rule of law and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, solidarity and non-discrimination.

Explanation (if any) :

As a value, 'equality' should be placed on an equal footing with 'liberty', 'democracy' etc.

AMENDMENT FORM**Title I****Suggestion for amendment of Article: I-2****By: Mr. Vytenis Povilas Andriukaitis****Status: Member.**

Article I-2: The Union's values

The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, **in particular social justice**, equality, solidarity and non-discrimination.

Amendment Form

Suggestion for amendment of Article : I-2

By Ms: Linda McAvan

Status : - Member

Modify as follows:

The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law, *equality between men and women* and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, equality, solidarity and non-discrimination.

Explanation (if any) :

FICHE AMENDEMENT**Proposition d'amendement à l'Article : I- 2**

Déposée par Madame ou Monsieur : M. Louis Michel, M. Elio di Rupo, Mme Anne Van Lancker, membres de la Convention et M. Pierre Chevalier et Mme Marie Nagy, membres suppléants de la Convention

Qualité : - Membre - Suppléant

Article I-2: Les valeurs de l'Union

L'Union se fonde sur les valeurs de respect de la dignité humaine, de liberté, **d'égalité**, de démocratie, de l'état de droit, ainsi que de respect des droits de l'Homme. Ces valeurs sont communes aux États membres dans une société caractérisée par le pluralisme, la tolérance, la justice, ~~l'égalité~~, la solidarité et la non-discrimination.

AMENDMENT FORM**Suggestion for amendment of Article : I-2****By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann****Status : - Member - ~~Alternate~~**

Artikel I-2: Die Werte der Union

Die Werte, auf denen die Union sich gründet, sind die ~~Achtung~~ **Unantastbarkeit** der Menschenwürde, Freiheit **und Gleichheit**, Demokratie, Rechtsstaatlichkeit und die Wahrung der Menschenrechte; diese Werte sind allen Mitgliedstaaten in einer **friedlichen** Gesellschaft gemeinsam, die sich durch Pluralismus, Toleranz, Gerechtigkeit, ~~Gleichheit~~, Solidarität und Nichtdiskriminierung auszeichnet.

Explanation (if any) :

AMENDMENT FORM**Suggestion for amendment of Article : Article I-2: The Union's values****By Ms / Mr : Mr Jens-Peter Bonde****Status : X - Member - Alternate**

The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law, ~~and~~ respect for human rights **AND NATIONAL AND ETHNICAL MINORITIES**. These values are common to the Member States in a society of **STABLE DEMOCRATIC INSTITUTIONS**, pluralism, tolerance, justice, equality, solidarity and non-discrimination.

Explanation (if any) :

FICHE AMENDEMENT**Proposition d'amendement à l'Article : I-2 (partie I)****Déposée par Mme Pervenche Berès, Olivier Duhamel****Qualité : - Membre et Suppléante**

Article I-2: Les valeurs de l'Union

L'Union se fonde sur les valeurs de respect de la dignité humaine, de liberté, de démocratie, de l'état de droit, ainsi que de respect des droits **fondamentaux**. Ces valeurs sont communes aux États membres dans une société caractérisée par le pluralisme, la tolérance, la justice, l'égalité, la solidarité et la non-discrimination.

Explication

Amendement visant la neutralisation du genre, conformément à la Charte des droits fondamentaux qui a remplacé l'expression "droits de l'Homme" par "droits fondamentaux" et dans le prolongement du Préambule de la présente Constitution qui fait référence non pas à "l'Homme" mais à la "personne humaine".

AMENDMENT FORM**Title I: Definition and objectives of the Union****Suggestion for amendment of Article : Article I-2: The Union's values**

By Members: Mr Andrew Duff, Mr Lamberto Dini, Mr Paul Helminger, Mr Rein Lang, Lord Maclellann

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Article I-2: The Union's values

The Union is founded on the values of respect for human dignity, liberty, *equality*, democracy, the rule of law and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, solidarity and non-discrimination.

Explanation:

Equality is more a basic value than a description of European society.

AMENDMENT FORM**Suggestion for amendment of Article : Part I, Article I-2****By Mr : Henning Christophersen****Status : Member of the Convention**

Article I-2: The Union's values

The Union is founded on the values of respect for human dignity, liberty, democracy, **equality between women and men**, the rule of law and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, equality, solidarity and non-discrimination.

Explanation (if any) : Equality between women and men is a cornerstone of modern European society and a fundamental Union value and should be included in Article I-2.

FICHE AMENDEMENT 1 (FINAL)**Proposition d'amendement à l'Article : I-2 Valores de la Unión****Déposée par Madame ou Monsieur : Borrell, Carnero y López Garrido****Qualité : - Membre - Suppléant**

... Estos valores son comunes a los Estados miembros en una sociedad caracterizada por el pluralismo, la tolerancia, la justicia, la igualdad, **la igualdad entre el hombre y la mujer**, la solidaridad y la no discriminación.

Explication éventuelle :

AMENDMENT FORM**Suggestion for amendment of Article I - 2****By Mr : Dimitrij Rupel****Janez Lenarčič****Status : Member****Alternate**

Article 2: The Union's values

The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights and **fundamental freedoms**. These values are common to the Member States in a society of pluralism, tolerance, justice, equality, solidarity and non-discrimination. .

AMENDMENT FORM**Suggestion for amendment of Article : I-2****By Mr : Joschka Fischer****Status : - Member**

Artikel I-2: Die Werte der Union

Die Werte, auf denen die Union sich gründet, sind die Achtung der Menschenwürde, Freiheit, Gleichheit, insbesondere Gleichheit zwischen Männern und Frauen, Demokratie, Rechtsstaatlichkeit und die Wahrung der Menschenrechte; diese Werte sind allen Mitgliedstaaten gemeinsam in einer Gesellschaft des Pluralismus, der Toleranz, der Gerechtigkeit, ~~der Gleichheit~~, der Solidarität und der Nichtdiskriminierung.

Explanation (if any) :

Die Gleichheit vor dem Gesetz, ist ein Wert, der allen Mitgliedstaaten der Union gemeinsam ist. Dieser Wert ist justiziabel und sollte daher in Satz eins aufgenommen werden.

Die Gleichheit von Männern und Frauen vor dem Gesetz nimmt im Rahmen der europäischen Gesetzgebung und auch der europäischen Rechtsprechung einen großen Raum ein. Dies rechtfertigt ihre Hervorhebung in Satz 1.

AMENDMENT FORM**Suggestion for amendment of Article 1-2**

By Mrs Lena Hjelm-Wallén and Mr Sven-Olof Petersson, government representatives and Mr Sören Lekberg, national parliament representative.

**Status : - Members: Hjelm-Wallén and Lekberg
- Alternates: Petersson**

Article I-2: The Union's values

The Union is founded on the values of respect for human dignity, liberty, **equality**,¹ democracy, the rule of law and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, ~~equality~~, solidarity and non-discrimination.

¹ Equality is a value of the same dignity as liberty.

AMENDMENT FORM**Suggestion for amendment of Article :I-2****By Mr :Ernâni Lopes and Manuel Lobo Antunes****Status : Member and Alternate**

Article I-2: The Union's ~~values~~ principles

The Union is founded on the ~~values~~ of respect for human dignity, liberty, democracy, the rule of law and respect for human rights. These ~~values~~ **principles** are common to the Member States in a society of pluralism, tolerance, justice, equality, solidarity and non-discrimination.

Explanation : Human dignity, liberty...are principles and not mere values. Only principles may be legally binding and its violation invoked before a Court.

FICHE AMENDEMENT**Proposition d'amendement à l'Article : Artigo 2 - Epígrafe****Déposée par Monsieur : Luís QUEIRÓ****Qualité : Suppléant**

Artigo 2.º - Epígrafe**"Valores fundamentais da União"**

Explication éventuelle :

FICHE AMENDEMENT**Proposition d'amendement à l'Article : Article 2 - Titre****Déposée par Monsieur : Luís QUEIRÓ****Qualité : Suppléant**

Article 2 - TitreArticle 2: Les valeurs **fondamentales** de l'Union

Explication:

FICHE AMENDEMENT**Proposition d'amendement à l'Article : Artigo 2 bis, novo, n.º2****Déposée par Monsieur : Luís QUEIRÓ****Qualité : Suppléant**

2. Un Etat membre peut, dans le respect des procédures prévues à cet effet, engager une procédure de retrait du traité établissant l'Union européenne;

Explication éventuelle :

Jusqu'à présent, le droit de retrait n'est pas inscrit dans les traités existants. Cette omission entretient la confusion sur la nature des engagements souscrits lors de l'adhésion à l'Union européenne, confusion dont se nourrit par ailleurs le discours fédéraliste sur le caractère irréversible de l'appartenance à l'Union européenne. Organisation internationale reposant sur la souveraineté et le libre consentement des Etats, l'Union européenne doit prévoir une procédure autorisant, dans certaines circonstances exceptionnelles mettant en cause les intérêts fondamentaux d'un Etats, la possibilité pour ce dernier d'exercer son droit de retrait.

FICHE AMENDEMENT**Proposition d'amendement à l'Article : Article 2 bis, nouveau, paragraphe 2****Déposée par Monsieur : Luís QUEIRÓ****Qualité : Suppléant**

2. Un Etat membre peut, dans le respect des procédures prévues à cet effet, engager une procédure de retrait du traité établissant l'Union européenne;

Explication éventuelle :

Jusqu'à présent, le droit de retrait n'est pas inscrit dans les traités existants. Cette omission entretient la confusion sur la nature des engagements souscrits lors de l'adhésion à l'Union européenne, confusion dont se nourrit par ailleurs le discours fédéraliste sur le caractère irréversible de l'appartenance à l'Union européenne. Organisation internationale reposant sur la souveraineté et le libre consentement des Etats, l'Union européenne doit prévoir une procédure autorisant, dans certaines circonstances exceptionnelles mettant en cause les intérêts fondamentaux d'un Etats, la possibilité pour ce dernier d'exercer son droit de retrait.

FICHE AMENDEMENT**Proposition d'amendement à l'Article : Artigo 2 bis, novo - Epígrafe e n.º1****Déposée par Monsieur : Luís QUEIRÓ****Qualité : Suppléant**

"Alargamento da União"

1. A União está aberta a todos os Estados europeus cujos povos **partilhem os seus** valores, e se comprometam a **respeitá-los e a** promovê-los em comum.

Explication éventuelle :

Este Artigo não respeita à "Instituição da União" e a sua inserção como n.º 3 do Artigo 1.º seria, por isso, incorrecta. Trata-se antes do princípio fundamental do Alargamento da União, a que deve corresponder um artigo autónomo.

FICHE AMENDEMENT**Proposition d'amendement à l'Article : Article 2 bis, nouveau – Titre et n.º1****Déposée par Monsieur : Luís QUEIRÓ****Qualité : Suppléant**

Article 2 bis, nouveau**"Élargissement de l'Union"**

L'Union est ouverte à tous les Etats européens dont les peuples partagent ses valeurs et qui s'engagent à les respecter et à les promouvoir en commun.

Explication :

Cet article ne concerne pas « l'institution de l'Union », mais il s'agit d'un principe fondamental de l'élargissement. C'est pourquoi nous proposons qu'il puisse correspondre à un article autonome.

FICHE AMENDEMENT**Proposition d'amendement à l'Article : Artigo 2****Déposée par Monsieur : Luís QUEIRÓ****Qualité : Suppléant**

A União funda-se **no** respeito pela dignidade humana, **incluindo o primado da vida, pela** liberdade, **pela** democracia, **pelo** Estado de direito, e **pelo** respeito **dos** direitos do Homem, valores que são comuns aos Estados-Membros. Visa **a manutenção da paz e uma sociedade** que pratica a **igualdade entre os Estados e os povos da União e promove a** tolerância, a justiça e a solidariedade.

Explication éventuelle :

FICHE AMENDEMENT**Proposition d'amendement à l'Article : Article 2****Déposée par Monsieur : Luís QUEIRÓ****Qualité : Suppléant**

L'Union se fonde **sur le** respect de la dignité humaine, **y compris la primauté de la vie**, de **la** liberté, de **la** démocratie, de l'état de droit, et du respect des droits de l'homme, valeurs qui sont communes aux Etats membres. Elle vise **au maintien de la paix et** à être une société pratiquant **l'égalité entre les Etats et les peuples de l'Union et promouvant** la tolérance, la justice et la solidarité.

Explication :

FICHE AMENDEMENT

Proposition d'amendement à l'Article:	2
Déposée par Monsieur:	Erwin Teufel
Qualité:	Membre

Texte du Praesidium

Die Union beruht auf den folgenden Werten: Achtung der Menschenwürde, Freiheit, Demokratie, Rechtsstaatlichkeit und Achtung der Menschenrechte; diese Werte sind allen Mitgliedstaaten gemeinsam. Die Union strebt eine friedliche Gesellschaft an, in der Toleranz, Gerechtigkeit und Solidarität herrschen.

Amendement proposé

- (1) Die Union beruht auf den folgenden Werten: Achtung der Menschenwürde, Freiheit, Demokratie, Rechtsstaatlichkeit und Achtung der Menschenrechte; diese Werte sind allen Mitgliedstaaten gemeinsam. Die Union strebt eine friedliche Gesellschaft an, in der Toleranz, Gerechtigkeit und Solidarität herrschen.
- (2) **Die Werte der Europäischen Union umfassen die Wertvorstellungen derjenigen, die an Gott als die Quelle der Wahrheit, Gerechtigkeit, des Guten und des Schönen glauben, als auch derjenigen, die diesen Glauben nicht teilen, sondern diese universellen Werte aus anderen Quellen ableiten.**

Begründung:

Diese Formulierung erkennt die Werte an, die wesentlich für die europäische Zivilisation sind, unabhängig davon, ob sie auf einem Glauben an Gott beruhen oder auf einer anderen Quelle.

FICHE AMENDEMENT

Proposition d'amendement à l'Article:	2
Déposée par Monsieur:	Erwin Teufel
Qualité:	Membre

Texte du Praesidium

L'Union se fonde sur les valeurs de respect de la dignité humaine, de liberté, de démocratie, de l'état de droit, et de respect des droits de l'Homme, valeurs qui sont communes aux Etats membres. Elle vise à être une société paisible pratiquant la tolérance, la justice et la solidarité.

Amendement proposé

- (1) L'Union se fonde sur les valeurs de respect de la dignité humaine, de liberté, de démocratie, de l'état de droit, et de respect des droits de l'Homme, valeurs qui sont communes aux Etats membres. Elle vise à être une société paisible pratiquant la tolérance, la justice et la solidarité.
- (2) **Les valeurs de l'Union Européenne comprennent les valeurs spirituelles de ceux qui croient à Dieu comme source de la vérité et de la justice, de la bonté et de la beauté et de ceux qui ne partagent pas cette croyance mais qui trouvent ces valeurs universelles dans d'autres sources.**

Explication:

Ce passage reconnaît les valeurs essentielles de la civilisation européenne, sans distinction s'ils dépendent de la croyance à Dieu ou d'une autre source.

AMENDMENT FORM**Suggestion for amendment of Article : 2**

By Ms / Mr : Representatives of the Assembly of the Republic - Portugal

Members Maria Eduarda Azevedo, Alberto Costa

Alternates António Nazaré Pereira, Guilherme d'Oliveira Martins

Status :

Article 2

Principles

The Union is founded on the principles of liberty, democracy, respect for **human rights, equality between women and men**, the rule of law, tolerance, justice and **solidarity**.

FICHE AMENDEMENT**Proposition d'amendement à l'Article : 2****Déposée par Madame ou Monsieur :** Représentants de l'Assemblée de la République - Portugal**- Membre:** Maria Eduarda Azevedo, Alberto Costa**- Suppléant:** António Nazaré Pereira, Guilherme d'Oliveira Martins

Article 2**Les principes**

L'Union se fonde sur les principes de liberté, de démocratie, de respect des droits **humains**, **d'égalité entre femmes et hommes**, de l'état de droit, de tolérance, de justice et de **solidarité**.

Proposition d'amendement à l'Article 2

Déposée par Madame Elena Paciotti et Monsieur Valdo Spini, Suppléants

EN Version

Article 2: The Union's values

The Union is founded (*5 words deleted*) on human dignity, liberty, *equality*, democracy, the rule of

Law, respect for human rights, *solidarity and justice*, values which are common to the Member States.

1 sentence deleted.

Explication éventuelle:

Equality is a key value in modern constitutions and must be included in the article on the founding values of the Union.

The language used in the Constitution should not be sexist, but neutral in gender: not the 'rights of man' but 'human rights'.

Proposition d'amendement à l'Article 2

Déposée par Madame Elena Paciotti et Monsieur Valdo Spini, Suppléants

EN Version

Articolo 2: Valori dell'Unione

L'Unione si fonda *sulla* dignità umana, la libertà, *l'uguaglianza*, la democrazia, lo stato di diritto, il rispetto dei diritti *umani, la solidarietà e la giustizia*, valori che sono comuni agli Stati membri

(una frase soppressa)

Explication éventuelle:

L'uguaglianza è valore cardine delle moderne costituzioni e deve figurare nell'articolo dedicato ai valori fondanti dell'Unione.

Il linguaggio della Costituzione non deve essere sessista, ma neutrale rispetto al genere: non diritti "dell'uomo" ma diritti "umani".

FICHE AMENDEMENT**Proposition d'amendement à l'Article 2****Déposée par M. Jacques FLOCH, Membre suppléant**

Article 2. : Les valeurs de l'Union

Ajouter :

« Au travers de l'affirmation de ces valeurs, l'Union européenne reconnaît les luttes et combats de tout temps contre tous les régimes nazis, fascistes, autoritaires, totalitaires, racistes et xénophobes.

Pour l'affirmation et le respect de ses valeurs, l'Union poursuit le combat de ces hommes et de ces femmes. »

Explication éventuelle :

AMENDMENT FORM**Suggestion for amendment of Article : 2****By Ms / Mr : Marie Nagy****Status : - Member - Alternate**

Article 2: The Union's values

The Union is founded on the values of ~~respect for human dignity~~ of the inviolability of human dignity, liberty, democracy, the rule of law and respect for **fundamental and** human rights, **social justice, solidarity, pluralism and equality**, values which are common to the Member States. ~~Its aim is a society at peace, through the practice of tolerance, justice and solidarity.~~

Explanation (if any) :

FICHE AMENDEMENT

Proposition d'amendement à l'Article 2

Déposée par Monsieur Dominique de Villepin

Qualité : Membre

Article 2: Les valeurs de l'Union

L'Union se fonde sur les **principes** de respect de la dignité humaine, de liberté, de démocratie, de l'Etat de droit, et de respect des droits de l'Homme **et des libertés fondamentales**, valeurs qui sont communes aux Etats membres.

Elle vise à être une société pratiquant la tolérance, la justice et la solidarité.

Explication éventuelle :

AMENDMENT FORM**Suggestion for amendment of Article : 2****By Mr : Edmund Wittbrodt****Status : - Member**

1. The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law, ~~and~~ respect for human rights **and the equality of women and men**, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.
 2. **The Union's values include the values of those who believe in God as the source of truth, justice, good and beauty as well as of those who do not share such a belief but respect these universal values arising from the other sources.**
 3. **The European Union bases on the principle of solidarity among its Member States while carrying out its missions.**
-

Explanation (if any) :

1. *This follows the EPP suggestion, but changes the order of words.*
2. *Inspired by the Preamble of the Constitution of Poland, follows the EPP suggestion.*
3. *Solidarity in the first paragraph has a different meaning than traditional "solidarity" in the Union's policies. This point is essential for the newcomer States.*

AMENDMENT FORM**Suggestion for amendment of Article : 2****By Lord Tomlinson****Status : Alternate**

I would prefer to see a re-ordering of values in order to give primacy to democracy, the rule of law, respect for human rights and then refer to human dignity and liberty which in any event arise from the other values.

The second sentence seems to me to say that our aims are self-evidently "good" but producing concepts incapable of clear definition. What specifically is the measure of a "society at peace", "tolerance" and "solidarity". What are the intended meanings by which we measure?

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article 2

By: Mr Andrew Duff, Mr Dimitrij Rupel, Mr Paul Helminger, Mr István Szent-Iványi and Mr Lamberto Dini

Status : Members and alternate member

Article 2: The Union's values

2.1 The Union is founded on *shared* values of *liberty*, human dignity, democracy, the rule of law and respect for *fundamental* rights. Its aim is a society at peace, *enriched by its cultural diversity, practising and promoting* tolerance, justice and solidarity.

2.2 *The Union shall respect its national and regional identities.*

Explanation :

2.1 The formulation of 'shared' rather than 'common' values is to indicate a positive commitment to the unity of Europe. 'Common' is a more passive concept.

Liberty takes priority in a list of values.

If we have 'human dignity' already we need the wider notion of 'fundamental' rights, which is also consistent with the Charter.

A reference to the value of European culture is surely desirable at this point, as is the idea of promoting by example what it is we as Europeans practise.

2.2 This clause is taken over from Article 1. 2. The qualification of national identities being 'of its Member States' is dropped in the interests of pluralism and historical accuracy. There are many national identities within the states of Europe.

Likewise we include regional identities. The Constitution must cater for the emergence of a post-national democratic identity with flourishing regions and localities.

AMENDMENT FORM**Suggestion for amendment of Article 2:**

By Pervenche Berès, Teresa Almeida Garrett, Irena Belohorska, Maria Berger, Alfonso Dastis, Olivier Duhamel, Lone Dybkjaer, Jacques Floch, Povilas Andriukaitis, Neil McCormick, Luis Marinho, Elena Paciotti, Hildegard Puwak, Anne Van Lancker, Proinsias de Rossa, Valdo Spini and Renée Wagener

Status : Members

Article 2: Les valeurs de l'Union

L'Union se fonde sur les valeurs de respect de la dignité *de la personne*, de liberté, de démocratie, de l'état de droit, et de respect des droits *fondamentaux*, valeurs qui sont communes aux Etats membres. Elle vise à être une société paisible pratiquant la tolérance, la justice et la solidarité.

Explanation (if any) :

La Constitution doit reprendre la terminologie consacrée par la Charte des droits fondamentaux, elle-même intégrée à la Constitution, s'agissant de la neutralisant du genre dans les terminologies "Droits de l'Homme" et "dignité humaine".

AMENDMENT FORM**Suggestion for amendment of Article : 2****By Ms / Mr : Johannes Voggenhuber, Eva Lichtenberger****Status : - Member - Alternate**

Article 2: The Union's values

The Union is founded on the values of ~~respect for human dignity~~ of the inviolability of human dignity, liberty, democracy, the rule of law and respect for **fundamental and** human rights, **social justice, solidarity, plurality and equality**, values which are common to the Member States. ~~Its aim is a society at peace, through the practice of tolerance, justice and solidarity.~~

Explanation (if any) :

FICHE AMENDEMENT**Proposition d'amendement à l'Article : Art. 2****Déposée par Madame Cristiana MUSCARDINI****Qualité : Membre**

Ultima riga (*versione italiana*), aggiungere dopo "*mira*": "**al mantenimento della pace e ad una società che pratici la tolleranza, la giustizia e la solidarietà.**"

Explication éventuelle :

FICHE AMENDEMENT**Proposition d'amendement à l'Article : Art. 2****Déposée par Madame Cristiana MUSCARDINI****Qualité : Membre**

Dopo le parole *diritti dell'Uomo*, aggiungere:**“e sulla tradizione greco-romana, giudaico-cristiana, laica e liberale”**

Explication éventuelle :

AMENDMENT FORM**Suggestion for amendment of Article : 2 (Values of the Union)**

By Mr :
Jan FIGEL

Status : - Member - Alternate

Add to the paragraph

Para 2 (new):

The Union respects cultural and ethical sovereignty of the Member States.

Explanation (if any) :

The amendment is based on the principle of subsidiarity. Moreover National Council of the Slovak Republic has passed the Declaration regarding the sovereignty of the member states of the European Union in the cultural and ethical issues, on January, 30, 2002.

AMENDMENT FORM**Suggestion for amendment of Article : 2****By Mr : Joachim Wuermeling and Peter Altmaier****Status : - Alternates**

Die Union beruht auf den folgenden Werten: Achtung der Menschenwürde, Freiheit, Demokratie, Rechtsstaatlichkeit, **und** Achtung der Menschenrechte **und Respekt der Vielfalt**; diese Werte sind allen Mitgliedstaaten gemeinsam. Die Union strebt eine friedliche Gesellschaft an, in der Toleranz, Gerechtigkeit und Solidarität herrschen.

Explanation (if any) :

AMENDMENT FORM**Suggestion for amendment of Article 2****By Mr : Dimitrij Rupel****Status : Member**

Article 2: The Union's values

The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights and fundamental freedoms, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.

FICHE AMENDEMENT**Proposition d'amendement à l'Article 2 :**

Déposée par M. Pierre LEQUILLER, Président de la Délégation pour l'Union européenne

Article 2 :

Après le mot « démocratie, », insérer les mots : « de pluralisme, ».

Explication éventuelle :

L'amendement vise à souligner l'importance du pluralisme- politique, médiatique, culturel- comme valeur de l'Union.

AMENDMENT FORM

2. Suggestion for amendment of Article 2: Les valeurs de l'Union**By Ms Meglena Kuneva****Status : Member**

L'Union se fonde sur les **principes** de respect de la dignité humaine, de liberté, de démocratie, de l'État de droit, et de respect des droits de l'Homme **et des libertés fondamentales**, valeurs qui sont communes aux États membres.

Elle vise à être une société pratiquant la tolérance, la justice et la solidarité.

Explanation (if any) :

Il serait préférable de garder la notion de 'principes', bien connue du droit communautaire et qui est employée par l'article 6 du TUE. La référence aux libertés fondamentales figure actuellement à l'art. 6 (1) TUE.

AMENDMENT FORM**Suggestion for amendment of Article 2:**

By Mrs Lena Hjelm-Wallén and Mr Sven-Olof Petersson, government representatives and Mr Sören Lekberg, Mr Göran Lenmarker and Mr Kenneth Kvist, national parliament representatives.

Status : - **Members: Hjelm-Wallén, Lekberg and Lenmarker**
- **Alternates: Petersson and Kvist**

The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights **and equality between men and women**¹ values which are common to the Member States. Its aim is a society at peace, through the practice of, tolerance, justice, and solidarity.

Explanation

¹ Equality between of men and women is one of the core values of the Union (expressed for example in Article 3.2 EC: "*In all the activities ... the Community shall aim to eliminate inequalities, and to promote equality, between men and women*"). Manifest risk of serious breach of this value should be sufficient to initiate the procedure for alerting and sanctioning a Member State. Promotion of equality between men and women must also remain a general objective for the Union (Article 3).

AMENDMENT FORM

Suggestion for amendment of Article : 2

By Ms : Giannakou Marietta

Status : - Member

Article 2: The Union's values

The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights *and fundamental freedoms*, values which are common to the Member States. Its aim is as society at peace, through the practice of tolerance, justice, *equality* and solidarity.

Explanation (if any) :

AMENDMENT FORM**Suggestion for amendment of Article 2 :****By Mr Joschka Fischer****Status : - Member**

Artikel 2: Werte der Union

(1) Die Union beruht auf den ~~Grundsätzen der folgenden Werten~~: Achtung der Menschenwürde, ~~der~~ Freiheit, ~~der~~ Demokratie, ~~der~~ Rechtsstaatlichkeit, ~~der~~ Gleichheit zwischen Männern und Frauen und ~~der~~ Achtung der Menschenrechte; diese ~~Grundsätze~~ ~~Werte~~ sind allen Mitgliedstaaten gemeinsam. Die Union strebt eine friedliche Gesellschaft an, in der Toleranz, Gerechtigkeit und Solidarität herrschen.

Explanation (if any) :

Absatz 1 wird stärker an die Formulierung von Art. 6 EUV angelehnt

AMENDMENT FORM**Suggestion for amendment of Article: 2**

By Ms / Mr : Mr. Ms. Irena Belohorska – member, Jan Zahradil – member, Mr. Jens-Peter Bonde - member, Mr. David Heathcoat-Amory - member, Mr. William Abitbol - alternate, Mr. Peter Skaarup - member, Mr. Per Dalgaard - alternate, Mr. Esko Seppänen – alternate, and Mr. John Gormley - alternate.

Article 2: Values of the Europe of Democracies

The Europe of Democracies is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice, solidarity and in particular democracy.

AMENDMENT FORM

Suggestion for amendment of Article 2:

By Elmar BROK, Jozsef SZAJER, Erwin TEUFEL, René VAN DER LINDEN, Frantisek KROUPA, Jacques SANTER, Antonio TAJANI, Teresa ALMEIDA GARRETT, Peter ALT-MAIER, Jan Jacob VAN DIJK, Jan FIGEL, Piia Noora KAUPPI, Göran LENNMARKER, Hanja MAIJ-WEGGEN, Reinhard RACK, Joachim WÜRMEILING

on behalf of the EPP Convention Group

Status: Members and Alternates

Text of the Praesidium

Proposed Amendments

Article 2: The Union's values

The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.

Article 2: The Union's values

1. The Union is founded on the values of ~~respect for~~ human dignity, liberty, democracy, the rule of law and respect for human rights **and fundamental freedoms**, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice, **equality** and solidarity.
2. ***The Union's values include the values of those who believe in God as the source of truth, justice, good and beauty as well as of those who do not share such a belief but respect these universal values arising from other sources.***

Explanation:

- *It should be kept in mind that infringement of the values in Para 1, first sentence will lead to the application of **the sanction procedure under the present Article 7 of the EU Treaty**, which eventually could lead to the suspension of voting rights of a Member State in the Council. This is why we agree with the Praesidium to keep the values in the first sentence short and concise. However, this should not preclude listing further aims and fundamental principles in the second sentence and in a second paragraph of Article 2.*
- *Para 1, first sentence emphasises the aim of **equality** – which includes **equality before the law and in particular equality between women and men** – in order to underline the fundamental rights included in Chapter III of the Charter of Fundamental Rights (which is an integral part of the Constitution, see our amendment to Article 5). Chapter III of the Charter is entitled “Equality” and includes equality before the law; the directly effective **prohibition of all discriminations** based on sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a*

national minority, property, birth, disability, age or sexual orientation; and the directly-effective prohibition of discrimination based on grounds of nationality within the scope of application of Part Two of the Constitution.

- *Para 2, which has been inspired by the Preamble of the Constitution of Poland, recognises **values which are essential for the European civilisation**, regardless of whether they are linked to believing in God or to another source of values. Without these values, Europe would not be what it is today. See also Article 57(2) of the EPP Discussion Paper (Frascati text, as amended, 27 January 2003)*

AMENDMENT FORM**Suggestion for amendment of Article 2****By Mr : Jan KOHOUT****Status : - Member**

Art. 2Avoid the repetition in the second sentence of the wording from Art. 3.1.

Explanation (if any) :**Art. 2:** The basic idea of the second sentence ("Its aim is a society at peace...") reappears in Art. 3.1.

AMENDMENT FORM**Suggestion for amendment of Article : 2****By MM : Kiljunen and Vanhanen****Status : - Members**

The Union is founded on the values of respect for human dignity, liberty, equality, democracy, the rule of law [del], respect for human and minority rights as well as the rights of the disabled people, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice, [del]solidarity and openness.

Explanation (if any) :

It is self-evident that equality is one of the key values of the Union.

AMENDMENT FORM**Suggestion for amendment of Article: 2****By Marco FOLLINI****Status: Member****Articolo 2: Valori dell'Unione**

L'Unione si fonda sui valori del rispetto della dignità umana, di libertà, di democrazia, *di solidarietà e di legalità. Questi valori riflettono l'importanza dei principi delle grandi tradizioni religiose e della cultura laica dei popoli europei e richiamano la necessità di far convergere primato della persona, libertà religiosa, solidarietà sociale, convivenza tra etnie, religioni e culture differenti verso l'obiettivo della coesione sociale dell'Unione europea.*

Amendments submitted by Teija Tiilikainen and Antti Peltomäki 17 February 2003

Article 2: The Union's values

The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights **and fundamental freedoms**, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice, solidarity **and equality**.

Commentary:

It is self-evident that equality is one of the key values of the Union.

AMENDMENT FORM**Suggestion for amendment of Article 2****By Mr Ivan Korčok (SK)****Status : - Member**

Article 2: The Union's values

1.The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.

2. **The Union's values include the values of those who believe in God as the source of truth, justice, good and beauty as well as of those who do not share such a belief but respect those universal values arising from other sources.**

Explanation (if any) :

AMENDMENT FORM**Suggestion for amendment of Article : 2****By Mr Korcok, Mr Jan Figel, Mr Juraj Migas, Ms Zuzana Martinakova****Status : Mr Korcok and Mr Figel are members. Mr Migas and Ms Martinakova are alternates.**

1. The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.
2. The Union's values include the values of those who believe in God as the source of truth, justice, good and beauty as well as of those who do not share such a belief but respect those universal values arising from other sources.

Explanation (if any) :

AMENDMENT FORM**Suggestion for amendment of Article 2 :****By Mr : Ingvar SVENSSON****Status : - Alternate**

~~The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.~~

The Union is founded on respect for fundamental values such as human dignity, life, freedom, knowledge, truth, justice, solidarity, equality, openness and tolerance. These values shall be promoted through democracy and the rule of law. Thereby conditions for a society at peace are created.

Explanation:

The Preasidum's proposal is characterized by a mixture of general values and instrumental values. The proposal above gives a more logical structure.

AMENDMENT FORM**Suggestion for amendment of Article 2****By Prof Peter Serracino-Inglott - Member****Mr John Inguanez - Alternate**

To be reworded as follows:

The Union is founded on the values embodied in fundamental rights: human dignity, liberty, equality, solidarity, rights arising from citizenship and justice; and the values which are common to the Member States, such as democracy and the rule of law.

Explanation (if any) :

To ensure conformity with the Charter of Fundamental Rights.

FICHE AMENDEMENT**Proposition d'amendement à l'Article : 2****Déposée par Madame ou Monsieur : Mme PALACIO****Qualité : - Membre - Suppléant**

Article 2: Les valeurs de l'Union

L'Union se fonde sur les valeurs de respect de la dignité humaine, de liberté, d'égalité, de démocratie, de l'état de droit, et de respect des droits ~~[de l'Homme]~~ fondamentaux, valeurs qui sont communes aux Etats membres. Elle ~~[vise à être une société paisible pratiquant]~~ est basée sur la tolérance, la justice et la solidarité.

Explication :

L'égalité est une valeur fondamentale de l'Union.

L'expression « droits fondamentaux » est celle utilisée dans la Charte des Droits Fondamentaux.

Il faut modifier la rédaction de la dernière phrase. Autrement, elle devrait se trouver dans l'article 3.

AMENDMENT FORM**Suggestion for amendment of Article : 2****By: Ms Linda McAvan****Status : - Member - Alternate**

The Union is founded on the values of respect for human dignity, liberty, **equality between men and women**, democracy, the rule of law and respect for human rights, **solidarity and justice**, values which are common to the Member States. (*Delete rest*).

Explanation: the additions are also basic values

AMENDMENT FORM**Suggestion for amendment of Article : 2****By Mr : Gianfranco FINI****Status : - Member**

Articolo 2: Valori dell'Unione

L'Unione si fonda sui valori del rispetto della dignità umana, di libertà, di democrazia, dello stato di diritto e del rispetto dei diritti dell'uomo, valori che sono comuni agli Stati membri. ***L'Unione riconosce le comuni radici giudaico-cristiane come valori fondanti del suo patrimonio***

~~Essa mira ad essere una società pacifica che pratica la tolleranza, la giustizia e la solidarietà.~~

Explanation (if any) :

FICHE AMENDEMENT**Proposition d'amendement à l'Article 2:****Déposée par : M. Caspar EINEM****Qualité : - Membre**

Artikel 2: Werte der Union

Die Union beruht auf den folgenden Werten: Achtung der Menschenwürde, Freiheit, Demokratie, Rechtsstaatlichkeit und Achtung der Menschenrechte **und des internationalen Rechts, soziale Gerechtigkeit, Solidarität und Gleichheit, insbesondere Gleichheit zwischen Männern und Frauen und Nachhaltigkeit**; diese Werte sind allen Mitgliedstaaten gemeinsam. Die Union strebt eine friedliche Gesellschaft an, in der Toleranz, Gerechtigkeit und Solidarität herrschen.

Explication éventuelle :

AMENDMENT FORM**Suggestion for amendment of Article 2****By Ms Hildegard Puwak****Status : - Member**

L'Union se fonde sur les valeurs de respect de la dignité *de la personne*, de liberté, de démocratie, de l'état de droit, et de respect des droits *fondamentaux, la solidarité, l'égalité entre hommes et femmes*, valeurs qui sont communes aux Etats membres. Elle vise à être une société paisible pratiquant la tolérance, la justice et la solidarité.

Explanation (if any) :

AMENDMENT FORM**Suggestion for amendment of Article : 2****By Mr Kirkhope MEP****Status : Member**

Article 2: The Community's values

The **Community** is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.

Explanation (if any) :

FICHE AMENDEMENT**Proposition d'amendement à l'Article : 2**

Déposée par Mme Pervenche Berès, membre suppléante de la Convention et M. Elio Di Rupo, membre de la Convention

Qualité : - Membre - Suppléante

Article 2

L'Union se fonde sur les valeurs de respect de la dignité humaine, de liberté, de démocratie, de l'état de droit, de respect des droits de la personne, d'égalité, de justice, de tolérance et de solidarité qui sont communes aux Etats membres. Elle garantit la séparation des Eglises et des Etats.

Explication éventuelle :

AMENDMENT FORM**Suggestion for amendment of Article 2:****By Mr. Peter SKAARUP****Status: Member**

Ad to article 2:

"The Union recognizes the fundamental importance of Christianity embedded in European History and the lives of its people. Christianity draws a sharp line between secularism and spiritualism - the Union believes this division to be of vital importance for the development of the individual European member states."

AMENDMENT FORM**Suggestion for amendment of Article : 2****By Mr : Georgios Katiforis****Status : - Member**

Article 2: The Union's values

The Union is founded on the values of respect for human dignity **and human rights**, liberty, **equality, solidarity**, democracy, the rule of law **and peace** ~~and respect for human rights~~, values which are common to the Member States. ~~Its aim is a society at peace, through the practice of tolerance, justice and solidarity.~~

AMENDMENT FORM**Suggestion for amendment of Article 2****By:** Danuta Hübner**Status:** Member

<i>Text of the Praesidium</i>	<i>Proposed Amendments</i>
<p><u>Article 2: The Union's values</u></p> <p>The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.</p>	<p><u>Article 2: The Union's values</u></p> <p>The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law, and respect for human rights, <u>tolerance, justice and solidarity</u>, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.</p>
<p>Explanation:</p> <ol style="list-style-type: none"> 1. The wording “its aim is...” seems inappropriate as it suggests objectives and not values. 2. Although not proposed in this Article, a reference to the religious heritage should be mentioned in the Preamble. 	

AMENDMENT FORM**Suggestion for amendment of Article : 2, paragraph 2****By Ms / Mr :****Ján FIGEL (Slovakia, National Council of the Slovak Republic)****Status :** - Member - Alternate

Add to the sentence :

« their constitutional and political structures, including regional and local self-government, their choices regarding language, and the legal status of churches and religious societies. »

Explanation (if any) :

AMENDMENT FORM**Suggestion for amendment of: Article 2****By: Lamberto Dini****Status : - Member**

Aim:

In article 2, cancel any reference to a "society at peace"

Explanation :**The expression "society at peace" is ambiguous: it is not clear whether it applies internally or externally and it adds nothing to the values already listed in the same article.**

AMENDMENT FORM**Suggestion for amendment of Article : Article 2****By Mr : CUSHNAHAN****Status : - Alternate (European Parliament Delegation)**

Article 2: The Union's values

The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law, sustainable development, equality, non-discrimination on the basis of sex, nationality, racial or ethnic origins, religion or sexual orientation and respect for human rights, values which are common to the Member States as defined by the International and European Human Rights law. Its aim is a society at peace, through the practice of tolerance, justice and solidarity and respect for cultural and linguistic diversity.

Explanation (if any) :

The original draft is not sufficiently comprehensive

AMENDMENT FORM**Suggestion for amendment of Article 2****By Dolores Cristina****- Alternate**

To be reworded as follows:

The Union is founded on the values embodied in fundamental rights: human dignity, liberty, equality of men and women, solidarity, rights arising from citizenship and justice; and the values which are common to the Member States, such as democracy and the rule of law.

Explanation (if any) :

To ensure conformity with the Charter of Fundamental Rights.

AMENDMENT FORM

Suggestion for amendment of Article : 2**By Mr Péter Balázs****Status :** Member - Alternate

Article 2: The Union's values

„The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights *including those of national minorities*, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.”

Explanation (if any) :

The proposal adds and refers to the missing element of the Copenhagen criteria, which makes an important part of the acquis.

AMENDMENT FORM**Suggestion for amendment of Article : 2****By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann****Status : - Member ~~Alternate~~**

Artikel 2: Werte der Union

Die Union beruht auf ~~den folgenden Werten: Achtung der Menschenwürde~~ **der Unantastbarkeit der Würde des Menschen, auf Freiheit und Gleichheit, auf Demokratie, Rechtsstaatlichkeit und Sozialstaatlichkeit sowie auf der Achtung der Menschenrechte; diese Werte sind allen Mitgliedstaaten gemeinsam.** Die Union strebt eine friedliche Gesellschaft an, ~~die auf in der~~ Toleranz, Gerechtigkeit und Solidarität ~~gründet herrschen.~~ **Diese Werte sind allen Mitgliedstaaten gemeinsam.**

Explanation (if any) :

Die Würde des Menschen ist das höchste Gut in unserer Gesellschaft. Aus ihr leiten sich die Menschenrechte ab. Die bloße *Achtung* der Würde des Menschen wird ihrer Bedeutung nicht gerecht. Die Würde des Menschen muss in der Europäischen Union *unantastbar* sein (vgl. Art. 1 der Grundrechtecharta).

Der Wert der Gleichheit spiegelt das Ergebnis der Arbeitsgruppe "Soziales Europa" wider.

Auch die Sozialstaatlichkeit ist nach dem Selbstverständnis aller Mitgliedstaaten ein grundlegender Wert ihrer jeweiligen Verfassungsordnung. Sie ist damit ein gemeinsamer Wert aller Mitgliedstaaten. In der deutschen Verfassung gehört die Sozialstaatlichkeit sogar, wie die Demokratie, die Rechtsstaatlichkeit und die Menschenwürde, zu den obersten, durch die Ewigkeitsgarantie geschützten Verfassungsgütern.

Satz 2 und 3 sind zu tauschen, da sonst der Eindruck entstehen könnte, die Mitgliedstaaten seien nicht den Werten der Toleranz, der Gerechtigkeit und der Solidarität verpflichtet.

FICHE AMENDEMENT**Proposition d'amendement à l'Article 2:**

Déposée par M. Olivier DUHAMEL
Mme Linda McAVAN
M. Luis MARINHO
Mme Anne VAN LANCKER
M. Klaus HÄNSCH

Qualité: - Membres

Mme Pervenche BERÈS
Mme Maria BERGER
M. Carlos CARNERO
Mme Elena PACIOTTI
Mme Helle THORNING-SCHMIDT

Qualité: - Suppléants

Article 2: Les valeurs de l'Union

L'Union se fonde sur la dignité humaine, la liberté, **l'égalité**, la démocratie, l'Etat de droit, le respect des droits de l'Homme, **la solidarité et la justice**, valeurs qui sont communes aux Etats membres.

Explication éventuelle:

AMENDMENT FORM**Suggestion for amendment of Article 2****By: Mr Józef Oleksy****Status: Member**

Explanation:

Taking into account the current wording of article 2 and the fact that the possible text of the Preamble of the Constitution has not yet been drafted, I see the possibility of a reference in art. 2 to the spiritual dimension and the values deeply rooted in the European tradition.

AMENDMENT FORM

Suggestion for amendment of Article 2**By: Robert Maclellan****Status : Alternate**

Article 2: The Union's values

- 2.1** The Union is founded on *shared* values of *liberty*, human dignity, democracy, the rule of law and respect for *fundamental* rights. Its aim is a society at peace, *enriched by its cultural diversity, practising and promoting* tolerance, justice and solidarity.
- 2.2** *The Union shall respect the identities of the Member States and the national and regional identities within them.*

Explanation :

2.1 The formulation of 'shared' rather than 'common' values is to indicate a positive commitment to the unity of Europe. 'Common' is a more passive concept.

Liberty takes priority in a list of values.

If we have 'human dignity' already we need the wider notion of 'fundamental' rights, which is also consistent with the Charter.

A reference to the value of European culture is surely desirable at this point, as is the idea of promoting by example what it is we as Europeans practice.

2.2 This clause is taken over from Article 1. 2. The addition of ' and the national and regional identities within them' is proposed in the interests of pluralism and historical accuracy. There are many national identities within Europe.

Likewise we should include regional identities. The Constitution must cater for the emergence of a post-national democratic identity with flourishing regions and localities.

FICHE AMENDEMENT**Proposition d'amendement à l'Article : 2****Déposée par Madame ou Monsieur : Rt Hon David Heathcoat-Amory, MP****Qualité : - Membre *X* - Suppléant**

2 Insert after Member States «which have signed the European Convention on Human Rights as a prerequisite of treaty membership »

Explication éventuelle

The Union does not need to sign the Convention if member states have. This is a more logical approach, and one which does not confer upon the Union an attribute of statehood.

2 Delete « human dignity »

Explication éventuelle

Although a worthy concept, dignity is a subjective term once placed in a lawyer's brief.

2 Insert after « human rights » « as set out in national laws »

Explication éventuelle

Many of these terms are subjective. Treaty creep will place priority in the rights expressed in this article, as interpreted by the courts, over the rights as determined by national parliaments, and those set out elsewhere in Community agreements.

2 After « human rights », insert « freedom of speech »

Explication éventuelle

This supports the bravery of whistleblowers. The institutions are currently masked by silence.

FICHE AMENDEMENT**Proposition d'amendement à l'Article 2****Déposée par Monsieur Ben Fayot (Chambre des Députés, Luxembourg)****Qualité : - Membre**

Article 2 : Les valeurs de l'Union

L'Union se fonde sur les valeurs de respect de la dignité humaine, de liberté, de démocratie, de l'état de droit, et de respect des droits de l'Homme, valeurs qui sont communes aux Etats membres. Elle vise à être une société paisible pratiquant la tolérance, la justice **sociale**, **et** la solidarité, **la non-discrimination, l'égalité des femmes et des hommes et le développement durable.**

Explication éventuelle :

AMENDMENT FORM**Suggestion for amendment of Article : 2****By Mr : Josef Zieleniec****Status : Member**

Article 2: The Union's values

The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights, values which are common to the Member States **and which are the basis of a** society **living** at peace and practicing tolerance, justice and solidarity.

Explanation:

The word “aim” should not be used here – if the following article speaks about Union’s aims. The proposed wording fits better with the headline “Values”.

FICHE AMENDEMENT**Proposition d'amendement à l'Article : 2**

Déposée par Madame ou Monsieur : M. Louis Michel, M. Karel de Gucht, M. Elio di Rupo, Mme Anne Van Lancker, membres de la Convention et M. Pierre Chevalier et Mme Marie Nagy, membres suppléants de la Convention

Qualité : - Membre - Suppléant

L'Union se fonde sur les valeurs de respect de la dignité humaine, de liberté, de démocratie, de l'état de droit, de respect des droits de **la personne, d'égalité, de justice, de tolérance et de solidarité** qui sont communes aux Etats membres. ~~Elle vise à être une société paisible pratiquant la tolérance, la justice et la solidarité.~~

Explication éventuelle :

L'article 2 énonce les valeurs sur lesquelles repose l'Union. La valeur d'« égalité » devrait toutefois y être ajoutée de même que la tolérance, la justice et la solidarité (ce qui permet de faire l'économie de la seconde phrase qui est d'ailleurs dans le texte du Praesidium rédigée sous forme d'objectif (« vise à ») plutôt que de valeur.

AMENDMENT FORM**Suggestion for amendment of art. 2****By Mr. FREUDO****Member**

Article 2 The Union's values

Suggested Amended version of Article 2:

“The Union is founded on respect for human dignity, liberty, human rights, tolerance, democracy, solidarity, justice and the rule of law, values which are common to the Member States.”

Explanatory note

Solidarity is a fundamental value of the EU not just an objective. Solidarity should be included as a fundamental value of the European Union on the same level as freedom, justice, pluralistic democracy and human rights. This is rightly recommended by Working Group XI (Social Europe) and, in my view, the Convention should be four-squarely fully behind this recommendation.

The adoption by the Convention of such an amended clauses would represent an important development away from the rather peripheral reference to solidarity in Article 2 TEC which, in the heading “Principles”, inter alia, refers to “economic and social cohesion *and solidarity* among Member States”.

AMENDMENT FORM

Suggestion for amendment of Article :2**By Ms / Mr :Ernâni Lopes****Status : - Member**

Article 2: The Union's ~~values~~ principles

The Union is founded on ~~the values of~~ the respect for human dignity, liberty, democracy, the rule of law and respect for human rights and fundamental freedoms, principles ~~values~~ which are common to the Member States. Its ruling principles are ~~aim is a society at peace, through the practice of~~ those of tolerance, justice, solidarity and equality among States

AMENDMENT FORM**Suggestion for amendment of Article : 2****By Mr Hain****Status : Member**

The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights, values which are common to the Member States.

Explanation (if any) :

The Treaty should not conflate values with aims and objectives. The aims of the second sentence in the Praesidium draft would be better suited to the Preamble.

It would be useful to have clarification on the intended meaning of 'solidarity' if it is to remain in the values.

AMENDMENT FORM**Suggestion for amendment of Article 2, Title I**

By : By : Mr.V.P.Andriukaitis (LT Parl., Status-Member), Mr.A.Gricius (LT Parl., Status-Member), Mr. O.Jusys (LT Gov., Status-Alternate), Mr. R.Martikonis (LT Gov., Status-Member)

Insert “equality” :

“The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.”

Explanation (if any) :

Follow the recommendation of WG XI “Social Europe”.

AMENDMENT FORM**Suggestion for amendment of Article : 2****By Mr. Lennmarker****Status : X Member**

Article 2: The Union's values

The Union is founded on the universal values of respect for human dignity, liberty, democracy...

Explanation: The presentation of the Union's values has implications not only for the purpose of its own activities and founding principles, but also for its relations to the wider world. In Article 3.4, it is stated that the Union "shall seek to advance its values", which relates to Article 2. We do not wish to come across as patronising towards other countries, and to avoid that we should underline the *universal* character of the values in Article 2, as well as in Article 3.4.

AMENDMENT FORM**Suggestion for amendment of Article : 2****By Ms / Mr : Ms Androula Vassiliou****Status : - Member - Alternate ✓**

Article 2 should be amended so as to read:

“The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law, **equality between men and women** and respect for human rights, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.”

Explanation (if any) :

AMENDEMENT FORM**Suggestion for amendment of Article: 2****By Mr Joao CRAVINHO****Status: Member (observer)**

Article 2 : The Union's values

The Union is founded on the values of respect for human dignity, liberty, democracy, **pluralism**, the rule of law and respect for human rights, values which are common to the Member States...

Explanation (if any):

Article 2: Pluralism in the media is a "conditio sine qua non" for a good functioning of democracy in a Europe of cultural diversity.

AMENDMENT FORM**Suggestion for amendment of Article 2:**

By Pervenche Berès, Teresa Almeida Garrett, Irena Belohorska, Maria Berger, Alfonso Dastis, Olivier Duhamel, Lone Dybkjaer, Jacques Floch, Povilas Andriukaitis, Sylvia-Yvonne Kaufmann, Luis Marinho, Elena Paciotti, Hildegard Puwak, Anne Van Lancker, Proinsias de Rossa, Valdo Spini, Renée Wagener.

Status : Members

Article 2: Les valeurs de l'Union

L'Union se fonde sur les valeurs de respect de la dignité *de la personne*, de liberté, de démocratie, de l'état de droit, et de respect des droits *fondamentaux*, valeurs qui sont communes aux Etats membres. Elle vise à être une société paisible pratiquant la tolérance, la justice et la solidarité.

Explanation (if any) :

La Constitution doit reprendre la terminologie consacrée par la Charte des droits fondamentaux, elle-même intégrée à la Constitution, s'agissant de la neutralisant du genre dans les terminologies "Droits de l'Homme" et "dignité humaine".

AMENDMENT FORM**Suggestion for amendment of Article 2: The Union's values****By Mr Dick Roche, Representative of the Government of Ireland****Status : Member**

Article 2: The Union's values

The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights **and fundamental freedoms**, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.

Explanation (if any) :

To reflect existing language in Article 6.1 TEU

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 2

Déposée par M. Hubert HAENEL, membre, et M. Robert BADINTER, suppléant.

Article 2: Les valeurs de l'Union

L'Union européenne est fondée sur les principes de liberté, d'égalité, de solidarité, de démocratie, de l'État de droit et de respect des droits de l'homme, communs à tous les États membres. Elle promeut ces valeurs dans le monde. ~~Elle vise à être une société paisible pratiquant la tolérance, la justice et la solidarité.~~

Explication éventuelle :

Il est inutile de mentionner ici le principe de la dignité humaine qui est intégré dans les droits de l'homme. En revanche, le principe de **solidarité** doit être explicitement inscrit.

Il convient en outre d'ajouter que **l'Union doit promouvoir ces valeurs dans le monde.**

FICHE AMENDEMENT**Proposition d'amendement à l'Article 2****Déposée par Monsieur Eckstein-Kovács Péter****Qualité : - Membre suppléant**

Article 2 – modifier comme suit

L'Union se fonde sur les valeurs de respect de la dignité humaine, de liberté, de démocratie, de l'état de droit et de respect des droits de l'Homme **y compris les droits des minorités nationales** valeurs qui sont communes aux Etats membre. Elle vise à être une société paisible pratiquant la tolérance, la justice et la solidarité.

AMENDMENT FORM**Suggestion for amendment of Article : Article 2****By Mr : MacCormick, Neil****Status : - Alternate**

Article 2, concluding sentence, add seven words

'Its aim is a society at peace through the practice of tolerance, justice and solidarity, *and of respect for cultural and linguistic diversity*'.

Explanation (if any) :

Debate at the Convention revealed that this aspect of respect for diversity is properly recognised as a value rather than objective of the Union. In a later Title of the Constitution this point will have to be taken up in a way that ensures the Union's institutions have competence to give support to linguistic diversity, in particular in relation to regional and minority languages, and lesser-used languages. In addition, I draw attention to the text in the European parliament's Napolitano Report suggesting a new Article 151a in the Community Treaty about 'respecting and promoting linguistic diversity, including regional and minority languages'.

AMENDMENT FORM**Suggestion for amendment of Article : Artículo 2****By Ms / Mr : Borrell (miembro), Carnero y López Garrido (miembros suplentes)****Status : - Member - Alternate**

Quedaría como sigue: “La Unión se fundamenta en el respeto y *la promoción* de la dignidad *de la persona*, la libertad, *la igualdad*, la democracia, el Estado de Derecho y los derechos humanos, valores que *considera universales e indivisibles* y que son comunes a sus Estados miembros. Su fin es ser una sociedad pacífica *e integradora* que practique la tolerancia, la justicia y la solidaridad”.

Explanation (if any) :

FICHE AMENDEMENT**Proposition d'amendement à l'Article 2**

Déposée par Monsieur William ABITBOL

Qualité : Suppléant

Article 2 :

La paix, la liberté et la solidarité sont les principes politiques fondateurs de l'Union.

L'Union respecte le droit international. Elle applique les décisions de l'Organisation des Nations Unies.

L'Union reconnaît le droit des peuples à disposer d'eux-mêmes. Elle s'interdit toute ingérence dans l'expression du suffrage universel des Etats qui la composent.

L'Union agit dans le monde afin d'assurer un développement équilibré, responsable et respectueux des diversités.

Explication éventuelle :

Ce texte remplace l'ensemble du texte original de l'article visé

AMENDMENT FORM**Suggestion for amendment of Article : 2****By Mr : František Kroupa****Status : Alternate**

Indicate the text of article as para. 2 and to add a new para. 1 as follows :

1. The Union values include the values of those who believe in God as the source of truth, justice, good and beauty as well as those who do not share such a belief but respect these universal values arising from other sources.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : **2**

By Mr : **Emilio GABAGLIO**

Status: **Observer**

The Union is founded on human dignity, liberty, democracy, the rule of law, respect for human rights, tolerance, social justice, solidarity and equality between women and men, values which are common to the member states.

Explanation (if any)

= Better reflecting the consensus achieved in the “Social Europe” working group.

FICHE AMENDEMENT**Proposition d'amendement à l'Article : 2****Déposée par Monsieur Olivier Duhamel****Qualité : - Membre**

Article 2 - modifier comme suit :

L'Union se fonde sur (trois mots supprimés) le respect de la dignité humaine, de liberté de démocratie, de l'état de droit, et de respect des droits de l'Homme, valeurs qui sont communes aux Etats membres. Elle vise à être une société paisible pratiquant la tolérance, la justice et la solidarité.

Explication éventuelle :

AMENDMENT FORM**Suggestion for amendment of Article : I-2: The Union's values****By Ms / Mr : Lone Dybkjaer and Anne Van Lancker****Status : - Member X Alternate**

Article I-2: The Union's values

The Union is founded on the values of respect for human dignity, liberty, *equality*, democracy, the rule of law and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, [*delete: equality*] solidarity and non-discrimination.

Explanation (if any) :

Placing "equality" in the second sentence of the article is NOT innocent. In the present draft from the Presidium "equality" is NOT a value. Almost the contrary. As it stands the values are common for societies, which in addition are characterised by pluralism, tolerance, equality and more. But that means something which one is exactly characterised by, not something absolute. One can measure whether a society is based on (at least formally) equality. In addition concrete legislation and legislative practice exist. This is not the case in relation to pluralism and tolerance.

FICHE AMENDEMENT**Proposition d'amendement à l'Article : 5****Déposée par Monsieur Olivier Duhamel****Qualité : - Membre**

Article 5 Para 2 - modifier comme suit :

2. L'Union peut adhérer à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales. Cette adhésion(trois mots supprimés) ne modifie pas les compétences de l'Union telles que définies par la présente Constitution.

Explication éventuelle :

AMENDMENT FORM

Suggestion for amendment of Article : I-7

By Ms: Danuta Hübner

Status : - Member

<u>Article I-7: Fundamental rights</u>	<u>Article I-7: Fundamental rights</u>
1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes the Second Part of this Constitution.	1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes the Second Part of this Constitutional <u>Treaty</u> .
2. The Union shall seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined in this Constitution.	2. The Union shall seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms <u>and to other human rights conventions</u> . Accession to the <u>seat</u> Convention shall not affect the Union's competences as defined in this Constitution.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.	3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Explanation (if any) : It seems indispensable to assure at the Treaty level that the Union will have access to other conventions on human rights.

FICHE AMENDEMENT

Proposition d'amendement à l'Article I-7

Déposée par Monsieur de Villepin

Qualité : - Membre

Article I-7: Droits fondamentaux

1. L'Union reconnaît les droits, les libertés et les principes énoncés dans la Charte des droits fondamentaux qui constitue la deuxième partie de la présente Constitution.
2. L'Union ~~s'emploie à~~ **peut** adhérer à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales. L'adhésion à cette Convention ne modifie pas les compétences de l'Union telles que définies dans la présente Constitution. **A cette fin, est annexée à l'acte final une déclaration fixant les conditions de cette adhésion.**
3. Les droits fondamentaux, tels qu'ils sont garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et tels qu'ils résultent des traditions constitutionnelles communes aux États membres, font partie du droit de l'Union en tant que principes généraux.

Explication éventuelle :

Lors de la discussion par la Convention du projet d'article 5 de la future constitution, le représentant des autorités françaises à la Convention a présenté un amendement ne contestant pas l'introduction d'une base juridique permettant l'adhésion de l'Union à la CEDH, mais indiquant que cette adhésion ne devait être mentionnée que comme une possibilité. Etant donnée la nouvelle proposition du Præsidium, qui n'a pas retenu notre amendement, les autorités françaises souhaitent que l'adhésion de l'Union à la CEDH soit explicitement subordonnée à l'adoption d'une déclaration annexée à l'acte final de la CIG qui permettrait d'entourer cette adhésion de toutes les garanties nécessaires. La formule employée par le Præsidium selon laquelle « L'adhésion à cette Convention ne modifie pas les compétences de l'Union telles que définies dans la présente Constitution » n'est pas suffisante.

AMENDMENT FORM

Title II: Fundamental Rights and Citizenship of the Union

Suggestion for amendment of Article : Article I-7: Fundamental Rights

By Members: Mr Andrew Duff, Mr Lamberto Dini, Mr Paul Helminger, Mr Rein Lang, Mr Dimitrij Rupel, Lord Maclellan.

TITLE II: FUNDAMENTAL RIGHTS AND CITIZENSHIP OF THE UNION**Article I-7: Fundamental rights**

1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes the Second Part of this Constitution.
 2. The Union shall seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined in this Constitution. ***The Union may also seek accession to other international human rights conventions.***
 3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.
-

Explanation:

7.2 Although the ECHR is the principal human rights convention, and in the light of the jurisprudence of the European Court of Justice may need a specific mention in the Constitution, it is by no means the only one. We need to provide for EU activism in the field of human rights.

AMENDMENT FORM**Suggestion for amendment of Article I – 7:****By Ms Sandra Kalniete****Status : Member**

The Charter shall be annexed to the Constitutional Treaty as a Protocol.

1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out in a Protocol annexed to this Constitutional Treaty.

Explanation (if any) :

The Union is a specific entity which is legally based on several Establishing treaties. Taking into account that the constitutional issues in the EU are decided on the basis of the agreement between the Member States in the form of treaties, the new Treaty should be defined as a Constitutional Treaty.

The Charter of Fundamental Rights itself consists of more than 50 articles and it is thus not practical to include the entire text of the Charter into the body of the Constitutional Treaty text. Given the orderly structure of the Constitutional Treaty and the laconic nature of its text, the Charter of Fundamental rights should be annexed to the Treaty as a protocol.

To provide a unified implementation of the provisions of the Charter, the Commentary should be elaborated.

AMENDMENT FORM**Suggestion for amendment of Article I-7.1:**

By Mrs Lena Hjelm-Wallén and Mr Sven-Olof Petersson, government representatives and Mr Sören Lekberg, national parliament representative.

Status : - **Members: Hjelm-Wallén and Lekberg**
- **Alternates: Petersson**

1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights ~~which constitutes the Second Part of~~ **in a Protocol to** this Constitution.¹

Explanation

¹ To have the Charter as a Protocol would be more in line with the overall constitutional architecture.

FICHE AMENDEMENT**Proposition d'amendement à l'Article : I-7****Déposée par Madame ou Monsieur : Gianfranco Fini / Francesco Speroni****Qualité : - Membre - Suppléant**

Articolo I-7: Diritti fondamentali

1. L'Unione riconosce i diritti, le libertà e i principi sanciti nella Carta dei diritti fondamentali che costituisce la parte II della Costituzione. **Nello spirito del “commentario alla Carta” e sulla base degli articoli 51 e ss della II parte, le istituzioni, gli organi e le agenzie dell'Unione rispettano tali diritti e libertà e osservano tali principi promuovendone l'applicazione secondo le rispettive competenze.**
2. L'Unione persegue l'adesione alla Convenzione europea di salvaguardia dei diritti dell'uomo e delle libertà fondamentali. L'adesione a tale Convenzione non modifica le competenze dell'Unione definite nella Costituzione.
3. I diritti fondamentali, garantiti dalla Convenzione europea di salvaguardia dei diritti dell'uomo e delle libertà fondamentali e risultanti dalle tradizioni costituzionali comuni agli Stati membri, fanno parte del diritto dell'Unione in qualità di principi generali.

Explication éventuelle :

AMENDMENT FORM**Suggestion for amendment of Article : 7****By Ms / Mr : mr. Gijs de Vries and mr. Thom de Bruijn****Status : - Member - Alternate**

Article I-7: Fundamental rights

1. The Union shall recognise the rights, freedoms and principles ~~set out in~~of the Charter of Fundamental Rights ~~which constitutes the Second Part of~~that is set out in a Protocol annexed to this Constitution.
2. The Union shall seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined in this Constitution.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Explanation (if any): Firstly, the Dutch Government would like to point out that many articles (especially the articles of title VI, part I of the Constitution) are a repetition of what is already laid down in the Charter of Fundamental Rights. If the Charter would become a part of the Constitution, such a repetition is obviously undesirable. Therefore, if the Charter would become a part of the Constitution, which the Dutch government does not support, these articles will have to be deleted and/or adjusted. See for further background information the relevant declaration of the Dutch Government Representative (CONV 659/03).

Furthermore, the articles 14, 15, 29 and 35 of part II of the Constitution should not be legally enforceable. A declaration attached to the Constitution should make this very clear.

FICHE AMENDEMENT**Proposition d'amendement à l'ArtI-7.Demiralp.doc****Déposée par ~~Madame ou~~ Monsieur Oğuz DEMIRALP****Qualité : ~~Membre~~ - Suppléant**

Article I-7: Droits fondamentaux**• Remplacer le terme « s'emploie » par « accomplit tout ce qui lui incombe afin de » :**

2. L'Union ~~s'emploie~~ **accomplit tout ce qui lui incombe afin à d'**adhérer à la Convention européenne de sauvegarde des droits de l'Homme et des libertés fondamentales. L'adhésion à cette Convention ne modifie pas les compétences de l'Union telles que définies dans la présente Constitution.

Explication éventuelle :

Avec l'incorporation de la Charte des droits fondamentaux dans le Traité constitutionnel l'Union franchit un pas considérable dans le domaine de la protection des droits fondamentaux. Par ailleurs, dans le cadre de la Convention européenne de sauvegarde des droits de l'Homme et des libertés fondamentales, qui a valeur constitutionnelle, il y a un processus dynamique qui a permis un développement sans précédent en ce qui concerne la protection de ses droits et libertés depuis 1950. Compte tenu du fait que tous les Etats membres et les futurs Etats membres de l'Union sont aussi partie à cette Convention, il conviendrait d'éviter toute duplication et concurrence entre le système communautaire et européen en ce qui concerne les droits fondamentaux. En outre, l'adhésion de l'Union à la Convention européenne permettrait d'éviter une nouvelle division en Europe sur la base des droits fondamentaux.

AMENDMENT FORM**Suggestion for amendment of Article : I-7****By Mr : Hain****Status : - Member -**

-
1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes ~~the Second Part of a~~ Protocol annexed to this Constitution.
 2. The Union ~~shall~~may seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined in this Constitution.
 3. *OK.*
-

Explanation (if any) :

1. *Repeated amendment: The Charter should be included only as a Protocol.*
2. *Repeated amendment: The first draft of this Article had 'may' rather than 'shall' – we prefer the original wording.*

FICHE AMENDEMENT**Proposition d'amendement à l'Article : Artigo 5, n.º3 bis, novo****Déposée par Monsieur : Luís QUEIRÓ****Qualité : Suppléant**

3. L'Union européenne donnera une priorité particulière à l'intérêt des enfants dans toutes les décisions prises dans les limites des dispositions du Traité, et comme prévu dans la Convention sur les droits de l'enfant.

Explication éventuelle :

Les droits des mineurs doivent être considérés comme fondamentaux et inclus dans le nouveau Traité. Jusqu'à maintenant, les bébés sont seulement considérés comme d'éventuelles victimes, des personnes à charge et interdites de travail. Ou encore exclusivement comme objet de protection plutôt que comme sujets de droits. Ceci est en contradiction avec l'esprit et al lettre de la Convention sur les droits de l'enfant de 1989.

L'ajout permettra entre autre de :

1. garantir que la politique et la législation de l'Union n'auront plus un impact négatif sur les mineurs ;
2. reconnaître la transnationalité des droits des enfants, évident aussi dans le fait qu'une série de directives européennes ont un impact sur les mineurs, comme celles en matière de media et de politique pour les consommateurs, de réglementation de l'asile ou du combat contre les phénomènes du trafic et de l'abus de mineurs ;
3. garantir que l'UE respecte et prend en considération les droits des mineurs dans l'approbation des lois qui peuvent avoir un impact direct ou indirect sur les enfants. Les besoins et les droits des mineurs diffèrent de ceux des adultes, et ceci est amplement exprimé dans la Convention sur les droits de l'enfant, ratifiée par tous les États-membres de l'Union comme par les pays candidats.

FICHE AMENDEMENT**Proposition d'amendement à l'Article : Article 5, paragraphe 3 bis, nouveau****Déposée par Monsieur : Luís QUEIRÓ****Qualité : Suppléant**

3. L'Union européenne donnera une priorité particulière à l'intérêt des enfants dans toutes les décisions prises dans les limites des dispositions du Traité, et comme prévu dans la Convention sur les droits de l'enfant.

Explication :

Les droits des mineurs doivent être considérés comme fondamentaux et inclus dans le nouveau Traité. Jusqu'à maintenant, les bébés sont seulement considérés comme d'éventuelles victimes, des personnes à charge et interdites de travail. Ou encore exclusivement comme objet de protection plutôt que comme sujets de droits. Ceci est en contradiction avec l'esprit et al lettre de la Convention sur les droits de l'enfant de 1989.

L'ajout permettra entre autre de :

1. garantir que la politique et la législation de l'Union n'auront plus un impact négatif sur les mineurs ;
2. reconnaître la transnationalité des droits des enfants, évident aussi dans le fait qu'une série de directives européennes ont un impact sur les mineurs, comme celles en matière de media et de politique pour les consommateurs, de réglementation de l'asile ou du combat contre les phénomènes du trafic et de l'abus de mineurs ;
3. garantir que l'UE respecte et prend en considération les droits des mineurs dans l'approbation des lois qui peuvent avoir un impact direct ou indirect sur les enfants. Les besoins et les droits des mineurs diffèrent de ceux des adultes, et ceci est amplement exprimé dans la Convention sur les droits de l'enfant, ratifiée par tous les États-membres de l'Union comme par les pays candidats.

FICHE AMENDEMENT**Proposition d'amendement à l'Article : Artigo 5, n.º1****Déposée par Monsieur : Luís QUEIRÓ****Qualité : Suppléant**

1. A Carta dos Direitos Fundamentais **fica anexa ao presente Tratado** e consta...

Explication éventuelle :

FICHE AMENDEMENT**Proposition d'amendement à l'Article : Article 5, paragraphe 1****Déposée par Monsieur : Luís QUEIRÓ****Qualité : Suppléant**

1. La Charte des Droits Fondamentaux **figure dans une annexe du Traité.**

Explication:

AMENDMENT FORM**Suggestion for amendment of:** Article 5 (1)**By:** Professor Jürgen Meyer, delegate of the German Bundestag**Status :** - Member -

Aim:

To incorporate the Charter of Fundamental Rights, including the preamble, at the beginning, or at least in the second part, of the Constitution

Explanation :

With the Charter of Fundamental Rights, the EU has made it unmistakably clear that it considers itself to be a European union of values going beyond a purely economic community. The Charter incorporates, in one single text, in chapters on human dignity, freedoms, equality, solidarity, citizens' rights and justice, a balanced and up-to-date catalogue of specific rights, general freedoms, values and principles. At the same time, it reaffirms the constitutional traditions common to the Member States and the unique European social model. The European citizens have already begun to invoke the Charter in their petitions to the European parliament and their complaints to the European Ombudsman. The commitment to safeguarding fundamental and human rights demonstrated by the EU in the Charter belongs at the beginning of a future European Constitution. This applies in particular to the preamble, which is the result of intense debates and a balanced political compromise in the first Convention.

In case the charter should be integrated in the second part of the constitution, Art. 5 should read as follows :

Article 5: Fundamental rights

- (1) The fundamental rights of the citizens of the Union, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall derive from the Charter of Fundamental Rights in the second part of this Constitution.
- (2) The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms and to other international agreements safeguarding human rights. Accession to these agreements shall not affect the Union's competences as defined by this Constitution.

FICHE AMENDEMENT

Proposition d'amendement à l'Article:	5
Déposée par Monsieur:	Erwin Teufel
Qualité:	Membre

*Texte du Praesidium**Amendement proposé*

- | | |
|---|--|
| <p>(1) La Charte des Droits Fondamentaux fait partie intégrante de la Constitution. La Charte figure [dans la deuxième partie de / dans un protocole annexé à] de celle-ci.</p> | <p>(1) L'Union reconnaît les droits fondamentaux énumérés ci-après.</p> |
| <p>(2) L'Union peut d'adhérer à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales. L'adhésion à cette Convention ne modifie pas les compétences de l'Union telles que définies par la présente Constitution.</p> | <p>(2) Les droits fondamentaux énumérés ci-après ne créent aucune compétence ni aucune tâche nouvelles pour l'Union et ne modifient pas les compétences et tâches définies par ce Traité constitutionnel.</p> |
| <p>(3) L'Union peut d'adhérer à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales. L'adhésion à cette Convention ne modifie pas les compétences de l'Union telles que définies par la présente Constitution.</p> | <p>(3) L'Union peut adhérer à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales. L'adhésion à cette Convention ne modifie ni les compétences de l'Union telles que définies par la présente Constitution ni la délimitation des compétences entre l'Union et les Etats membres.</p> |
| <p>(3) Les droits fondamentaux, tels qu'ils sont garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et tels qu'ils résultent des traditions constitutionnelles communes aux Etats membres, font partie</p> | <p>(4) Les droits fondamentaux, tels qu'ils sont garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et tels qu'ils résultent des traditions constitutionnelles communes aux Etats membres, font partie</p> |

du droit de l'Union en tant que principes
généraux.

du droit de l'Union en tant que principes
généraux.

Explication:

Il conviendrait de reprendre le texte de la Charte des droits fondamentaux dans la première partie. Les droits fondamentaux sont un élément essentiel de toute Constitution. Leur intégration entière garantit une meilleure visibilité pour le citoyen. Pour des raisons systématiques le texte de l'article 51 (2) de la Charte des droits fondamentaux devrait être placé déjà ici (al. 2).

AMENDMENT FORM**Suggestion for amendment of Article : 5 (1)**

By Ms / Mr : Representatives of the Assembly of the Republic - Portugal

Members Maria Eduarda Azevedo, Alberto Costa

Alternates António Nazaré Pereira, Guilherme d'Oliveira Martins

Status :

Article 5

Fundamental Rights

1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union, which shall be an integral part of the present Constitution.

2. (...)

3. (...)

FICHE AMENDEMENT**Proposition d'amendement à l'Article : 5****Déposée par Madame ou Monsieur :** Représentants de l'Assemblée de la République - Portugal

- **Membre:** Maria Eduarda Azevedo, Alberto Costa
 - **Suppléant:** António Nazaré Pereira, Guilherme d'Oliveira Martins
-

Article 5

Droits fondamentaux

1. L'Union reconnaît les droits, les libertés et les principes énoncés dans la Charte des droits fondamentaux de l'Union européenne, qui fait partie intégrante de cette Constitution.

2. (...)

3. (...)

Proposition d'amendement à l'Article 5

Déposée par Madame Elena Paciotti et Monsieur Valdo Spini, Suppléants

EN Version

Articolo 5: Diritti fondamentali

1. *I diritti fondamentali dell'Unione europea sono enunciati nella Carta dei diritti fondamentali che costituisce la prima parte della Costituzione (resto soppresso).*

[2. L'Unione può aderire alla Convenzione europea di salvaguardia dei diritti dell'uomo e delle libertà fondamentali, *ai trattati e alle organizzazioni internazionali che assicurano la protezione dei diritti fondamentali. Tali adesioni non modificano le competenze dell'Unione definite dalla presente Costituzione.*]

3. *Soppresso*

Explication éventuelle:

1. *La Carta dei diritti fondamentali non costituisce un'aggiunta alla Costituzione, ma una sua parte.*

2. *Il paragrafo potrebbe anche essere soppresso perché l'attribuzione della personalità giuridica all'Unione e l'integrazione della Carta dei diritti fondamentali nella Costituzione dovrebbero superare gli ostacoli all'adesione individuati dalla Corte di Giustizia (che ha rilevato la mancanza di competenza dell'Unione nel campo dei diritti fondamentali). Ove così non fosse bisognerebbe aggiungere analoga facoltà di adesione ai trattati e alle organizzazioni che assicurano la protezione dei diritti fondamentali affinché la specifica autorizzazione ad aderire alla CEDU non appaia come limitativa.*

3. *Il paragrafo è superfluo e fonte di possibili equivoci. Esso ripete la formula dell'articolo 6 paragrafo 2 del Trattato UE che è superato dall'avvenuta approvazione della Carta dei diritti fondamentali e dalla sua integrazione nella Costituzione. Infatti, sia i diritti derivanti dalle tradizioni costituzionali comuni, sia quelli sanciti dalla CEDU sono già inclusi nella Carta, come risulta dal preambolo e dagli articoli 52 e 53 della stessa. Poiché i cataloghi dei diritti fondamentali presenti nelle costituzioni non sono mai interpretabili come esaustivi, non c'è bisogno di citare queste fonti per consentire un'eventuale interpretazione evolutiva della Carta. Al contrario, poiché nel preambolo della stessa sono indicate altre fonti da cui sono tratti i diritti fondamentali vigenti nell'Unione, la menzione di sole due fonti rischia di avere un significato limitativo.*

Proposition d'amendement à l'Article 5

Déposée par Madame Elena Paciotti and Monsieur Valdo Spini, Suppléants

EN Version

Article 5: Fundamental rights

1. *The fundamental rights of the European Union are stated in the Charter of Fundamental Rights which constitutes the first part of the Constitution.*

2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms, *and to international treaties and organisations that ensure the protection of fundamental rights*. Accession to *these* shall not affect the Union's competencies as defined by this Constitution.

3. *Suppressed*

Explication éventuelle:

1. *The Charter of Fundamental rights is not an appendage of the Constitution but a part of it.*

2. *The paragraph could be suppressed because the attribution of legal status to the Union and the integration of the Charter of Fundamental Rights in the Constitution should overcome the obstacles to accession noted by the Court of Justice (it noticed the Union's lack of competence in the area of fundamental rights). Where this is not the case, an analogous provision for accession to treaties and organisations that ensure the protection of fundamental rights should be added, so that the specific authorisation given for accession to the ECHR is not considered a limiting factor.*

3. *The paragraph is superfluous and a source of possible misconceptions. It repeats the words of article 6 paragraph 2 of the EU Treaty, which was superseded by the approval of the Charter of Fundamental Rights and its integration into the Constitution. In fact, both the rights that derive from common constitutional traditions, and those sanctioned by the ECHR are included in the Charter, as can be seen in the preamble and articles 52 and 53 of the same. Since the catalogues of fundamental rights present in the constitutions can never be interpreted as exhaustive, there is no need to quote these sources in any future elaboration of the Charter. On the contrary, since the preamble to the same indicates other sources for the fundamental rights in force in the Union, to mention just two sources could be seen as a limiting factor.*

AMENDMENT FORM**Suggestion for amendment of Article : 5 (2)**

By Mr : **R. VAN DER LINDEN** **(member)**
 F. TIMMERMANS **(member)**
 W. VAN EEKELEN **(alternate member)**
 J.J. VAN DIJK **(alternate member)**

The Union **wants to** accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.

Explanation (if any) :

The reasons why the EU should accede to the ECHR have been adequately and convincingly set out in the final report unanimously adopted by Working Group II and largely endorsed by the Plenary Convention, where a very strong tendency in favour of accession emerged.

It is therefore essential to ensure that accession is not only made *legally possible* in the future EU-Constitution, but also *effectively pursued* as an option agreed upon by the Convention, in order to maintain the parallelism which was expediently established by the Laeken Declaration between the Charter and the ECHR.

The most appropriate way to secure this is to lay down an obligation to this effect in the future Constitution, as proposed by the amendment above. Alternatively, and in any event, a clear statement to the effect that the EU should accede to the ECHR should be made by the Convention, either in the introduction or in the explanations to the Constitutional Treaty.

AMENDMENT FORM**Suggestion for amendment of Article:** 5§1**By Mr: Paraskevas AVGERINOS****Status: Member**

Ο Χάρτης των Θεμελιωδών Δικαιωμάτων αποτελεί συστατικό τμήμα του Συντάγματος. Ο Χάρτης περιλαμβάνεται [στο δεύτερο μέρος του/ σε πρωτόκολλο προσαρτώμενο] στο Σύνταγμα.

Ο Χάρτης των Θεμελιωδών Δικαιωμάτων αποτελεί συστατικό τμήμα του Συντάγματος. Ο Χάρτης περιλαμβάνεται **στο δεύτερο μέρος του Συντάγματος.**

Explanation:

Ενώ η νομική ισχύς είναι η ίδια για τις δύο περιπτώσεις [δεύτερο μέρος ή πρωτόκολλο], για τους ευρωπαίους πολίτες έχει πολιτική σημασία ο Χάρτης να βρίσκεται στο σώμα του Συντάγματος.

AMENDMENT FORM**Suggestion for amendment of Article : 5****By Ms / Mr : Marie Nagy****Status : - Member - Alternate**

TITLE II: Fundamental rights and citizenship of the Union**Article 5: Fundamental rights**

1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out ~~[in the second part of/in a Protocol annexed to]~~ **in the second part** of this Constitution.
 2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms **and to other international agreements for the protection of Human and Fundamental Rights**. Accession to that Convention or to other **international agreements** shall not affect the Union's competences as defined by this Constitution.
 3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.
-

Explanation (if any) :

FICHE AMENDEMENT

Proposition d'amendement à l'Article 5

Déposée par Monsieur Dominique de Villepin

Qualité : Membre

Article 5: Droits fondamentaux

1. La Charte des Droits Fondamentaux fait partie intégrante de la Constitution. La Charte figure **dans la deuxième partie de celle-ci.**
 2. [L'Union peut **décider d'adhérer** à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales. L'adhésion à cette Convention ne modifie pas les compétences de l'Union telles que définies par la présente Constitution.]¹
 3. Les droits fondamentaux, tels qu'ils sont garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et tels qu'ils résultent des traditions constitutionnelles communes aux Etats membres, font partie du droit de l'Union en tant que principes généraux.
-

Explication éventuelle :

¹ Le paragraphe 2 du projet d'article 5, qui constituerait la base juridique d'une éventuelle adhésion de l'Union à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, trouverait davantage sa place dans la seconde partie du traité constitutionnel.

AMENDMENT FORM**Suggestion for amendment of Article : 5.2****By Lord Tomlinson****Status : - Alternate**

2nd sentence - change word "affect" to "extend"

Explanation (if any) :

AMENDMENT FORM**Suggestion for amendment of Article : 5.1****By Lord Tomlinson****Status : Alternate**

The House of Lords has broadly supported HM Government concerning their view of the Charter of Fundamental Rights and I do not support the Charter as being an integral part of the Constitution.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article 5

By Mr Andrew Duff, Mr Dimitrij Rupel, Mr Paul Helminger, Lord MacLennan,
Mr István Szent-Iványi, Ms Teresa Almeida-Garrett and Mr Lamberto Dini.

Status : Members and alternate members.

Article 5: Fundamental rights

- 5.1 The Charter of Fundamental Rights, *as set out in Chapter Two*, shall be an integral part of the Constitution.
- 5.2 The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms *and other international human rights conventions*. Accession *to them* shall not affect the Union's competences as defined by this Constitution.
- 5.3 Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.
-

Explanation:

5.1 *Of the options available for the installation of the Charter in the Constitution, its publication as a second chapter of Part One would seem to offer the greatest visibility and comprehension. Its annexation as a Protocol would be equivalent in legal terms, but it would in that case be necessary to spell out (and therefore repeat without divergence) some of the Charter's key points in this Title II.*

The Chapter Two solution proposed here would allow the Convention to shorten radically Article 7 on citizenship.

5.2 *Although the ECHR is the principal human rights convention, and in the light of the jurisprudence of the European Court of Justice may need a specific mention in the Constitution, it is not the only one.*

FICHE AMENDEMENT**Proposition d'amendement à l'Article : Article 5****Déposée par ~~Madame ou~~ Monsieur : Oğuz DEMIRALP****Qualité : ~~-Membre-~~ - Suppléant**

Article 5 (2) :

Ajouter dans la deuxième phrase : « **la répartition des compétences entre l'Union et les Etats Membres** ».

La nouvelle deuxième phrase se lit comme suit :

L'adhésion à cette Convention ne modifie pas **la répartition des compétences entre l'Union et les Etats Membres telles que définies par la présente Constitution.**

Explication éventuelle :

Cette modification semble nécessaire, car la phrase « l'adhésion à cette Convention ne modifie pas les compétences de l'Union » ne reflète pas correctement le but recherché, tel que défini dans la note explicative (p.13), qui est d'empêcher la répartition des compétences entre l'Union et les Etats Membres de pâtir de l'adhésion.

FICHE AMENDEMENT**Proposition d'amendement à l'Article : Art. 5 par. 1****Déposée par Madame Cristiana MUSCARDINI****Qualité : Membre**

Il paragrafo 1 è sostituito dal seguente paragrafo:

"Il Trattato costituzionale fa riferimento alla Carta dei diritti fondamentali."

FICHE AMENDEMENT**Proposition d'amendement à l'Article : Article 5****Déposée par ~~Madame ou~~ Monsieur : Oğuz DEMIRALP****Qualité : ~~-Membre-~~ - Suppléant**

Article 5 (1) : Les droits fondamentaux :

Retenir la formule « **La charte figure dans un Protocole annexé à celle-ci** ».

Ainsi l'article 5(1) devient comme suit :

La charte des droits fondamentaux fait partie intégrante de la Constitution. **La charte figure dans un Protocole annexé à celle-ci.**

Explication éventuelle :

Le but de la Convention est de rédiger un texte constitutionnel simple et lisible pour les citoyens. Intégrer la Charte telle qu'elle est, conduirait à un texte constitutionnel nécessairement volumineux. En outre, son intégration textuelle dans le futur Traité nécessiterait la modification de certains de ses articles. Matériellement, il serait difficile pour la Convention de se livrer à un tel exercice.

Fiche amendement**Proposition d'amendement à l'article : 5****Déposée par MM. Santer, Helminger, Fayot****En qualité de MEMBRES**

Il est proposé de reprendre la Charte dans un Titre Ier de la Constitution. Il faut noter que la plupart des dispositions du Titre II consacré aux « droits fondamentaux et à la citoyenneté de l'Union » se retrouvent déjà dans la Charte. L'actuel Titre Ier deviendrait le Titre II. Le nouveau premier titre pourrait être complété par les dispositions ne figurant pas dans la Charte, telles que la définition de la citoyenneté de l'Union et l'adhésion de l'Union à la Convention européenne de sauvegarde des droits de l'Homme et des libertés fondamentales. Cette disposition devrait être formulée de la manière suivante :

« L'Union s'engage à adhérer à la Convention européenne de sauvegarde des droits de l'Homme et des libertés fondamentales. L'adhésion... »

Explication :

L'Union possédant dorénavant la personnalité juridique a vocation à adhérer à la CEDH. L'amendement vise à prendre un engagement ferme à cet égard, indispensable dans un souci d'unicité et de cohérence de la future interprétation et jurisprudence en matière de droits de l'Homme et de libertés fondamentales.

FICHE AMENDEMENT**Proposition d'amendement à l'Article : Art. 5****Déposée par Madame Cristiana MUSCARDINI****Qualité : Membre**

Aggiungere un par. 4 :

"L'Unione europea darà una considerazione preminente all'interesse superiore del fanciullo in tutte le decisioni prese nell'ambito delle disposizioni del Trattato, così come sancito dalla Convenzione sui diritti del fanciullo."

Motivazione:

I diritti dei minori devono essere compresi tra quelli fondamentali e devono essere inclusi nel nuovo Trattato. Fino ad ora i bambini sono considerati solo come eventuali vittime, persone a carico o impedimenti al lavoro. Dunque ancora esclusivamente come oggetto di tutela piuttosto che come soggetti di diritto, E ciò in contrasto con lo spirito e la lettera della Convenzione sui Diritti del Fanciullo del 1989. L'inserimento contribuirebbe inoltre a:

1. garantire che le politiche e la legislazione dell'Unione non abbiano più un impatto negativo sui minori;
2. riconoscere la transnazionalità dei diritti dei minori, evidente anche dal fatto che una serie di direttive europee hanno un impatto sui minori, come quelle in materia di *media* e di politiche per i consumatori, o politiche per regolare l'asilo o per combattere il fenomeno del traffico e di abuso di minori;

garantire che l'UE rispetti e tenga in considerazione i diritti dei minori nell'approvazione delle leggi che possono avere un impatto diretto o indiretto sui minori. I bisogni e i diritti dei minori differiscono da quelli degli adulti, e ciò è ampiamente espresso nella Convenzione sui diritti del fanciullo, ratificata da tutti gli stati membri dell'Unione, così come dai Paesi candidati all'adesione.

AMENDMENT FORM

Suggestion for amendment of Article 5.1, Title II

By : Mrs Sandra Kalniete (LV Gov., Member), Mr Roberts Zile (LV Gov., Alternate), Mrs Liene Liepina (LV Parl., Member), Mr Rihards Piks (LV Parl., Member), Mr Arturs Krisjanis Karins (LV Parl., Alternate), Mr Guntars Krasts (LV Parl., Alternate).

- Replace the title “Constitution” by the “Constitutional treaty” (in the whole text);
- Delete the following part of first sentence “*shall be an integral part of the Constitution*”;
- The Charter shall be annexed to the Constitutional Treaty as a Protocol.

*1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out ~~in the second part of~~ in a Protocol annexed to this **Constitutional Treaty**.*

Explanation (if any) :

The Union is a specific entity, which is based on the several establishing Treaties. Taking into account that the constitutional issues in the EU are approved on the basis of the agreement between the Member States in form of the treaties, the new Treaty should be defined as the Constitutional Treaty.

The Charter of Fundamental Rights itself consists of more than 50 articles and it is thus not practical to include the entire text of the Charter into the body of the Constitutional Treaty text. Given the orderly structure of the Constitutional Treaty and the laconic nature of its text, the Charter of Fundamental rights should be annexed to the Treaty as a Protocol.

Insertion of the Charter as a Protocol should allow the Member States when they decide on the entering into force of the Constitutional Treaty to decide separately about the entering into force of the Protocol. This would allow the Member States to negotiate a time schedule that will determine when the given rights will become binding.

AMENDMENT FORM**Suggestion for amendment of Article 5.1 and 5.2:**

By Mrs Lena Hjelm-Wallén and Mr Sven-Olof Petersson, government representatives and Mr Sören Lekberg, Mr Göran Lenmarker and Mr Kenneth Kvist, national parliament representatives.

Status : - **Members: Hjelm-Wallén, Lekberg and Lenmarker**
- **Alternates: Petersson and Kvist**

1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out [~~in the second part of~~¹ /in a Protocol annexed] to this Constitution.²

2. The Union [may accede] **shall seek accession to**³ to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.

Explanation

¹ The Charter should not be set out in Part II of the Treaty (The Charter does not provide any legal basis for the implementation of policies).

² The Laeken Declaration rightly established parallelism between “incorporation of the Charter” and “accession to the ECHR”, not only in substance but implicitly also as regards the timing of their respective implementation.

³ An enabling clause must be combined with a clear commitment by the high contracting parties in favour of accession.

AMENDMENT FORM**Suggestion for amendment of Article : 5****By Ms : Giannakou Marietta****Status : - Member**

Article 5: Fundamental rights

1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out *in the second part of this Constitution*.

Explanation (if any) :

AMENDMENT FORM**Suggestion for amendment of Article 5 :****By Mr Joschka Fischer****Status : - Member**

Artikel 5: Grundrechte

(1) Die Charta der Grundrechte ist ~~integraler Bestandteil der Verfassung. Die Charta ist [im zweiten Teil dieser Verfassung/ in einem dieser Verfassung beigefügten Protokoll]~~ wiedergegeben.

1

(2) Zusätzlich zu den in der Grundrechtecharta anerkannten Rechten achtet die Union die Grundrechte, wie sie in der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten gewährleistet sind und wie sie sich aus den gemeinsamen Verfassungsüberlieferungen der Mitgliedstaaten ergeben.

(3) Die Union kann der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten beitreten. Der Beitritt zu dieser Konvention berührt nicht die in dieser Verfassung festgelegten Zuständigkeiten der Union.

~~(3) Die Grundrechte, wie sie in der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten gewährleistet sind und wie sie sich aus den gemeinsamen Verfassungsüberlieferungen der Mitgliedstaaten ergeben, gehören zu den allgemeinen Grundsätzen des Gemeinschaftsrechts.~~

¹ [Der vollständige Wortlaut der Charta wird mit sämtlichen redaktionellen Anpassungen, die im Schlussbericht der Gruppe II (CONV 354/02) aufgeführt sind, an herausgehobener Stelle in diesem Verfassungsvertrag aufgenommen, ~~entweder in einen zweiten Teil der Verfassung oder in ein Protokoll zur Verfassung aufgenommen~~; die Entscheidung hierüber liegt beim Konvent.]

Explanation (if any) :

Das Wort "integral" in Absatz 1 ist überflüssig. Die Charta sollte an herausragender Stelle des Verfassungvertrags erscheinen (am besten unmittelbar nach der Präambel der Verfassung). Die Protokolllösung scheidet aus, da sie nicht der Würde und dem Stellenwert der Charta als Ausdruck der europäischen Werteordnung entspricht. Der neue Absatz 2 übernimmt die Formulierung aus Art. 6 (2) EUV. Der bisherige Absatz 2 sollte aus systematischen Gründen Absatz 3 werden.

AMENDMENT FORM**Suggestion for amendment of Article: 5**

By Ms / Mr : Mr. Ms. Irena Belohorska – member, Jan Zahradil – member, Mr. Jens-Peter Bonde - member, Mr. David Heathcoat-Amory - member, Mr. William Abitbol - alternate, Mr. Peter Skaarup - member, Mr. Per Dalgaard - alternate, Mr. Esko Seppänen – alternate, and Mr. John Gormley - alternate.

Article 5: Fundamental rights

1. The Charter of Fundamental Rights binds the European institutions. The Europe of Democracies respects the European Convention for the Protection of Human Rights and Fundamental Freedoms and the basic rights of the national constitutions.¹
2. The Europe of Democracies may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

¹ [The full text of the Charter, with all the drafting adjustments given in Working Group II's final report (CONV 354/02) will be set out either in a second part of the Constitution or in a Protocol annexed thereto, as the Convention decides.]

AMENDMENT FORM

Suggestion for amendment of Articles 1.1., 3.2. and 5.2

By Alexander Arabadjiev

Status: Alternate Member (Bulgarian Parliament)

(a) In Article 1.1. *citizens* of the EU – along with peoples and States- should be mentioned;

(b) In Article 3.2. *socal market economy* should ebe added as EU objective;

(c) In Article 5.2. **in stead of:**

The Union ‘may’ accede

The Union **shall** accede

Explanation:

With respect to (c) above - The question of accession is of “constitutional significance” and the Convention must pronounce itself clearly in favour of accession. Under the conclusions of Working Group II accession is regarded as a complementary (to incorporation of the Charter) and not an alternative option.

AMENDMENT FORM

Suggestion for amendment of Article 5:

By Elmar BROK, Jozsef SZAJER, Erwin TEUFEL, René VAN DER LINDEN, Frantisek KROUPA, John CUSHNAHAN, Teresa ALMEIDA GARRETT, Peter ALTMAIER, Jan FIGEL, Piia Noora KAUPPI, Hanja MAIJ-WEGGEN, Reinhard RACK, Joachim WÜRMEILING

on behalf of the EPP Convention Group

Status: Members and Alternates

Text of the Praesidium

Proposed Amendments

Article 5: Fundamental rights

1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out [in the second part of/in a Protocol annexed to] this Constitution.

2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

**IMPORTANT STRUCTURAL
AMENDMENT:**

The Charter should be inserted in its full text at the very beginning of the Constitution, in Part One, in a Title I “Charter of Fundamental Rights and Citizenship of the Union”.

The Constitution would then start with “Human Dignity” as Article 1, would include Citizenship of the Union (Article 17 EC) as Article 51 of the Charter and would end with Article 55 (Prohibition of abuse of rights).

As a consequence, Title I of the Praesidium text should become Title II. The Articles of the Praesidium text should be renumbered accordingly.

For a full-text example, see the EPP Discussion Paper (Frascati text, as amended, 27 January 2003).

Article 5: Fundamental rights

~~1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out [in the second part of/in a Protocol annexed to] this Constitution.~~

2. The Union may *shall request to* accede to the European Convention for the Protection of Hu-

man Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.

~~3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.~~

Explanation:

Para 1:

– *The insertion of the Charter as a **full text** and **at the very beginning of the Constitution** was clearly the preferred option of Convention Working Group II “Charter” (see page 3 of its Final Report, where “insertion of the text of the Charter articles at the beginning of the Constitutional Treaty” is presented as the first of three options. It is then said: „a large majority of the Group would prefer the first option in the interest of a greater legibility of the Constitutional Treaty“. We share this recommendation of the Working Group for the following reasons:*

- (1) To integrate the full text of the Charter into the Constitution makes its rights and duties **clearly visible to the citizens of the Union** which, according to the Charter, should be placed at the heart of the Union’s activities.*
- (2) To start the Constitution with the Charter would stress that the Union is a **“Union of values”**. It would reflect the fundamental respect of the Union for human dignity (which would figure prominently as Article 1 of the Constitution) and thereby give the best possible evidence of the Christian origins of European civilisation. It should be recalled that the Constitutions of Finland, the Netherlands, Portugal and Germany also start with Fundamental Rights (the latter did so after the historic experience of a barbaric and inhuman regime which had come to power under a Constitution which had placed the Fundamental Rights Chapter in an Annex to the Constitution of Weimar ...).*
- (3) The full-text integration of the Charter at the beginning of the Constitution also **would make the drafting of the rest of the Constitution simpler and shorter**. In particular, it would make numerous Articles of the current *acquis* superfluous as they are already fully integrated into the Charter. For example: the Charter already includes all rights related to Union citizenship (Articles 39-46 Charter; today Articles 18-21, 255 EC of the Treaty), which therefore would not have to be repeated in the Constitutional Text, as currently suggested by the Praesidium text in Article 7; the Charter also includes the prohibition of discrimination on grounds of nationality (Article 21(2) Charter), equality between women and men (Article 21(1), 23 Charter; today Article 141 EC Treaty) as well as a number of economic rights granted by the EC Treaty, such as the right of free movement of workers, of services and the freedom of establishment (Article 15(2) Charter; today Articles 39, 43, 49 EC Treaty); the Charter includes furthermore a number of the important transversal objectives of the EC Treaty, such as a high level of human health protection (Article 35 Charter; today Article 152(1) EC Treaty), a high level of environment protection (Article 37 Charter; today Article 2, 6, and 174 EC Treaty) and a high level of consumer protection (Article 38*

Charter; today Article 153 EC Treaty); and finally, the Charter already guarantees access to services of general interest in order to promote economic and social cohesion of the Union (Article 36 Charter; see today Article 16 EC Treaty). Following inclusion of the full Charter at the beginning of Part One of the Constitution, all these provisions would not to have be repeated in the remaining text of the Constitution. Their legal importance would be beyond doubt, in view of their prominent location.

- It is no counter-argument to a full-text integration of the Charter that such an integration could lead to problems regarding its **Preamble**. The essential elements of the preamble of the Charter can easily be integrated into the Preamble of the Constitution which should take over the main elements of the Charter. For an illustrative example, see the Preamble in the EPP Discussion Paper (Frascati text, as amended, 27 January 2003), which combines the Preamble of the Charter with elements of the ECSC Treaty, the EU Treaty and the EC Treaty. See also our amendment proposing integration of such a Preamble in the Constitutional Text.
- The Charter states, in its Article 51 (2) that it **does not extend the scope of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks defined by this Constitution** (text of the Charter, as clarified by the recommendations of Convention Working Group II “Charter”).

Para 2:

- **Enabling clause for ECHR accession:** could better be integrated either as an additional provision at the end of the Charter or, alternatively, in the constitutional provisions on the treaty-making power of the Union. As an example for the latter, see Article 124(2), subpara 2, 5th indent of the EPP Discussion Paper (Frascati text, as amended, 27 January 2003).

Para 3:

- is a superfluous provision if the Charter is integrated into the Constitution. It is the very purpose of the Charter to reaffirm the fundamental rights as integral parts of primary law as they result from the ECHR and from the constitutional traditions of the Member States (as well as from other sources) – see the fifth paragraph of the Preamble of the Charter.

AMENDMENT FORM**Suggestion for amendment of Article : 5****By MM : Kiljunen and Vanhanen****Status : - Members**

-
1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out **in a Protocol annexed** to this Constitution.
 2. The Union **shall take the necessary steps to** accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.
 3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Explanation (if any) :

It is clear that the Charter of Fundamental Rights belongs to provisions that are constitutional to their nature. It follows that the Charter should be annexed to the Constitution as a protocol with a status equivalent to that of Part I. Since the Charter and the ECHR are complementary to each other, there should a clearer commitment by the Union to bring about the accession to the ECHR

Amendments submitted by Teija Tiilikainen and Antti Peltomäki 17 February 2003

Article 5: Fundamental rights

1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out **in a Protocol annexed** to this Constitution.
2. The Union **shall take the necessary steps to** accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Commentary:

It is clear that the Charter of Fundamental Rights belongs to provisions that are constitutional to their nature. It follows that the Charter should be annexed to the Constitution as a protocol with a status equivalent to that of Part I.

Since the Charter and the ECHR are complementary to each other, there should a clearer commitment by the Union to bring about the accession to the ECHR.

AMENDMENT FORM**Suggestion for amendment of Article 5****By Mr. Ivan Korčok (SK)****Status : - Member**

Article 5: Fundamental rights

1. The Charter of Fundamental Rights shall be ~~an integral part of the Constitution~~ a legally binding document. The Charter is set out ~~[in the second part of]~~ in a Protocol annexed to] this ~~Constitution~~ Constitutional Treaty.
2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this ~~Constitution~~ Constitutional Treaty.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Explanation (if any) :

AMENDMENT FORM**Suggestion for amendment of Article 5 :****By Mr : Ingvar SVENSSON****Status : - Alternate**

1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out ~~[in the second part of/in a Protocol annexed to]~~ in this Constitution.

2. The Union ~~may accede~~ **shall seek accession** to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Explanation:**Article 5.1**

The Charter of Fundamental Rights should be a part of the Constitution, but is not necessary to state where in the Constitution the Charter can be found. That will be obvious when the Constitution is complete.

Article 5.2

It is important that the Union seeks accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

FICHE AMENDEMENT**Proposition d'amendement à l'Article : 5****Déposée par Madame ou Monsieur : Mme PALACIO****Qualité : - Membre - Suppléant**

Article 5: Droits fondamentaux

1. ~~L'Union respecte les droits, les libertés et les principes énoncés par la Charte des Droits Fondamentaux figurant dans la Partie Ibis de la Constitution. [La Charte des Droits Fondamentaux fait partie intégrante de la Constitution. La Charte figure [dans la deuxième partie de / dans un protocole annexé à] de celle-ci].~~
 2. L'Union peut adhérer à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales. L'adhésion à cette Convention ne modifie pas les compétences de l'Union telles que définies par la présente Constitution.
 3. Les droits fondamentaux, tels qu'ils sont garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et tels qu'ils résultent des traditions constitutionnelles communes aux Etats membres, font partie du droit de l'Union en tant que principes généraux.
-

Explication:

Il faut que la pleine valeur constitutionnelle de la Charte soit absolument claire.

AMENDMENT FORM**Suggestion for amendment of Article : 5****By Mr : Gianfranco FINI****Status : - Member**

Articolo 5: Diritti fondamentali

1. La Carta dei diritti fondamentali ~~é,~~ parte integrante della **presente** Costituzione, **è contenuta in un Protocollo allegato**. ~~Il testo della Carta è contenuto in un protocollo [nella seconda parte della / in un protocollo allegato alla] stessa.~~
2. ***L'esercizio dei diritti delineati nella Carta si esercita in quanto compatibile con l'ordinamento giuridico di ciascuno Stato membro***
3. L'Unione può aderire alla Convenzione europea di salvaguardia dei diritti dell'uomo e delle libertà fondamentali. L'adesione a tale Convenzione non modifica le competenze dell'Unione definite dalla presente Costituzione.
4. I diritti fondamentali, garantiti dalla Convenzione europea di salvaguardia dei diritti dell'uomo e delle libertà fondamentali e risultanti dalle tradizioni costituzionali comuni agli Stati membri, fanno parte del diritto dell'Unione in qualità di principi generali.

Explanation (if any) :

AMENDMENT FORM**Suggestion for amendment of Article : 5****By Ms / Mr : Johannes Voggenhuber, Eva Lichtenberger****Status : - Member - Alternate**

TITLE II: Fundamental rights and citizenship of the Union**Article 5: Fundamental rights**

1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out [~~in the second part of/in a Protocol annexed to~~] **in the second part** of this Constitution.
 2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms **and to other international agreements for the protection of Human and Fundamental Rights**. Accession to that Convention or to other **international agreements** shall not affect the Union's competences as defined by this Constitution.
 3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.
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Explanation (if any) :

AMENDMENT FORM**Suggestion for amendment of Article 5, paragraph 1****By Ms : Hildegard Puwak****Status : - Member**

“ The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out in the second part of this Constitution.”

Explanation (if any) :

AMENDMENT FORM**Suggestion for amendment of Article : 5****By Mr Kirkhope MEP****Status : Member**

DELETE

Explanation (if any) :

AMENDMENT FORM**Suggestion for amendment of Article : 5, 6 and 7****By Mr : Georgios Katiforis****Status : - Member**

TITLE II: Fundamental rights and citizenship of the Union**Option a: insert the articles of the Charter under Title II****Option b:****Article 5: Fundamental rights**

1. All fundamental rights referred in this Constitution shall bind the institutions and bodies of the European Union regarding all their actions and the Member States when they are implementing Union law.

~~2.~~ **2.** The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out in the second part of ~~{in a Protocol annexed to}~~ this Constitution.

~~3.~~ **3.** The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.

~~4.~~ **4.** Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

(If option a retained, delete paragraph 2, integrate appropriately paragraphs 1, 3 and 4)

Article 6: Non-discrimination on grounds of nationality

In the field of application of this Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

(If option a retained, delete article 6)

Article 7: Citizenship of the Union

1. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship; it shall not replace it. All citizens of the Union, women and men, shall be equal before the law.

2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in this Constitution. They shall have:

- the right to move and reside freely within the territory of the Member States;
- the right to vote and to stand as a candidate in elections to the European Parliament and in municipal elections in their Member State of residence under the same conditions as nationals of that State;
- the right to enjoy, in the territory of a third country in which the Member State of which they are a national is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;
- the right to petition the European Parliament, to apply to the Ombudsman, and to write to the institutions and advisory bodies of the Union in any of the Union's languages and to obtain a reply in the same language.

3. These rights shall be exercised in accordance with the conditions and limits defined by this Constitution and by the measures adopted to give it effect.

(If option a retained, delete paragraph 2, integrate appropriately paragraphs 1 and 3)

AMENDMENT FORM

Suggestion for amendment of Article 5/2:

By **Mr. Jozsef Szajer**

Status: Member, National Parliament, Hungary

2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms **and to the Framework Convention on Minority Rights**. Accession to that Convention **and to the Framework Convention** shall not affect the Union's competences as defined by this Constitution.

Explanation

The adhesion to the **Framework Convention** would solve an important deficiency of the present acquis, which is missing an effective protection of national and ethnic minorities. The Central European part of the continent, which is about to join the EU brings into the union a great number of national and ethnic minorities. However the Copenhagen democracy criteria give clear guidelines for the candidate countries for safeguarding national minority rights, unfortunately neither the present acquis nor the Charter of Fundamental Rights deal sufficiently with national minority rights. This would mean, that after adhesion the level of national minority rights protection would considerably fall due to the lack of clear guidelines in these areas.

AMENDMENT FORM**Suggestion for amendment of Article : 5****By Mr Poul Schlüter:****Status : Alternate**

1. The Union respects the rights, freedoms and principles in the ~~the~~ Charter of Fundamental Rights ~~shall be an integral part of the Constitution. The Charter is as~~ set out ~~[in the second part of/~~in a Protocol annexed to] this Constitutional Treaty.
2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitutional Treaty.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Explanation:

- 1) A reference to the Charter as an “integral part” of the Constitutional Treaty is not in line with the recommendations from WG II.
- 2) There was general agreement in the Convention that the Charter should be made legally binding through a direct reference in the first part of the Constitutional Treaty and annexed to the Treaty in a protocol.

AMENDMENT FORM**Suggestion for amendment of Article 5****By:** Danuta Hübner**Status:** Member

<i>Text of the Praesidium</i>	<i>Proposed Amendments</i>
<p><u>Article 5: Fundamental rights</u></p> <p>1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out [in the second part of/in a Protocol annexed to] this Constitution.</p> <p>2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.</p> <p>3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.</p>	<p><u>Article 5: Fundamental rights</u></p> <p>1. <u>As a reflection of the political unity reached among the Member States, citizens of the Union are endowed with the rights set out in the</u> the Charter of Fundamental Rights <u>which is shall be</u> an integral part of the Constitution. The Charter is set out in the second part of in a Protocol annexed to this Constitution.</p> <p>2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.</p> <p>3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.</p>
<p>Explanation:</p> <p>1. The including of the Charter of Fundamental Rights directly into the Treaty was supported by the vast majority of the Convention and of the Working Group II. The proposed wording is of a more solemn nature.</p> <p>2. The enabling clause for ECHR accession should be put in the Final Provisions of the Constitutional Treaty.</p>	

AMENDMENT FORM**Suggestion for amendment of: Article 5****By: Lamberto Dini****Status : - Member**

Aim:

Reformulate Article 5.1:

"The Charter of Fundamental Rights, **as set out in Chapter Two**, shall be an integral part of the Constitution.

Explanation :

It would be better for the Charter of Fundamental Rights to be inserted as a second part of the Constitution rather than annexed to it as a Protocol. In this respect, it is worth recalling that the American Bill of Rights was added two years after the adption of the US Constitution, with the enactment of the first ten amendments. Consequently, articles 8-9 ought to be redrafted, to avoid any redundancy.

AMENDMENT FORM**Suggestion for amendment of Article 5****By : G.M de Vries,****Th. J.A.M. de Bruijn,****J.J. van Dijk,****Status : Member, Alternate Members**

Article 5: Fundamental rights

1. ~~The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out [in the second part of/in a Protocol annexed to] this Constitution.~~¹
2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Charter of Fundamental Rights, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Explanation (if any) :

We can only consider integration of the Charter of Fundamental Rights into the Constitution, provided that this does not thereby become substantive EU law which could result in direct claims by citizens against their government.

¹ ~~[The full text of the Charter, with all the drafting adjustments given in Working Group II's final report (CONV 354/02) will be set out either in a second part of the Constitution or in a Protocol annexed thereto, as the Convention decides.]~~

AMENDMENT FORM**Suggestion for amendment of Article : 5****By Mr : CUSHNAHAN****Status : - Alternate (European Parliament Delegation)**

Article 5: Fundamental rights

1. The Charter of Fundamental Rights ***shall be fully integrated into the Constitution.*** The Charter is set out ***in the second part of this Constitution.***

Explanation (if any) :

AMENDMENT FORM**Suggestion for amendment of Article: 5****By Mr Péter Balázs****Status :** **Member** - **Alternate**

Article 5: Fundamental rights

„3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.”

Explanation (if any) :

The appropriate enforcement necessitates the clear division of competencies between the two Courts (Luxembourg, Strassbourg).

AMENDMENT FORM**Suggestion for amendment of Article : 5****By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann****Status : - Member ~~Alternate~~**

Artikel 5: Grundrechte

(1) Die Charta der Grundrechte ist integraler Bestandteil **dieser** Verfassung. ~~Die Charta ist [im zweiten Teil dieser Verfassung/in einem dieser Verfassung beigefügten Protokoll] wiedergegeben.~~

~~(32)~~ Die Union kann der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten **und anderen internationalen Konventionen zum Schutze der Menschenrechte** beitreten. ~~Der Beitritt zu dieser Konvention berührt nicht die in dieser Verfassung festgelegten Zuständigkeiten der Union.~~

~~(23)~~ Die Grundrechte, wie sie in der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten gewährleistet sind und wie sie sich aus den gemeinsamen Verfassungsüberlieferungen der Mitgliedstaaten ergeben, gehören zu den allgemeinen Grundsätzen des **Gemeinschaftsrechts Verfassungsrechts der Union.**

Explanation (if any) :

Abs. 1:

Die vollständige Wiedergabe des Wortlautes der Grundrechtecharta ist unverzichtbar. Darüber hinaus ist ein redaktioneller Verweis auf den Zweiten Teil unnötig und in einer Verfassung unüblich.

Absatz 2 und 3 sollten getauscht werden, da es sich bei Absatz 2 - anders als bei Absatz 1 und 3, die materielle Gewährleistungen enthalten - um eine Ermächtigungsgrundlage handelt.

Abs. 3 (ex-Abs. 2):

Die Union sollte die Möglichkeit haben, auch anderen Verträgen zum Schutz der Menschenrechte beizutreten.

FICHE AMENDEMENT**Proposition d'amendement à l'Article 5:**

Déposée par M. Olivier DUHAMEL
Mme Linda McAVAN
M. Luis MARINHO
Mme Anne VAN LANCKER
M. Klaus HÄNSCH

Qualité: - Membres

Mme Pervenche BERÈS
Mme Maria BERGER
M. Carlos CARNERO
Mme Helle THORNING-SCHMIDT

Qualité: - Suppléants

Article 5: Droits fondamentaux

1. **Les droits fondamentaux de l'Union européenne sont énoncés dans la Charte des droits fondamentaux qui fait partie intégrante de la Constitution. Elle constitue la deuxième partie de la Constitution.**
 2. **A supprimer**
 3. **A supprimer**
-

Explication éventuelle:

La Charte des droits fondamentaux ne constitue pas un ajout à la Constitution, elle en sera une partie.

Sur la suppression du paragraphe 2 de l'article 5: l'attribution de la personnalité juridique à l'Union prévue dans l'article 4 et l'intégration de la Charte des droits fondamentaux dans la Constitution prévue dans l'article 5 paragraphe 1 devrait surmonter les obstacles à l'adhésion à la Convention européenne des droits de l'homme. Ceci répondrait aux exigences de la Cour de Justice.

Sur la suppression du paragraphe 3 de l'article 5: ceci devient superflu et source d'éventuels équivoques. Il répète le contenu de l'article 6 paragraphe 2 du Traité de l'UE qui deviendra obsolète après l'intégration de la Charte des droits fondamentaux dans la Constitution. En effet, les droits qui résultent des traditions constitutionnelles communes aux Etats membres ainsi que ceux qui sont garantis par la Convention européenne des droits de l'homme font déjà partie de la Charte, voir dans son préambule et dans ses articles 52 et 53.

AMENDMENT FORM

Suggestion for amendment of Article 5

By: Mr Józef Oleksy

Status: Member

Proposed Amendments:

Article 5: Fundamental rights

1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out in the second part of this Constitution.

3. *delete*

Explanation:

It is assumed that the Charter will become the second part of the Treaty. In addition to this, the deletion of para. 3 confirms the treaty legitimacy of the Charter of Fundamental Rights and not the European Convention on Human Rights (ECHR), which the Union may (or may not) choose to adapt . As the Charter of Fundamental Rights is raised to an act of constitutional rank and includes basic rights, including those, which the Court of Justice articulated in the form of general legal rules, questions arise as to why provisions on basis rights are kept as general rules.

AMENDMENT FORM**Suggestion for amendment of Article 5 para 2****By Mr : MacCormick, Neil****Status : - Alternate**

Article 5 para 2: insert 19 words :

The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms *and to other international agreements for the protection and promotion of human rights.*. Accession to *the European Convention or other like Conventions* shall not affect the Union's competences as defined by this Constitution.

Explanation (if any) : *It is particularly urgent for the Union to accede to the European Convention, but there are other instruments to which it may be or become desirable to accede.*

FICHE AMENDEMENT**Proposition d'amendement à l'Article : 5****Déposée par Madame ou Monsieur : Rt Hon David Heathcoat-Amory, MP****Qualité : - Membre ~~X~~ - Suppléant**

5.1 Delete

Explication éventuelle

The integration of the Charter overturns the consensus reached by its authors. Integrating the text establishes a new legal hierarchy. It sets European law against established national practice, and creates immense legal uncertainty which can only be settled through the ECJ acting as a constitutional arbiter, a role for which it was manifestly not established.

5.2 Delete

Explication éventuelle

This creates ambiguity of institutions, between the ECJ and the ECHR.

5.3 Delete

Explication éventuelle

As the explanatory note explicitly states, this article is intended to expand Union competences by case law, and not through the treaties. This is most undemocratic. A better and simpler solution would be to require members of the Union to be signatories of the European Convention on Human Rights.

FICHE AMENDEMENT**Proposition d'amendement à l'Article : 5****Déposée Monsieur : Hannes FARNLEITNER****Qualité : - Membre**

5. 1

[..]

The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out [in the first ~~second~~ part of ~~in a Protocol annexed to~~] this Constitution.

Explication:

In accordance with the recommendations of Working Group II (see pages 3 and 6 of CONV 354/02) the text of the Charter Articles should be inserted “at the beginning of the Constitutional Treaty” (therefore into the **first part** of the Constitution). If the Plenary intends not to follow this recommendation of “a large majority of the Group” the Charter should be annexed to the Constitution as a Protocol.

Art. 5 para 2 should in any case remain in part one of the Constitution.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 5

Déposée par Madame ou Monsieur : M. Louis Michel, M. Karel de Gucht, M. Elio di Rupo, Mme Anne Van Lancker, membres de la Convention et M. Pierre Chevalier et Mme Marie Nagy, membres suppléants de la Convention

Qualité : - Membre - Suppléant

1. La Charte des Droits Fondamentaux fait partie intégrante de la Constitution. La Charte figure **dans la deuxième partie** de ~~dans un protocole annexé à]~~ de celle-ci.
 2. L'Union peut adhérer à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales **ainsi qu'à d'autres accords internationaux de protection des droits fondamentaux**. L'adhésion à cette Convention **ou à ces accords** ne modifie pas les compétences de l'Union telles que définies par la présente Constitution
 3. Les droits fondamentaux, tels qu'ils sont garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et tels qu'ils résultent des traditions constitutionnelles communes aux Etats membres, font partie du droit de l'Union en tant que principes généraux.
-

Explication éventuelle :

1. Même si l'intégration de la Charte dans une deuxième partie ou dans un Protocole n'emporte pas en elle-même des implications juridiques, il reste que la Charte doit, en raison de son importance, être intégrée dans le corps même de la Constitution et ne peut donc être reléguée dans un document annexée à celle-ci.
2. Outre la possibilité d'une adhésion de l'Union à la Convention européenne des droits de l'homme, la Constitution devrait prévoir que l'Union puisse adhérer à d'autres instruments de protection des droits fondamentaux.

FICHE AMENDEMENT**Proposition d'amendement à l'Article 5****Déposée par Monsieur Eckstein-Kovács Péter****Qualité : - Membre suppléant**

Article 5 nouvelle Para 2b) :

L'Union peut adhérer à la Convention-cadre pour la protection des minorités nationales, à la Charte des langues régionales ou minoritaire du Conseil de l'Europe et à la Charte européenne de l'autonomie locale. L'adhésion à cette Convention ne modifie pas les compétences de l'Union telles que définies par la présente Constitution.

AMENDMENT FORM**Suggestion for amendment of Article 5.1, Title II**

By : Mr.V.P.Andriukaitis (LT Parl., Status-Member), Mr.A.Gricius (LT Parl., Status-Member), Mr. O.Jusys (LT Gov., Status-Alternate), Mr. R.Martikonis (LT Gov., Status-Member)

Insert the text of Charter:

Propose full insertion of the text of the Charter articles in Title I or II.

Explanation (if any) :

Fundamental rights should go first reflecting adequately the constitutional status.
Follow majority agreement in the Working Group II.

AMENDMENT FORM**Suggestion for amendment of Article : 5****By Mr Hain****Status : Member**

1. The Union recognises the rights, freedoms and principles in the Charter of Fundamental Rights. The scope, applicability and legal effect of the Charter are described in Part VII of that Charter.
 2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not extend the Union's competences as defined by this Constitution.
 3. See comment below.
-

Explanation (if any) :

We cannot accept the Charter of Fundamental Rights being ‘an integral part of the Constitution’ as it stands.

In paragraph 2, I have replaced ‘affect’ by ‘extend’ for clarity. The paragraph confers a power upon the Union to accede to the ECHR but it does not address the issue of the Union procedures applicable to ECHR accession. The modalities of accession would need to be discussed in detail at a later date, at which time we would need to ensure our derogations were protected. The agreement of the Contracting Parties to the ECHR to an amendment to the ECHR to enable Union accession would also be needed.

The point in paragraph 3 is currently a principle of Community case law – and would be better remaining as such. Its formalisation here could have implications for CFSP, as it is extended from a principle of the Community to a principle of the Union.

AMENDMENT FORM**Suggestion for amendment of Article 5: Fundamental rights****By Mr Dick Roche, Representative of the Government of Ireland****Status : Member**

Article 5: Fundamental rights - paragraph 1

1. The Charter of Fundamental Rights shall be an integral part of the Consitution. The Charter is set out ~~[in the second part of /~~in a Protocol annexed to]this Constitution. **The Charter shall not affect the Union's competences as defined elsewhere in this Constitution.**

Explanation (if any) :

Without prejudice to the political decision to be reached as to *whether* the Charter is to be incorporated, if it is to be incorporated, for reasons of simplicity and clarity, it should be included in a Protocol to the Treaty.

Article 5.1, in keeping with the wording of Article 5.2, should reflect the fact that incorporation of the Charter shall respect the limits of the powers of the Union as conferred on it by other parts of the Treaty.

The question of the standing of the commentary drawn up by the Praesidium of the Charter Convention must also be addressed in a satisfactory way in the drafting of the relevant further part of the Constitution.

AMENDMENT FORM**Suggestion for amendment of Article : 5****By Mr. Lennmarker****Status : X Member**

Article 5: Fundamental rights

1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out [in the second part of/in a Protocol annexed to] this Constitution.

2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. ~~Accession to that Convention shall not affect the Union's competences as defined by this Constitution.~~

3. Neither the Charter, nor an accession to the European Convention, shall affect the Union's competences as defined by this Constitution.

4. ~~3-~~ Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Explanation:

The competences of the Union are defined by the Constitution and neither the Charter of Fundamental Rights nor an accession to the European Convention should affect these competences. It should not be possible to use the Charter or the European Convention as means to expand the competences of the Union.

AMENDMENT FORM 3**Option in Article 5**

By: M.J.CHABERT
M.M.DAMMEYER
M.P.DEWAEL
Ms. C.du GRANRUT
M. C.MARTINI
M.R.VALCARCEL SISO

Status : - ~~Member~~ - ~~Alternate~~ - ~~Observer~~

"FUNDAMENTAL RIGHTS"

The Committee of the Regions prefers the incorporation of the Charter of Fundamental Rights *in the second part* of this Constitution.

Explanation:

FICHE AMENDEMENT**Proposition d'amendement à l'Article : 5****Déposée par Monsieur : Danny Pieters****Qualité : - Suppléant : Kamer van Volksvertegenwoordigers - België**

Vraag

Explication éventuelle :

2.1. Artikel 5 combineert eigenlijk 3 grondrechtencatalogi: is dit niet wat veel en gaat het resultaat geen juridisch kluwen geven? Hier lijkt verduidelijking geboden.

2.2. Wat bv. als de diverse catalogi andere beperkingen van deze grondrechten toelaten? Gaan we dan de meest verregaande of de minst verregaande toepassen?

AMENDMENT FORM**Suggestion for amendment of Article : 5 (2)****By Mr : SÖDERMAN****Status : Observer**

The Union may accede to ~~the European Convention for the Protection of Human Rights and Fundamental Freedoms~~ **international agreements for the protection and promotion of human rights**. Accession to ~~that Convention~~ shall not affect the Union's competences as defined by this Constitution.

Explanation (if any) :

The possibility for the Union to accede to the ECHR is greatly to be welcomed. As currently drafted, however, this Article would prevent the Union from acceding to international human rights agreements developed by, for example, the United Nations and the ILO. Nor could the Union accede to other Council of Europe conventions.

The question of whether the Union should accede to international human rights agreements is a matter of policy. The Constitution should leave the matter open, to be debated on a case-by-case basis, as is the situation in the Member States.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 5

Déposée par M. Hubert HAENEL, membre, et M. Robert BADINTER, suppléant.

Article 5 : Droits fondamentaux

1. La Charte des Droits Fondamentaux *est* partie intégrante de la Constitution. ~~La Charte figure [dans la deuxième partie de / dans un protocole annexé à] de celle-ci.~~

2. Supprimé.

3. Supprimé.

Explication éventuelle :

2. Dès lors que l'Union dispose de la personnalité juridique, elle peut adhérer à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales. Il est donc inutile de le préciser dans la Constitution.

3. Dès lors que la Charte est intégrée dans la Constitution, cet alinéa n'est plus nécessaire.

AMENDMENT FORM**Suggestion for amendment of Article : Artículo 5****By Ms / Mr : Borrell (miembro), Carnero y López Garrido (miembros suplentes)****Status : - Member - Alternate**

En el punto 3, suprimir "como principios generales"

Explanation (if any) :

AMENDMENT FORM**Suggestion for amendment of Article : Artículo 5****By Ms / Mr : Borrell (miembro), Carnero y López Garrido (miembros suplentes)****Status : - Member - Alternate**

El punto 1 quedaría así: "1. La Carta de Derechos Fundamentales forma parte integrante de la Constitución. Esta Carta figura en su segunda parte."

Explanation (if any) :

FICHE AMENDEMENT**Proposition d'amendement à l'Article 5**

Déposée par Monsieur William ABITBOL

Qualité : Suppléant

Titre II : De la citoyenneté de l'Union**Article 5 :**

L'Union respecte la Charte des droits fondamentaux, annexée au présent traité, et la Convention européenne de sauvegarde des Droits de l'Homme et des libertés fondamentales.

Explication éventuelle :

Ce texte remplace l'ensemble du texte original de l'article visé

AMENDMENT FORM**Suggestion for amendment of Article : 5****By Mr : František Kroupa****Status : Alternate**

The 2nd sentence in para. 1 sounds :

1.The Charter is set out in a Protocol annexed to this Constitution.

Explanation (if any) :

AMENDMENT FORM**Suggestion for amendment of Article : I-7****By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann****Status : - Member - ~~Alternate~~**

Artikel I-7: Grundrechte

(1) Die ~~Union erkennt die Rechte, Freiheiten und Grundsätze an~~ **Bestimmungen**, die in der Charta der Grundrechte als dem zweiten Teil dieser Verfassung enthalten sind, **stellen unmittelbares Recht dar**.

(2) Die Union strebt den Beitritt zur Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten an **und kann anderen internationalen Konventionen zum Schutze der Menschenrechte beitreten**. Der Beitritt zu dieser Konvention berührt nicht die in dieser Verfassung festgelegten Zuständigkeiten der Union.

(3) Die Grundrechte, wie sie in der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten gewährleistet sind und wie sie sich aus den gemeinsamen Verfassungsüberlieferungen der Mitgliedstaaten ergeben, gehören zu den allgemeinen Grundsätzen des Unionsrechts.

Explanation (if any) :**Absatz 1:**

Die bloße Anerkennung der Bestimmungen des Teils II der Verfassung durch die Union wird dem Stellenwert, der der Grundrechtecharta eingeräumt werden soll, nicht gerecht. Diese Rechte sollen gerade keine bloßen Programmsätze der Union darstellen. Die Bestimmung muss vielmehr unmissverständlich zum Ausdruck bringen, dass die Grundrechtecharta unmittelbar geltendes Recht darstellt, das von der Union strikt einzuhalten ist.

Absatz 2:

Die vom Präsidium vertretene Auslegung, wonach dem Gutachten 2/94 des EuGH zu entnehmen sei, dass es für den Beitritt zu anderen internationalen Menschenrechtskonventionen keiner besonderen Rechtsgrundlage bedarf, ist keineswegs zwingend. Um der Union dies unzweifelhaft zu erlauben, sollte Absatz 2 deshalb um diese Möglichkeit ergänzt werden.

THE EUROPEAN CONVENTION
THE SECRETARIAT

Brussels, 12 June 2003

WG II

Working document 28

Note for the Members of Working Group II

Subject: Reactions of Working Group members to Document WD II 27 (consolidated and updated Explanations on the Charter)



Prof. Dr. Jürgen Meyer

Delegierter des Deutschen Bundestags
im Verfassungskonvent der Europäischen Union

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10. Juni 2003

— Herrn

Clemens Ladenburger

Sekretariat des Europäischen Konvents

Per email

clemens.ladenburger@consilium.eu.int

Sehr geehrter Herr Ladenburger,

vielen Dank für Ihr Schreiben vom 3. Juni 2003 und die Vorschläge zur Anpassung der Erläuterungen zum Chartatext.

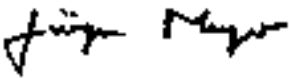
Für überzeugend halte ich die Überarbeitung der Erläuterungen mit Blick auf die im Europäischen Konvent bereits erzielten Integrationsfortschritte. Ebenso entsprechen die sprachlichen Klarstellungen und die Anpassung der Referenzen zur Rechtsprechung des EuGH dem von der Arbeitsgruppe II verfolgten Ziel, die Erläuterung als Interpretationshilfe für die Chartabestimmungen zu aktualisieren.

Nicht akzeptabel ist für mich als Mitglied des ersten und des zweiten Konvents allerdings die veränderte Formulierung zum rechtlichen Status der Erläuterungen. Die im Grundrechtekonvent gefundene Formel war Teil des schwierigen Endkompromisses und sollte von zweiten Konvent schon aus Respekt vor der Erarbeitung der Grundrechtecharta nicht wieder aufgeschnürt werden.

Darüber hinaus hat es zu keiner Zeit unter den Delegierten des Europäischen Konvents eine mehrheitlich getragene Zustimmung zu einer Veränderung der Eingangsformel der Erläuterungen gegeben. Ausserdem waren die Erklärungen inhaltlich nicht Gegenstand der Beratungen im ersten oder zweiten Konvent.

Ich halte es nicht für wünschenswert, die von vielen Delegierten politisch nicht gewollte Andeutung einer Aufwertung der Erläuterungen durch die technische Überarbeitung in den Text aufzunehmen. Dies gilt umso mehr mit Blick auf eine eventuelle spätere Erklärung der Regierungskonferenz zu den Charta-Erläuterungen.

Mit freundlichen Grüßen



(Meyer)

À l'attention du Commissaire

M. Antonio VITORINO

President GT II

Monsieur le Commissaire,

faisant suite à la note WGII 27 du 3 juin dernier, je tiens à vous féliciter vivement pour le soin avec lequel le travail a été fait. Personnellement, je ne partage pas la thèse, soutenue à la page 63 de la version française, concernant la distinction nette qu'il y aurait entre "droits" et "principes". Je crois, au contraire, qu'il s'agit d'une distinction partiellement dépassée, pas seulement par la doctrine, mais aussi par la jurisprudence constitutionnelle (cfr. par exemple, l'arrêt de la Cour Constitutionnelle italienne n. 309 du 16 juillet 1999 en matière de droit à la santé).

Néanmoins, je reconnais que mon opinion n'est pas importante, puis qu'il s'agit d'un travail confié exclusivement à la responsabilité des fonctionnaires-juristes et qui n'est pas soumis à la discussion et à l'approbation de la Convention. Pour cette raison, aucun renvoi et aucune mention à ce précieux travail ne peuvent être faits dans le traité constitutionnel ou, en général, dans des actes ayant une valeur juridique contraignant pour les institutions de l'Union et/ou des Etats membres.

Meilleures salutations.

Elena PACIOTTI

On. Elena PACIOTTI

Deputata al Parlamento europeo

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Commissioner Antonio Vitorino
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10 June 2003

Technical Explanations to the Charter of Fundamental Rights

Thank you for your note of 3 June (WG II 27) consulting Members of Working Group about your proposed changes to the original texts of the technical Explanations to the Charter of Fundamental Rights. I attach a note detailing some specific concerns. They are relatively few in number and this reflects, if I may say so, the typically thorough and sensitive work which has been done by you and the Secretariat

As you know, the Explanations have always been a key element in my Government's consideration of the Charter. Given the tightness of the deadline, compounded by all our other tasks and absences due to the Convention I hope you will understand it if I find that I need to revert to you later on this topic after I have completed necessary further consultation with my Ministerial colleagues.

In that context, there are two general points about WG II 27 which I should like to make in this covering letter. First, as regards the identification of “principles” within the meaning of Article 52(5), it remains my Government’s view that it would be very desirable to offer a full list of the pure and hybrid principles that may be found in the Charter. Even if that is not possible we believe that the Explanations to Articles 21, 23, 25, 28, 30, 31, 32, 33 and 34(3) should mention the word principles or refer to 52(5). At the very least two examples of each type of principle under 52(3) should be offered. I propose that Articles 25 and 28 are given in the Explanation to 52(5) as examples of pure principles, and that the other example given of a hybrid principle is Article 21, not Article 33.

My second general point concerns the legal status of the Explanations. As you know, we have discussed this and I have also spoken to some other members of the Working Group. It seems to me that if the Convention is to choose legal incorporation of the Charter into the Constitution, we must ensure reference to the Explanations. In particular, I believe that we need a reference in the Constitution, recognising the interpretative status of the technical Explanations and indicating where they may be found. You say in your note that the Courts must have due regard to the Explanations when interpreting the law concerned. Specific provision is needed to ensure that outcome.

1. BARONESS SCOTLAND QC

AMENDED EXPLANATIONS: DETAILED COMMENTS FROM UK

Art 14

For the sake of avoidance of doubt it would be helpful to insert “or vocational and continuing training” in line 6 of the second paragraph after “which provide private education”.

Art 18

It would be desirable to clarify still further that, in accordance with Article 52(2), this Article is subject to the conditions and limits in [III-162].

Art 21

Replace sentence beginning “Such legislation” with “Such legislation may cover action of MS authorities (as well as relations between private individuals) in any area within the scope of EU law.”

Art 47

An important linguistic point, already accepted in the provisions on the Court elsewhere in the Constitution, “the appeal system laid down by the Treaties” should be “the system of judicial review laid down by the Treaties”. Also, in the third sentence it would be more accurate here to say “general principle of Union law” rather than “right”.

Art 52 (which should be re-titled in the interests on accuracy, perhaps “Interpretation”)

- In the second paragraph, “merely been restated” should be clarified: after “Paragraph 2 clarifies that” delete the remainder of the sentence and insert “that rights which were based on the TEC or TEU, and which are now found in other parts of this Constitution, remain subject to the conditions and limits now made in Parts I and III of this Constitution or Union acts made thereunder”.
- In the Explanation to 52(3) I propose that we should replace “Union legislation” with “Union law” and delete (ii) altogether.
- In the Explanation to 52(4) we consider that the last sentence should be withdrawn, leaving the substantive provision to speak for itself.

- In the Explanation to 52(5) it would be more accurate to say “principles may be implemented” (rather than “are” implemented); and in the following sentence to say that “they become significant for the Courts only when acts implementing the principles are interpreted or reviewed.”

Minor linguistic points

- “have been drafted” (e.g. in line 4 of the Explanation to 51) reads oddly in English. “was drafted” would be preferable and this method could helpfully be employed throughout.
- there are some other minor points which we will pass on direct to the Secretariat.

Dear Mr Ladenburger

Many thanks to Mr Vitorino and yourself for excellent work in the paper concerning the Explanations of the Charter and on the revised Explanations themselves.

I want to record my entire satisfaction with the work that has been done. I have no amendment of substance to propose.

As I said to you last Thursday, however, it occurred to me in a conversation with Lady Scotland (to whom I am copying this) that an allusion to the Explanations in Part IV of the Treaty might be of value. My suggestion would be for an added Article IV-5 bis:

'The Explanations of the Charter annexed to the Constitution do not form part of it, and do not constitute binding law, but are recognised as a valuable [perhaps 'an authoritative'] tool of interpretation of the Articles of the Charter that comprise Part II of the Constitution.'

Yours sincerely

Neil MacCormick

Mr Antonio Vitorino,
Praesidium of the European Convention,
Brussels.

10 June 2003

Dear Antonio,

I am most grateful for your very helpful note of 3 June (WG II 27) concerning your proposed changes to the original texts of the Explanations to the Charter of Fundamental Rights.

The recognition in the Explanations that they are a valuable tool of interpretation of the Charter's provisions is important. As you are aware, they are an essential element in my Government's approach to incorporation of the Charter as a legally binding catalogue of fundamental rights.

The updating of the Explanations and the granting to them of appropriate legal recognition was a crucial element in the compromise reached at the Working Group. As you have acknowledged, it will be necessary for the Courts to have regard to and to take full account of the Explanations of the Charter provisions when interpreting any of its elements. Hence, when the text of the Explanations is finalised, it will be essential to ensure that they are given an explicit legal reference in an appropriate context in the Treaty. It is important that this matter be resolved at the Convention.

I fully support the amendments to the Explanations which you have proposed and we consider them to be both necessary and helpful. I wish to propose some additional amendments which would improve the text. I have also proposed a technical amendment to the Charter's Preamble and to Article 41 of the Charter (as reworded by you). These proposals are attached.

Yours sincerely,

Bobby McDonagh

**EXPLANATIONS OF THE TEXT OF THE CHARTER OF FUNDAMENTAL RIGHTS -
AMENDMENTS PROPOSED BY MR BOBBY MCDONAGH**

Amendments are proposed below to the Charter’s Preamble; to aspects of the Explanations; and to Article 41 of the Charter (as amended).

Proposed new wordings are in italics and bold lettering.

AMENDMENT TO PREAMBLE

Fifth paragraph to read:

“This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, *Parts I and III of the Constitution*, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights”.

Reason:

The references to the EC and EU Treaties have been deleted and not replaced with anything. It would be preferable to insert a reference to (*the other parts of the Constitution*) or (*Parts I and III of the Constitution*)

AMENDMENTS TO EXPLANATIONS

ARTICLE 2.2

In paragraph 2 of the Explanations after the words in quotes , viz: “The death penalty shall be abolished. No-one shall be condemned to such penalty or executed”, add – *Article 1 of Protocol*

No. 13 reiterates that provision.

Reason:

The references to the death penalty in the Explanations could be updated in light of the fact that Protocol 13 to the ECHR will enter into force on 1 July 2003. The Protocol has been signed or ratified by all EU Member States and acceding States and it removes for States Parties thereto the possibility of retaining the death penalty in respect of acts committed in time of war or of imminent threat of war.

ARTICLE 21

The second paragraph should be replaced by the following – *There is no contradiction or incompatibility between paragraph 1 and Article (III-5) of the Constitution which has a different purpose and scope: Article (III-5) provides, without prejudice to the other provisions of the Constitution and within the limits of the powers conferred by it on the Union, a legal base for the adoption by the Union of legislative acts, including harmonisation of the Member States' laws and regulations, to combat certain forms of discrimination, listed exhaustively in that Article. Such legislation may cover action of Member State authorities as well as relations between private individuals. In contrast, the provision in paragraph 1 does not create any power to enact anti-discrimination laws. It only addresses discrimination by the institutions, bodies and agencies of the Union themselves, when exercising powers conferred under other Articles of Parts I and III of the Constitution and by Member States only when they are implementing Union law. Paragraph 1 therefore does not alter the extent of the powers granted under Article (III-5) nor the interpretation given to that Article.*

Reason:

The explanation, when seeking to distinguish Article III – 5 of the Constitution from Article 21 of the Charter, gives an overly expansive definition of the Union's competence under the former.

ARTICLE 52.5

Amend the first sentences of paragraph 5 to read:

“Paragraph 5 clarifies the distinction between “rights” and “principles” set out in the Charter. According to that distinction, subjective rights shall be respected, whereas principles shall be observed (Article 51.1). *Where parts I and III of the Constitution provide a legal base for legislative action*, principles *may be* (delete are) implemented through legislative or executive acts; accordingly they become significant for the courts when such Acts are interpreted or reviewed. They do not however give rise to direct claims for positive action by the Union’s institutions or Member States authorities.”

Amend the final sentence of paragraph 5 to change the examples / illustrations of principles recognised the Charter (given as Articles 26 and 37) to include **Article 28** (collective bargaining) as an example of a principle. This could be added or, if necessary to limit to two examples, substituted for Article 37.

Reason:

These amendments would bring greater clarity to the Explanations.

AMENDMENT TO ARTICLE 41 OF THE CHARTER (AS AMENDED)

Article 41, paragraph 4 should be reworded as follows – “*Every person may write to the Institutions of the Union in one of the languages of the Treaty establishing the Constitution and must have an answer in the same language.*”

Reason:

This clarification, which has been agreed with the Secretariat, is designed to maintain the current status of the Irish language in accordance with the existing Treaty arrangements. A similar amendment has been agreed to Article I-8 of the Constitutional Treaty.

Manuel Lobo Antunes (9/06/03 15:37):

›1. On the documents transmitted, I have the following comments:

›a) on the Charter- article 42 (access to documents) could be completed with a reference to the text of nr 4 of the draft article 49-I, as to make clear that some limits could be imposed by law on the access to certain documents (vg documents emanated from Europol, Eurojust or the future Public Preosecutor) for reasons of private or public interest;

›2. I can accept the text of the draft updated explanations.

›3. I continue to believe that the explanations should serve exclusively as a tool of interpretation of the Charter.

›Best Regards,

›Manuel Lobo Antunes

›Gov. Alternate

›Member of the WG on the Charter

Dear Mr. Vitorino,

I sincerely welcome your efforts to update the Explanations. I believe that the proposed amendments will clarify the important and complex issues of the scope, interpretation and application of the Charter. I completely agree with you that attention should be drawn in an appropriate manner to the Explanations and that they should be publicised more widely, so that courts and citizens can get access to this excellent tool for interpretation of the Charter. I also agree with your suggestion to use a more precise formula regarding the value of the Explanations. The courts should have due regard to the Explanations when interpreting the Charter.

Best regards,

Ingvar Svensson
Member of Working Group II

Editors' note to CONV 797/1/03 REV 1,
Text of Part I and Part II of the Constitution
[Extracts]:

INIT version was dated 10 June 2003.

THE EUROPEAN CONVENTION

THE SECRETARIAT

Brussels, 12 June 2003**CONV 797/1/03****REV 1****VOLUME I****COVER NOTE**

from :	Praesidium
to :	Convention
No. prev. doc. :	CONV 722/03, CONV 724/1/03 REV 1, CONV 725/03 ,CONV 770/03, CONV 811/03
Subject :	Text of Part I and Part II of the Constitution

Members of the Convention will find attached the text of :

- Part I of the Constitution, preceded by the Preamble,
- Part II (Charter of Fundamental Rights),
- Protocol on the role of national parliaments in the European Union,
- Protocol on the application of the principles of subsidiarity and proportionality,

with a view to the plenary session of 13 June 2003.

PART ONE

TITLE I: DEFINITION AND OBJECTIVES OF THE UNION

Article I-1: Establishment of the Union

1. Reflecting the will of the citizens and States of Europe to build a common future, this Constitution establishes the European Union, on which the Member States confer competences to attain objectives they have in common. The Union shall coordinate the policies by which the Member States aim to achieve these objectives, and shall exercise in the Community way the competences they confer on it.
2. The Union shall be open to all European States which respect its values and are committed to promoting them together.

Article I-2: The Union's values

The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, solidarity and non-discrimination.

TITLE II: FUNDAMENTAL RIGHTS AND CITIZENSHIP OF THE UNION

Article I-7: Fundamental rights

1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes the Second Part of this Constitution.
2. The Union shall seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined in this Constitution.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Article I-8: Citizenship of the Union

1. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship; it shall not replace it.
2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in this Constitution. They shall have:
 - the right to move and reside freely within the territory of the Member States;
 - the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;

PART TWO

THE CHARTER OF FUNDAMENTAL RIGHTS OF THE UNION

PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

TITLE I**DIGNITY**Article II-1
Human dignity

Human dignity is inviolable. It must be respected and protected.

Article II-2
Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Article II-3
Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - (a) the free and informed consent of the person concerned, according to the procedures laid down by law,
 - (b) the prohibition of eugenic practices, in particular those aiming at the selection of persons,
 - (c) the prohibition on making the human body and its parts as such a source of financial gain,
 - (d) the prohibition of the reproductive cloning of human beings.

Article II-4
Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article II-5
Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

TITLE II**FREEDOMS**

Article II-6
Right to liberty and security

Everyone has the right to liberty and security of person.

Article II-7
Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article II-8
Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Article II-9
Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article II-10
Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Article II-11

Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Article II-12

Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article II-13

Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article II-14

Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article II-15

Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article II-16

Freedom to conduct a business

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

Article II-17

Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

Article II-18

Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Constitution.

Article II-19

Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

TITLE III**EQUALITY**

Article II-20

Equality before the law

Everyone is equal before the law.

Article II-21

Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

Article II-22

Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article II-23

Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article II-24

The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article II-25
The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article II-26
Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

TITLE IV
SOLIDARITY

Article II-27
Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

Article II-28

Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Article II-29

Right of access to placement services

Everyone has the right of access to a free placement service.

Article II-30

Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

Article II-31

Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article II-32

Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article II-33
Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article II-34
Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

Article II-35
Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Article II-36
Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Constitution, in order to promote the social and territorial cohesion of the Union.

Article II-37
Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article II-38
Consumer protection

Union policies shall ensure a high level of consumer protection.

TITLE V
CITIZENS' RIGHTS

Article II-39
Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Article II-40
Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article II-41
Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies and agencies of the Union.
2. This right includes:
 - (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - (c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Constitution and must have an answer in the same language.

Article II-42
Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies and agencies of the Union, in whatever form they are produced.

Article II-43
Ombudsman

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 refer to the Ombudsman of the Union cases of maladministration in the activities of the institutions, bodies or agencies of the Union, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Article II-44
Right to petition

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.

Article II-45
Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Constitution, to nationals of third countries legally resident in the territory of a Member State.

Article II-46
Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

TITLE VI
JUSTICE

Article II-47
Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Article II-48

Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Article II-49

Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

Article II-50

Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

TITLE VII

GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

Article II-51 Scope

1. The provisions of this Charter are addressed to the institutions, bodies and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the other Parts of the Constitution.
2. This Charter does not extend the scope of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks defined in the other Parts of the Constitution.

Article II-52 Scope and interpretation of rights and principles

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter for which provision is made in other Parts of the Constitution shall be exercised under the conditions and within the limits defined by these relevant Parts
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions and bodies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.
6. Full account shall be taken of national laws and practices as specified in this Charter.

Article II-53
Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article II-54
Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

THE EUROPEAN CONVENTION

THE SECRETARIAT

Brussels, 12 June 2003**(OR. fr,en)****CONV 811/03****COVER NOTE**

from : Praesidium

to : Convention

No. prev. docs. : CONV 725/03, CONV 726/03, CONV 797/03,

Subject : **Revised texts**

Members of the Convention will find attached revised texts put forward by the Praesidium, following consultations with the component groups and in the light of their suggested amendments, with a view to reaching consensus at the plenary session of 13 June.

Article I-27 : The Foreign Minister(footnote 1)

Footnote 1: The establishment of a Joint European External Action Service, to assist the Minister, will be addressed in a Declaration/Part III.

Citizens initiative - Article I-46, new paragraph 4

4. **A significant number of citizens, not less than one million, coming from a significant number of Member States, may invite the Commission to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing this Constitution. A European law shall determine the provisions regarding the specific procedures and conditions required for such a citizens' request.**

**PART II - PREAMBLE**

Sentence to be inserted in the Charter Preamble, at the end of paragraph 4

This Charter reaffirms ... and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. **In this context, the Charter will be interpreted by the courts of the Union and the Member States with due regard for the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter.**

Article II-41(4)

4. Every person may write to the institutions of the Union in one of the languages of **the Constitution** and must have an answer in the same language.

Change to title of Article II-52

The title should read as follows: "Scope **and interpretation** of rights **and principles**"

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THE EUROPEAN CONVENTION**Brussels, 9 July 2003**

THE SECRETARIAT

CONV 828/03**COVER NOTE**

from :	Praesidium
to :	Convention
No. prev. doc. :	WD N° 27 WGII
Subject :	Updated Explanations relating to the text of the Charter of Fundamental Rights.

Members of the Convention will find attached, for information, the updated explanations relating to the text of the Charter of Fundamental Rights, produced under the authority of the Chairman of Working Group II and endorsed by the Praesidium.

UPDATED EXPLANATIONS,
RELATING TO THE COMPLETE TEXT OF THE CHARTER OF FUNDAMENTAL
RIGHTS OF THE EUROPEAN UNION (AS AMENDED BY THE
EUROPEAN CONVENTION AND INCORPORATED AS PART II
OF THE TREATY ON A CONSTITUTION FOR EUROPE)

These explanations were originally prepared at the instigation of the Praesidium of the Convention which drafted the Charter of Fundamental Rights of the European Union. They have been updated at the instigation of the Praesidium of the European Convention, in the light of the drafting adjustments made to the text of the Charter by that Convention (notably to Articles 51 and 52) and of further developments of Union law. Although they do not as such have the status of law, they are a valuable tool of interpretation intended to clarify the provisions of the Charter.

PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

TITLE I. DIGNITY

Article 1

Human dignity

Human dignity is inviolable. It must be respected and protected.

Explanation

The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights. The 1948 Universal Declaration of Human Rights enshrined human dignity in its preamble: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." In its judgment of 9 October 2001 in case C-377/98 Netherlands v. European Parliament and Council, 2001 ECR 7079, at grounds n° 70 - 77, the Court of Justice confirmed that a fundamental right to human dignity is part of Union law.

It results that none of the rights laid down in this Charter may be used to harm the dignity of another person, and that the dignity of the human person is part of the substance of the rights laid down in this Charter. It must therefore be respected, even where a right is restricted.

Article 2

Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Explanation

1. Paragraph 1 of this Article is based on the first sentence of Article 2(1) of the ECHR, which reads as follows:

"1. Everyone's right to life shall be protected by law..."

2. The second sentence of the provision, which referred to the death penalty, was superseded by the entry into force of Article 1 of Protocol No 6 to the ECHR, which reads as follows:

"The death penalty shall be abolished. No-one shall be condemned to such penalty or executed."

Article 2(2) of the Charter is based on that provision.

3. The provisions of Article 2 of the Charter correspond to those of the above Articles of the ECHR and its Protocol. They have the same meaning and the same scope, in accordance with Article 52(3) of the Charter. Therefore, the "negative" definitions appearing in the ECHR must be regarded as also forming part of the Charter:

- (a) Article 2(2) of the ECHR:

"Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

- (b) Article 2 of Protocol No 6 to the ECHR:

"A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions..."

Article 3

Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:

the free and informed consent of the person concerned, according to the procedures laid down by law,

- the prohibition of eugenic practices, in particular those aiming at the selection of persons,
- the prohibition on making the human body and its parts as such a source of financial gain,
- the prohibition of the reproductive cloning of human beings.

Explanation

1. *In its judgment of 9 October 2001 in case C-377/98 Netherlands v. European Parliament and Council, 2001 ECR 7079, at grounds n° 70, 78 - 80, the Court of Justice confirmed that a fundamental right to human integrity is part of Union law and encompasses, in the context of medicine and biology, the free and informed consent of the donor and recipient.*

2. *The principles of Article 3 of the Charter are already included in the Convention on Human Rights and Biomedicine, adopted by the Council of Europe (ETS 164 and additional protocol ETS 168). The Charter does not set out to depart from those principles, and therefore prohibits only reproductive cloning. It neither authorises nor prohibits other forms of cloning. Thus it does not in any way prevent the legislature from prohibiting other forms of cloning.*

3. *The reference to eugenic practices, in particular those aiming at the selection of persons, relates to possible situations in which selection programmes are organised and implemented, involving campaigns for sterilisation, forced pregnancy, compulsory ethnic marriage among others, all acts deemed to be international crimes in the Statute of the International Criminal Court adopted in Rome on 17 July 1998 (see its Article 7(1)(g)).*

Article 4

Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Explanation

The right in Article 4 is the right guaranteed by Article 3 of the ECHR, which has the same wording: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". By virtue of Article 52(3) of the Charter, it therefore has the same meaning and the same scope as the ECHR Article.

Article 5

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

Explanation

1. *The right in Article 5(1) and (2) corresponds to Article 4(1) and (2) of the ECHR, which has the same wording.*

It therefore has the same meaning and scope as the ECHR Article, by virtue of Article 52(3) of the Charter. Consequently:

– no limitation may legitimately affect the right provided for in paragraph 1;

– in paragraph 2, "forced or compulsory labour" must be understood in the light of the "negative" definitions contained in Article 4(3) of the ECHR:

"For the purpose of this article the term "forced or compulsory labour" shall not include:

- (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;*
- (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;*
- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;*
- (d) any work or service which forms part of normal civic obligations."*

2. *Paragraph 3 stems directly from human dignity and takes account of recent developments in organised crime, such as the organisation of lucrative illegal immigration or sexual exploitation networks. The annex to the Europol Convention contains the following definition which refers to trafficking for the purpose of sexual exploitation: "traffic in human beings: means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children". Chapter VI of the Convention implementing the Schengen Agreement, which has been integrated into the Union's *acquis*, in which the United Kingdom and Ireland participate, contains the following wording in Article 27(1) which refers to illegal immigration networks: " The Contracting Parties undertake to impose appropriate penalties on any person who, for financial gain, assists or tries to assist an alien to enter or reside within the territory of one of the Contracting Parties in breach of that Contracting Party's laws on the entry and residence of aliens." On 19 July 2002, the Council adopted a framework decision on combating the*

trafficking in human beings (O.J. L 203/1) whose Article 1 defines in detail the offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation, which the Member States must make punishable by virtue of that framework decision.

TITLE II. FREEDOMS

Article 6

Right to liberty and security

Everyone has the right to liberty and security of person.

Explanation

The rights in Article 6 are the rights guaranteed by Article 5 of the ECHR, and in accordance with Article 52(3) of the Charter, they have the same meaning and scope. Consequently, the limitations which may legitimately be imposed on them may not exceed those permitted by the ECHR, in the wording of Article 5:

- "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:*
- (a) the lawful detention of a person after conviction by a competent court;*
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;*

- (c) *the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*
 - (d) *the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;*
 - (e) *the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*
 - (f) *the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.*
2. *Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.*
 3. *Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.*
 4. *Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*
 5. *Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation."*

The rights enshrined in Article 6 must be respected particularly when the European Parliament and the Council adopt laws and framework laws in the area of judicial cooperation in criminal matters, on the basis of Articles [III-166, III-167 and III-169] of the Constitution, notably to define common minimum provisions as regards the categorisation of offences and punishments and certain aspects of procedural law.

Article 7

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Explanation

The rights guaranteed in Article 7 correspond to those guaranteed by Article 8 of the ECHR. To take account of developments in technology the word "correspondence" has been replaced by "communications".

In accordance with Article 52(3), the meaning and scope of this right are the same as those of the corresponding article of the ECHR. Consequently, the limitations which may legitimately be imposed on this right are the same as those allowed by Article 8 of the ECHR:

- "1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
- 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

Article 8

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.

2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Explanation

This Article has been based on Article 286 of the Treaty establishing the European Community and Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995) as well as on Article 8 of the ECHR and on the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which has been ratified by all the Member States. Article 286 EC Treaty is now replaced by Article [I-50] of the Constitution. Reference is also made to regulation N° 45/2001 of the European Parliament and the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001). The above-mentioned directive and regulation contain conditions and limitations for the exercise of the right to the protection of personal data.

Article 9

Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Explanation

This Article is based on Article 12 of the ECHR, which reads as follows: "Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right." The wording of the Article has been modernised to cover cases in which national legislation recognises arrangements other than marriage for founding a family. This Article neither prohibits nor imposes the granting of the status of marriage to unions between people of the same sex. This right is thus similar to that afforded by the ECHR, but its scope may be wider when national legislation so provides.

Article 10

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Explanation

The right guaranteed in paragraph 1 corresponds to the right guaranteed in Article 9 of the ECHR and, in accordance with Article 52(3) of the Charter, has the same meaning and scope. Limitations must therefore respect Article 9(2) of the Convention, which reads as follows: "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

The right guaranteed in paragraph 2 corresponds to national constitutional traditions and to the development of national legislation on this issue.

Article 11

Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Explanation

1. *Article 11 corresponds to Article 10 of the European Convention on Human Rights, which reads as follows:*

- "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
- 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."*

Pursuant to Article 52(3) of the Charter, the meaning and scope of this right are the same as those guaranteed by the ECHR. The limitations which may be imposed on it may therefore not exceed those provided for in Article 10(2) of the Convention, without prejudice to any restrictions which competition law of the Union may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR.

- Paragraph 2 of this Article spells out the consequences of paragraph 1 regarding freedom of the media. It is based in particular on Court of Justice case law regarding television, particularly in case C-288/89 (judgment of 25 July 1991, Stichting Collectieve Antennevoorziening Gouda and others [1991] ECR I-4007), and on the Protocol on the system of public broadcasting in the Member States annexed to the EC Treaty and now to the Constitution, and on Council Directive 89/552/EC (particularly its seventeenth recital).*

Article 12

Freedom of assembly and of association

- Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
- Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Explanation

Paragraph 1 of this Article corresponds to Article 11 of the ECHR, which reads as follows:

- "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*

2. *No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."*

The meaning of the provisions of paragraph 1 is the same as that of the ECHR, but their scope is wider since they apply at all levels including European level. In accordance with Article 52(3) of the Charter, limitations on that right may not exceed those considered legitimate by virtue of Article 11(2) of the ECHR.

2. *This right is also based on Article 11 of the Community Charter of the Fundamental Social Rights of Workers.*
3. *Paragraph 2 of this Article corresponds to Article [I-45 § 4] of the Constitution.*

Article 13

Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Explanation

This right is deduced primarily from the right to freedom of thought and expression. It is to be exercised having regard to Article 1 and may be subject to the limitations authorised by Article 10 of the ECHR.

Article 14

Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Explanation

1. *This Article is based on the common constitutional traditions of Member States and on Article 2 of the Protocol to the ECHR, which reads as follows:*

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

It was considered useful to extend this article to access to vocational and continuing training (see point 15 of the Community Charter of the Fundamental Social Rights of Workers and Article 10 of the Social Charter) and to add the principle of free compulsory education. As it is worded, the latter principle merely implies that as regards compulsory education, each child has the possibility of attending an establishment which offers free education. It does not require all establishments which provide education or vocational and continuing training, in particular private ones, to be free of charge. Nor does it exclude certain specific forms of education having to be paid for, if the State takes measures to grant financial compensation. Insofar as the Charter applies to the Union,

this means that in its training policies the Union must respect free compulsory education, but this does not, of course, create new powers. Regarding the right of parents, it must be interpreted in conjunction with the provisions of Article 24.

- 2. Freedom to found public or private educational establishments is guaranteed as one of the aspects of freedom to conduct a business but it is limited by respect for democratic principles and is exercised in accordance with the arrangements defined by national legislation.*

Article 15

Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Explanation

Freedom to choose an occupation, as enshrined in Article 15(1), is recognised in Court of Justice case law (see inter alia judgment of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraphs 12 to 14 of the grounds; judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 8 October 1986, Case 234/85 Keller [1986] ECR 2897, paragraph 8 of the grounds).

This paragraph also draws upon Article 1(2) of the European Social Charter, which was signed on 18 October 1961 and has been ratified by all the Member States, and on point 4 of the Community Charter of the Fundamental Social Rights of Workers of 9 December 1989. The expression "working conditions" is to be understood in the sense of Article [III-102] of the Constitution.

The second paragraph deals with the three freedoms guaranteed by Articles [I-4] and [III-15, III-19 and III-26] of the Constitution, namely freedom of movement for workers, freedom of establishment and freedom to provide services.

The third paragraph has been based on TEC Article 137(3), fourth indent, now replaced by Article [III-99 (1) (g)] of the Constitution, and on Article 19(4) of the European Social Charter signed on 18 October 1961 and ratified by all the Member States. Article 52(2) of the Charter is therefore applicable. The question of recruitment of seamen having the nationality of third States for the crews of vessels flying the flag of a Member State of the Union is governed by Union law and national legislation and practice.

Article 16

Freedom to conduct a business

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

Explanation

This Article is based on Court of Justice case law which has recognised freedom to exercise an economic or commercial activity (see judgments of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraph 14 of the grounds, and of 27 September 1979, Case 230-78 SPA Eridiana and others [1979] ECR 2749, paragraphs 20 and 31 of the grounds) and freedom of contract (see inter alia Sukkerfabriken Nykøbing judgment, Case 151/78 [1979] ECR 1, paragraph 19 of the grounds, and judgment of 5 October 1999, C-240/97 Spain v. Commission, [1999] ECR I-6571, paragraph 99 of

the grounds) and Article [I-3 (2)] of the Constitution, which recognises free competition. Of course, this right is to be exercised with respect for Union law and national legislation. It may be subject to the limitations provided for in Article 52(1) of the Charter.

Article 17

Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

Explanation

This Article is based on Article 1 of the Protocol to the ECHR:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

This is a fundamental right common to all national constitutions. It has been recognised on numerous occasions by the case law of the Court of Justice, initially in the Hauer judgment (13 December 1979, ECR [1979] 3727). The wording has been updated but, in accordance with Article 52(3), the meaning and scope of the right are the same as those of the right guaranteed by the ECHR and the limitations may not exceed those provided for there.

Protection of intellectual property, one aspect of the right of property, is explicitly mentioned in paragraph 2 because of its growing importance and Community secondary legislation. Intellectual property covers not only literary and artistic property but also inter alia patent and trademark rights and associated rights. The guarantees laid down in paragraph 1 shall apply as appropriate to intellectual property.

Article 18

Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Constitution.

Explanation

The text of the Article has been based on TEC Article 63, now replaced by Article [III-162] of the Constitution, which requires the Union to respect the Geneva Convention on refugees. Reference should be made to the Protocols relating to the United Kingdom and Ireland annexed to the [Treaty of Amsterdam] Constitution and to Denmark to determine the extent to which those Member States implement Union law in this area and the extent to which this Article is applicable to them. This Article is in line with the Protocol on Asylum annexed to the Constitution.

Article 19

Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

Explanation

Paragraph 1 of this Article has the same meaning and scope as Article 4 of Protocol No 4 to the ECHR concerning collective expulsion. Its purpose is to guarantee that every decision is based on a specific examination and that no single measure can be taken to expel all persons having the nationality of a particular State (see also Article 13 of the Covenant on Civil and Political Rights).

*Paragraph 2 incorporates the relevant case law from the European Court of Human Rights regarding Article 3 of the ECHR (see *Ahmed v. Austria*, judgment of 17 December 1996, [1996] ECR VI-2206 and *Soering*, judgment of 7 July 1989).*

TITLE III. EQUALITY**Article 20****Equality before the law**

Everyone is equal before the law.

Explanation

This Article corresponds to a general principle of law which is included in all European constitutions and has also been recognised by the Court of Justice as a basic principle of Community law (judgment of 13 November 1984, Case 283/83 Racke [1984] ECR 3791, judgment of 17 April 1997, Case 15/95 EARL [1997] ECR I-1961, and judgment of 13 April 2000, Case 292/97 Karlsson, [2000] ECR 2737).

Article 21**Non-discrimination**

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

Explanation

Paragraph 1 draws on Article 13 of the EC Treaty, now replaced by [Article III-5] of the Constitution, Article 14 of the ECHR and Article 11 of the Convention on Human Rights and Biomedicine as regards genetic heritage. Insofar as this corresponds to Article 14 of the ECHR, it applies in compliance with it.

There is no contradiction or incompatibility between paragraph 1 and Article [III-5] of the Constitution which has a different scope and purpose: Article [III-5] confers power on the Union to adopt legislative acts, including harmonisation of the Member States' laws and regulations, to combat certain forms of discrimination, listed exhaustively in that Article. Such legislation may cover action of Member State authorities (as well as relations between private individuals) in any area within the limits of the Union's powers. In contrast, the provision in paragraph 1 does not create any power to enact anti-discrimination laws in these areas of Member State or private action, nor does it lay down a sweeping ban of discrimination in such wide-ranging areas. Instead, it only addresses discriminations by the institutions and bodies of the Union themselves, when exercising powers conferred under other articles of Parts I and III of the Constitution, and by Member States only when they are implementing Union law. Paragraph 1 therefore does not alter the extent of powers granted under Article [III-5] nor the interpretation given to that Article.

Paragraph 2 corresponds to Article [I-4 (2)] of the Constitution and must be applied in compliance with that Article.

Article 22

Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Explanation

This Article has been based on Article 6 of the Treaty on European Union and on Article 151(1) and (4) of the EC Treaty, now replaced by Article [III-176 (1) and (4)] of the Constitution, concerning culture. Respect for cultural and linguistic diversity is now also laid down in Article [I-3 (3)] of the Constitution. The Article is also inspired by declaration No 11 to the Final Act of the Amsterdam Treaty on the status of churches and non-confessional organisations, now taken over in Article [I-51] of the Constitution.

Article 23

Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Explanation

The first paragraph has been based on Articles 2 and 3(2) of the EC Treaty, now replaced by Articles [I-3] and [III-1] of the Constitution which impose the objective of promoting equality between men and women on the Union, and on Article 141 (1) of the EC Treaty, now replaced by Article [III-103 (1)] of the Constitution. It draws on Article 20 of the revised European Social Charter of 3 May 1996 and on point 16 of the Community Charter on the rights of workers. It is also based on Article 141(3) of the EC Treaty, now replaced by Article [III-103 (3)] of the Constitution, and Article 2(4) of Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Paragraph 2 takes over in shorter form Article [III-103 (4)] of the Constitution which provides that the principle of equal treatment does not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers. In accordance with Article 52 (2), the present paragraph does not amend Article [III-103 (4)].

Article 24

The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Explanation

This Article is based on the New York Convention on the Rights of the Child signed on 20 November 1989 and ratified by all the Member States, particularly Articles 3, 9, 12 and 13 thereof.

Paragraph 3 takes account of the fact that, as part of the establishment of an area of freedom, security and justice, Union legislation on civil matters having cross-border implications, for which Article [III-165] of the Constitution confers power, may include notably visiting rights ensuring that children can maintain on a regular basis a personal and direct contact with both his or her parents.

Article 25

The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Explanation

This Article draws on Article 23 of the revised European Social Charter and Articles 24 and 25 of the Community Charter of the Fundamental Social Rights of Workers. Of course, participation in social and cultural life also covers participation in political life.

Article 26

Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

Explanation

The principle set out in this Article is based on Article 15 of the European Social Charter and also draws on point 26 of the Community Charter of the Fundamental Social Rights of Workers.

TITLE IV. SOLIDARITY

Article 27

Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

Explanation

This Article appears in the revised European Social Charter (Article 21) and in the Community Charter on the rights of workers (points 17 and 18). It applies under the conditions laid down by Union law and by national laws. The reference to appropriate levels refers to the levels laid down by Union law or by national laws and practices, which might include the European level when Union legislation so provides. There is a considerable Union acquis in this field: Articles [III-100 and III-101] of the Constitution, and Directives 2002/14/EC (general framework for informing and consulting employees in the European Community), 98/59/EC (collective redundancies), 2001/23/EC (transfers of undertakings) and 94/45/EC (European works councils).

Article 28

Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Explanation

This Article is based on Article 6 of the European Social Charter and on the Community Charter of the Fundamental Social Rights of Workers (points 12 to 14). The right of collective action was recognised by the European Court of Human Rights as one of the elements of trade union rights laid down by Article 11 of the ECHR. As regards the appropriate levels at which collective negotiation might take place, see the explanation given for the above Article. The modalities and limits for the exercise of collective action, including strike action, come under national laws and practices, including the question of whether it may be carried out in parallel in several Member States.

Article 29**Right of access to placement services**

Everyone has the right of access to a free placement service.

Explanation

This Article is based on Article 1(3) of the European Social Charter and point 13 of the Community Charter of the Fundamental Social Rights of Workers.

Article 30**Protection in the event of unjustified dismissal**

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

Explanation

This Article draws on Article 24 of the revised Social Charter. See also Directive 2001/23/EC on the safeguarding of employees' rights in the event of transfers of undertakings, and Directive 80/987/EEC on the protection of employees in the event of the insolvency of their employer, as amended by Directive 2002/74/EC.

Article 31

Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Explanation

1. *Paragraph 1 of this Article is based on Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work. It also draws on Article 3 of the Social Charter and point 19 of the Community Charter on the rights of workers, and, as regards dignity at work, on Article 26 of the revised Social Charter. The expression "working conditions" must be understood in the sense of Article [III-102] of the Constitution.*
2. *Paragraph 2 is based on Directive 93/104/EC concerning certain aspects of the organisation of working time, Article 2 of the European Social Charter and point 8 of the Community Charter on the rights of workers.*

Article 32

Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Explanation

This Article is based on Directive 94/33/EC on the protection of young people at work, Article 7 of the European Social Charter and points 20 to 23 of the Community Charter of the Fundamental Social Rights of Workers.

Article 33

Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Explanation

Article 33(1) is based on Article 16 of the European Social Charter. The second paragraph draws on Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are

breastfeeding and Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC. It is also based on Article 8 (protection of maternity) of the European Social Charter and draws on Article 27 (right of workers with family responsibilities to equal opportunities and equal treatment) of the revised Social Charter. "Maternity" covers the period from conception to weaning.

Article 34

Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

Explanation

The principle set out in Article 34(1) is based on Articles 137 and 140 of the EC Treaty, now replaced by Articles [III-99 and III-102] and on Article 12 of the European Social Charter and point 10 of the Community Charter on the rights of workers. The Union must respect it when exercising the powers conferred on it by Articles [III-99 and III-102] of the Constitution. The reference to social services relates to cases in which such services have been introduced to provide certain advantages but does not imply that such services must be created where they do not exist. "Maternity" must be understood in the same sense as in the preceding Article.

The second paragraph is based on Articles 12 (4) and 13(4) of the European Social Charter and point 2 of the Community Charter of the Fundamental Social Rights of Workers and reflects the rules arising from Regulation No 1408/71 and Regulation No 1612/68.

The third paragraph draws on Article 13 of the European Social Charter and Articles 30 and 31 of the revised Social Charter and point 10 of the Community Charter. The Union must respect it in the context of policies based on Article [III-99] of the Constitution.

Article 35

Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Explanation

The principles set out in this Article are based on Article 152 of the EC Treaty, now replaced by Article [III-174] of the Constitution, and on Articles 11 and 13 of the European Social Charter. The second sentence of the Article takes over Article [III-174 (1)].

Article 36

Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Constitution, in order to promote the social and territorial cohesion of the Union.

Explanation

This Article is fully in line with Article [III-3] of the Constitution and does not create any new right. It merely sets out the principle of respect by the Union for the access to services of general economic interest as provided for by national provisions, when those provisions are compatible with Union law.

Article 37**Environmental protection**

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Explanation

The principles set out in this Article have been based on Articles 2, 6 and 174 of the EC Treaty, which have now been replaced by Articles [I-3 (3), III-2 and III-124] of the Constitution. It also draws on the provisions of some national constitutions.

Article 38**Consumer Protection**

Union policies shall ensure a high level of consumer protection.

Explanation

The principles set out in this Article have been based on Article 153 of the EC Treaty, now replaced by Article [III-127] of the Constitution.

TITLE V. CITIZENS' RIGHTS

Article 39

Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Explanation

Article 39 applies under the conditions laid down in Parts I and III of the Constitution, in accordance with Article 52(2) of the Charter. Article 39(1) corresponds to the right guaranteed in Article [I-8 (2)] of the Constitution (cf. also the legal base in Article [III-7] for the adoption of detailed arrangements for the exercise of that right) and Article 39(2) corresponds to Article [I-19 (2)] of the Constitution. Article 39(2) takes over the basic principles of the electoral system in a democratic State.

Article 40

Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Explanation

This Article corresponds to the right guaranteed by Article [I-8 (2)] of the Constitution (cf. also the legal base in Article [III-7] for the adoption of detailed arrangements for the exercise of that right). In accordance with Article 52(2) of the Charter, it applies under the conditions set out in these Articles of Parts I and III of the Constitution.

Article 41

Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the Institutions, bodies and agencies of the Union.
2. This right includes:
 - the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its Institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the Institutions of the Union in one of the languages of the Constitution and must have an answer in the same language.

Explanation

Article 41 is based on the existence of the Union as subject to the rule of law whose characteristics were developed in the case law which enshrined inter alia good administration as a general principle of law (see inter alia Court of Justice judgment of 31 March 1992 in Case C-255/90 P, Burbán [1992] ECR I-2253, and Court of First Instance judgments of 18 September 1995 in Case T-167/94 Nölle [1995] ECR II-2589, and 9 July 1999 in Case T-231/97 New Europe Consulting and others [1999] ECR II-2403). The wording for that right in the first two paragraphs results from the case law (Court of Justice judgment of 15 October 1987 in Case 222/86 Heylens [1987] ECR 4097, paragraph 15 of the grounds, judgment of 18 October 1989 in Case 374/87 Orkem [1989] ECR 3283, judgment of 21 November 1991 in Case C-269/90 TU München [1991] ECR I-5469, and Court of First Instance judgments of 6 December 1994 in Case T-450/93 Lisrestal [1994] ECR II-1177, 18 September 1995 in Case T-167/94 Nölle [1995] ECR II-258) and the wording regarding the obligation to give reasons comes from Article 253 of the EC Treaty, now replaced by Article [I-37(2)] of the Constitution (cf. also the legal base in Article [III-300] of the Constitution for the adoption of legislation in the interest of an open, efficient and independent European public service).

Paragraph 3 reproduces the right now guaranteed by Article [III-333] of the Constitution.

Paragraph 4 reproduces the right now guaranteed by Articles [I-8, fourth indent, and III-9] of the Constitution. In accordance with Article 52(2) of the Charter, those rights are to be applied under the conditions and within the limits defined by Part III of the Constitution.

The right to an effective remedy, which is an important aspect of this question, is guaranteed in Article 47 of this Charter.

Article 42

Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the Institutions, bodies and agencies of the Union, in whatever form they are produced.

Explanation

The right guaranteed in this Article has been taken over from Article 255 of the EC Treaty, on the basis of which Regulation 1049/2001 has subsequently been adopted. The European Convention has extended this right to documents of institutions, bodies and agencies generally, regardless of their form, see Article [I-49 (3)] of the Constitution. In accordance with Article 52(2) of the Charter, the right of access to documents is exercised under the conditions and within the limits for which provision is made in Articles [I-49 (3) and III-301].

Article 43**Ombudsman**

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 refer to the European Ombudsman cases of maladministration in the activities of the Institutions, bodies or agencies of the Union, with the exception of the European Court of Justice and the High Court acting in their judicial role.

Explanation

The right guaranteed in this Article is the right guaranteed by Articles [I-8 and III-232 of the Constitution]. In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these two Articles.

Article 44**Right to petition**

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.

Explanation

The right guaranteed in this Article is the right guaranteed by Articles [I-8 and III-231] of the Constitution. In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these two Articles.

Article 45

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Constitution, to nationals of third countries legally resident in the territory of a Member State.

Explanation

The right guaranteed by paragraph 1 is the right guaranteed by Article [I-8, first indent] of the Constitution (cf. also the legal base in Article [III-6]); and the judgement of the Court of Justice of 17 September 2002, C-413/99 Baumbast, [2002] ECR 709). In accordance with Article 52(2) of the Charter, it applies under the conditions and within the limits defined for which provision is made in Part III of the Constitution.

Paragraph 2 refers to the power granted to the Union by Articles [III-161 to III-163] of the Constitution. Consequently, the granting of this right depends on the institutions exercising that power.

Article 46

Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

Explanation

The right guaranteed by this Article is the right guaranteed by Article [I-8] of the Constitution; cf. also the legal base in Article [III-8]. In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these Articles.

TITLE VI. JUSTICE

Article 47

Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Explanation

The first paragraph is based on Article 13 of the ECHR:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

However, in Union law the protection is more extensive since it guarantees the right to an effective remedy before a court. The Court of Justice enshrined that right in its judgment of 15 May 1986 as a general principle of Union law (Case 222/84 Johnston [1986] ECR 1651; see also judgment of 15 October 1987, Case 222/86 Heylens [1987] ECR 4097 and judgment of 3 December 1992, Case C-97/91 Borelli [1992] ECR I-6313). According to the Court, that general principle of Union law also applies to the Member States when they are implementing Union law. The inclusion of this precedent in the Charter has not been intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to admissibility for direct actions before the Court of Justice of the European Union. The European Convention has considered the Union's system of judicial review including the rules on admissibility, and confirmed them while amending them as to certain aspects, as reflected in Articles [III-254 to III-285] of the Constitution, and in particular in Article [III-266 (4)]. Article 47 applies to the institutions of the Union and of Member States when they are implementing Union law and does so for all rights guaranteed by Union law.

The second paragraph corresponds to Article 6(1) of the ECHR which reads as follows:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

In Union law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations. That is one of the consequences of the fact that the Union is a community based on the rule of law as stated by the Court in Case 294/83, "Les Verts" v. European Parliament (judgment of 23 April 1986, [1988] ECR 1339). Nevertheless, in all respects other than their scope, the guarantees afforded by the ECHR apply in a similar way to the Union.

With regard to the third paragraph, it should be noted that in accordance with the case law of the European Court of Human Rights, provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy (ECHR Judgment of 9.10.1979, Airey, Series A, Volume 32, 11). There is also a system of legal assistance for cases before the Court of Justice of the European Union.

Article 48

Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Explanation

Article 48 is the same as Article 6(2) and (3) of the ECHR, which reads as follows:

- "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
3. *Everyone charged with a criminal offence has the following minimum rights:*
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
 - (b) to have adequate time and facilities for the preparation of his defence;*
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*

- (e) *to have the free assistance of an interpreter if he cannot understand or speak the language used in court."*

In accordance with Article 52(3), this right has the same meaning and scope as the right guaranteed by the ECHR.

Article 49

Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

Explanation

This Article follows the traditional rule of the non-retroactivity of laws and criminal sanctions. There has been added the rule of the retroactivity of a more lenient penal law, which exists in a number of Member States and which features in Article 15 of the Covenant on Civil and Political Rights.

Article 7 of the ECHR is worded as follows:

- "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was*

committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. *This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."*

In paragraph 2, the reference to "civilised" nations has been deleted; this does not change the meaning of this paragraph, which refers to crimes against humanity in particular. In accordance with Article 52(3), the right guaranteed here therefore has the same meaning and scope as the right guaranteed by the ECHR.

Paragraph 3 states the general principle of proportionality between penalties and criminal offences which is enshrined in the common constitutional traditions of the Member States and in the case law of the Court of Justice of the Communities.

Article 50

Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

Explanation

Article 4 of Protocol No 7 to the ECHR reads as follows:

- "1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.*
2. *The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and the penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.*

3. *No derogation from this Article shall be made under Article 15 of the Convention."*

The "non bis in idem" rule applies in Union law (see, among the many precedents, the judgment of 5 May 1996, Cases 18/65 and 35/65, Gutmann v. Commission [1966] ECR 103 and a recent case, the decision of the Court of First Instance of 20 April 1999, Joined Cases T-305/94 and others, Limburgse Vinyl Maatschappij NV v. Commission [1999] ECR II-931). The rule prohibiting cumulation refers to cumulation of two penalties of the same kind, that is to say criminal law penalties.

*In accordance with Article 50, the "non bis in idem" rule applies not only within the jurisdiction of one State but also between the jurisdictions of several Member States. That corresponds to the *acquis* in Union law; see Articles 54 to 58 of the Schengen Convention and the judgment of the Court of Justice of 11 February 2003, C-187/01 Gözütok (not yet published), Article 7 of the Convention on the Protection of the European Communities' Financial Interests and Article 10 of the Convention on the fight against corruption. The very limited exceptions in those Conventions permitting the Member States to derogate from the "non bis in idem" rule are covered by the horizontal clause in Article 52(1) of the Charter concerning limitations. As regards the situations referred to by Article 4 of Protocol No 7, namely the application of the principle within the same Member State, the guaranteed right has the same meaning and the same scope as the corresponding right in the ECHR.*

TITLE VII. GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

Article 51

Scope

1. The provisions of this Charter are addressed to the Institutions, bodies and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the other Parts of the Constitution.
2. This Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks defined in the other Parts of the Constitution.

Explanation

The aim of Article 51 is to determine the scope of the Charter. It seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union, in compliance with the principle of subsidiarity. This provision was drafted in keeping with Article 6(2) of the Treaty on European Union, which required the Union to respect fundamental rights, and with the mandate issued by Cologne European Council. The term "institutions" is enshrined in Part I of the Constitution, Article [I-18(2)] of which lists the institutions. The expression "bodies and agencies" is commonly used in the Constitution to refer to all the authorities set up by the Constitution or by secondary legislation (see, e.g., Article [I-49 or I-50] of the Constitution).

As regards the Member States, it follows unambiguously from the case law of the Court of Justice that the requirement to respect fundamental rights defined in a Union context is only binding on the Member States when they act in the scope of Union law (judgment of 13 July 1989, Case 5/88 Wachauf [1989] ECR 2609; judgment of 18 June 1991, ERT [1991] ECR I-2925); judgment of 18 December 1997 (C-309/96 Annibaldi [1997] ECR I-7493). The Court of Justice confirmed this case law in the following terms: "In addition, it should be remembered that the requirements

flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they implement Community rules..." (judgment of 13 April 2000, Case C-292/97, [2000] ECR 2737, paragraph 37 of the grounds). Of course this rule, as enshrined in this Charter, applies to the central authorities as well as to regional or local bodies, and to public organisations, when they are implementing Union law.

Paragraph 2, together with the second sentence of paragraph 1, confirms that the Charter may not have the effect of extending the competences and tasks which the other Parts of the Constitution confer on the Union. Explicit mention is made here of the logical consequences of the principle of subsidiarity and of the fact that the Union only has those powers which have been conferred upon it. The fundamental rights as guaranteed in the Union do not have any effect other than in the context of the powers determined by Parts I and III of the Constitution. Consequently, an obligation, pursuant to the second sentence of paragraph 1, for the Union's institutions to promote principles laid down in the Charter, may arise only within the limits of these same powers.

Paragraph 2 also confirms that the Charter may not have the effect of extending the field of application of Union law beyond the powers of the Union as established in the other Parts of the Constitution. The Court of Justice has already established this rule with respect to the fundamental rights recognised as part of Union law (judgment of 17 February 1998, C-249/96 Grant, 1998 ECR I-621, paragraph 45 of the grounds). In accordance with this rule, it goes without saying that the incorporation of the Charter into the Constitution cannot be understood as extending by itself the range of Member State action considered to be "implementation of Union law" (within the meaning of paragraph 1 and the above-mentioned case law).

Article 52

Scope and interpretation of rights and principles

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

2. Rights recognised by this Charter for which provision is made in other Parts of the Constitution shall be exercised under the conditions and within the limits defined by these relevant Parts.
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by Institutions and bodies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.
6. Full account shall be taken of national laws and practices as specified in this Charter.

Explanation

The purpose of Article 52 is to set the scope of the rights and principles of the Charter, and to lay down rules for their interpretation. Paragraph 1 deals with the arrangements for the limitation of rights. The wording is based on the case law of the Court of Justice: "...it is well established in the case law of the Court that restrictions may be imposed on the exercise of fundamental rights, in particular in the context of a common organisation of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights" (judgment of 13 April 2000, Case C-292/97, paragraph 45 of the grounds). The reference to general interests recognised by the Union covers both the objectives mentioned in Article [I-2] of the Constitution and other interests protected by specific provisions of the Constitution such as Articles [I-5 (1), III-15, III-40, III-339].

Paragraph 2 refers to rights which were already expressly guaranteed in the Treaty establishing the European Community and have been recognised in the Charter, and which are now found in other Parts of the Constitution (notably the rights derived from Union citizenship). It clarifies that such rights remain subject to the conditions and limits applicable to the Union law on which they are based, and for which provision is now made in Parts I and III of the Constitution. The Charter does not alter the system of rights conferred by the EC Treaty and now taken over by Parts I and III of the Constitution.

Paragraph 3 is intended to ensure the necessary consistency between the Charter and the ECHR by establishing the rule that, insofar as the rights in the present Charter also correspond to rights guaranteed by the ECHR, the meaning and scope of those rights, including authorised limitations, are the same as those laid down by the ECHR. This means in particular that the legislator, in laying down limitations to those rights, must comply with the same standards as are fixed by the detailed limitation arrangements laid down in the ECHR, which are thus made applicable for the rights covered by this paragraph, without thereby adversely affecting the autonomy of Union law and of that of the Court of Justice of the European Union.

The reference to the ECHR covers both the Convention and the Protocols to it. The meaning and the scope of the guaranteed rights are determined not only by the text of those instruments, but also by the case law of the European Court of Human Rights and by the Court of Justice of the European Union. The last sentence of the paragraph is designed to allow the Union to guarantee more extensive protection. In any event, the level of protection afforded by the Charter may never be lower than that guaranteed by the ECHR.

The Charter does not affect the possibilities of Member States to avail themselves of Article 15 ECHR, allowing derogations from ECHR rights in the event of war or of other public dangers threatening the life of the nation, when they take action in the areas of national defence in the event of war and of the maintenance of law and order, in accordance with their responsibilities recognised in Articles [I-5 (1), III-13, III-158] of the Constitution.

The list of rights which may at the present stage, without precluding developments in the law, legislation and the Treaties, be regarded as corresponding to rights in the ECHR within the meaning of the present paragraph is given hereafter. It does not include rights additional to those in the ECHR.

1. Articles of the Charter where both the meaning and the scope are the same as the corresponding Articles of the ECHR:

- Article 2 corresponds to Article 2 of the ECHR
- Article 4 corresponds to Article 3 of the ECHR
- Article 5(1) and (2) correspond to Article 4 of the ECHR
- Article 6 corresponds to Article 5 of the ECHR
- Article 7 corresponds to Article 8 of the ECHR
- Article 10(1) corresponds to Article 9 of the ECHR
- Article 11 corresponds to Article 10 of the ECHR without prejudice to any restrictions which Union law may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR
- Article 17 corresponds to Article 1 of the Protocol to the ECHR
- Article 19(1) corresponds to Article 4 of Protocol No 4
- Article 19(2) corresponds to Article 3 of the ECHR as interpreted by the European Court of Human Rights
- Article 48 corresponds to Article 6(2) and(3) of the ECHR
- Article 49(1) (with the exception of the last sentence) and (2) correspond to Article 7 of the ECHR

2. Articles where the meaning is the same as the corresponding Articles of the ECHR, but where the scope is wider:

- Article 9 covers the same field as Article 12 of the ECHR, but its scope may be extended to other forms of marriage if these are established by national legislation
- Article 12(1) corresponds to Article 11 of the ECHR, but its scope is extended to European Union level
- Article 14(1) corresponds to Article 2 of the Protocol to the ECHR, but its scope is extended to cover access to vocational and continuing training
- Article 14(3) corresponds to Article 2 of the Protocol to the ECHR as regards the rights of parents
- Article 47(2) and (3) correspond to Article 6(1) of the ECHR, but the limitation to the determination of civil rights and obligations or criminal charges does not apply as regards Union law and its implementation

- *Article 50 corresponds to Article 4 of Protocol No 7 to the ECHR, but its scope is extended to European Union level between the Courts of the Member States.*
- *Finally, citizens of the European Union may not be considered as aliens in the scope of the application of Union law, because of the prohibition of any discrimination on grounds of nationality. The limitations provided for by Article 16 of the ECHR as regards the rights of aliens therefore do not apply to them in this context.*

The rule of interpretation contained in paragraph 4 has been based on the wording of Article 6 § 2 of the Treaty on European Union (cf. now the wording of Article [I-7 § 3] of the Constitution) and takes due account of the approach to common constitutional traditions followed by the Court of Justice (e.g., judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 18 May 1982, Case 155/79, AM&S, [1982] ECR 1575). Under that rule, rather than following a rigid approach of "a lowest common denominator", the Charter rights concerned should be interpreted in a way offering a high standard of protection which is adequate for the law of the Union and in harmony with the common constitutional traditions.

Paragraph 5 clarifies the distinction between "rights" and "principles" set out in the Charter. According to that distinction, subjective rights shall be respected, whereas principles shall be observed (Article 51 (1)). Principles may be implemented through legislative or executive acts (adopted by the Union in accordance with its powers, and by the Member States only when they implement Union law); accordingly, they become significant for the Courts only when such acts are interpreted or reviewed. They do not however give rise to direct claims for positive action by the Union's institutions or Member States authorities. This is consistent both with case law of the Court of Justice (Cf. notably case law on the "precautionary principle" in Article 174 (2) TEC (replaced by [Article III-124] of the Constitution): judgment of the CFI of 11 September 2002, T-13/99, Pfizer vs. Council, with numerous references to earlier case law; and a series of judgments on Article 33 (ex-39) on the principles of agricultural law, e.g. judgment of the Court of Justice C-265/85, Van den Berg, 1987 ECR 1155: scrutiny of the principle of market stabilisation and of reasonable expectations) and with the approach of the Member States' constitutional systems to "principles" particularly in the field of social law. For illustration, examples for principles recognised in the Charter include e.g. Articles 25, 26 and 37. In some cases, an Article of the Charter may contain both elements of a right and of a principle, e.g., Articles 23, 33 and 34.

Paragraph 6 refers to the various Articles in the Charter which, in the spirit of subsidiarity, make reference to national laws and practices.

Article 53

Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Explanation

This provision is intended to maintain the level of protection currently afforded within their respective scope by Union law, national law and international law. Owing to its importance, mention is made of the ECHR.

Article 54

Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

Explanation

This Article corresponds to Article 17 of the ECHR:

"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

THE EUROPEAN CONVENTION

THE SECRETARIAT

Brussels, 18 July 2003**CONV 850/03****COVER NOTE**

from : Secretariat

to : Convention

Nos. prev. docs. : CONV 820/1/03 REV 1, CONV 847/03, CONV 848/03

Subject : **Draft Treaty establishing a Constitution for Europe**

Members of the Convention will find attached the final text of the draft Treaty establishing a Constitution for Europe, as submitted to the President of the European Council in Rome on 18 July 2003.

Draft

TREATY
ESTABLISHING A
CONSTITUTION
FOR EUROPE

Adopted by consensus by the European Convention
on 13 June and 10 July 2003

SUBMITTED TO THE
PRESIDENT OF THE EUROPEAN COUNCIL
IN ROME

– 18 July 2003 –



PREFACE

to Parts I and II of the draft Treaty establishing a Constitution for Europe submitted to the European Council meeting in Thessaloniki on 20 June 2003.

PREFACE

Noting that the European Union was coming to a turning point in its existence, the European Council which met in Laeken, Belgium, on 14 and 15 December 2001 convened the European Convention on the Future of Europe.

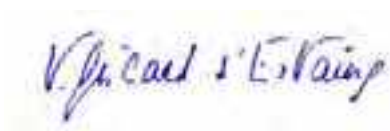
The Convention was asked to draw up proposals on three subjects: how to bring citizens closer to the European design and European Institutions; how to organise politics and the European political area in an enlarged Union; and how to develop the Union into a stabilising factor and a model in the new world order.

The Convention has identified responses to the questions put in the Laeken declaration:

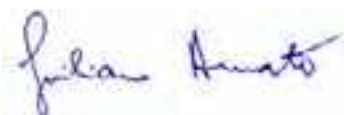
- it proposes a better division of Union and Member State competences;
- it recommends a merger of the Treaties and the attribution of legal personality to the Union;
- it establishes a simplification of the Union's instruments of action;
- it proposes measures to increase the democracy, transparency and efficiency of the European Union, by developing the contribution of national Parliaments to the legitimacy of the European design, by simplifying the decision-making processes, and by making the functioning of the European Institutions more transparent and comprehensible;
- it establishes the necessary measures to improve the structure and enhance the role of each of the Union's three institutions, taking account, in particular, of the consequences of enlargement.

The Laeken declaration also asked whether the simplification and reorganisation of the Treaties should not pave the way for the adoption of a constitutional text. The Convention's proceedings ultimately led to the drawing up of a draft Treaty establishing a Constitution for Europe, which achieved a broad consensus at the plenary session on 13 June 2003.

That is the text which it is our privilege to present today, 20 June 2003, to the European Council meeting in Thessaloniki, on behalf of the European Convention, in the hope that it will constitute the foundation of a future Treaty establishing the European Constitution.



Valéry Giscard d'Estaing
Président de la Convention



Giuliano Amato
Vice-Président



Jean-Luc Dehaene
Vice-Président

PART I

TITLE I: DEFINITION AND OBJECTIVES OF THE UNION

Article 1: Establishment of the Union

1. Reflecting the will of the citizens and States of Europe to build a common future, this Constitution establishes the European Union, on which the Member States confer competences to attain objectives they have in common. The Union shall coordinate the policies by which the Member States aim to achieve these objectives, and shall exercise in the Community way the competences they confer on it.
2. The Union shall be open to all European States which respect its values and are committed to promoting them together.

Article 2: The Union's values

The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, solidarity and non-discrimination.

TITLE II: FUNDAMENTAL RIGHTS AND CITIZENSHIP OF THE UNION

Article 7: Fundamental rights

1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes Part II of the Constitution.
2. The Union shall seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Constitution.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Article 8: Citizenship of the Union

1. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship; it shall not replace it.
2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Constitution. They shall have:
 - the right to move and reside freely within the territory of the Member States;
 - the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;

PART II

THE CHARTER OF FUNDAMENTAL RIGHTS OF THE UNION

PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice. The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

TITLE I: DIGNITY

Article II-1: Human dignity

Human dignity is inviolable. It must be respected and protected.

Article II-2: Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Article II-3: Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - (a) the free and informed consent of the person concerned, according to the procedures laid down by law,
 - (b) the prohibition of eugenic practices, in particular those aiming at the selection of persons,
 - (c) the prohibition on making the human body and its parts as such a source of financial gain,
 - (d) the prohibition of the reproductive cloning of human beings.

Article II-4: Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article II-5: Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

TITLE II: FREEDOMS

Article II-6: Right to liberty and security

Everyone has the right to liberty and security of person.

Article II-7: Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article II-8: Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Article II-9: Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article II-10: Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Article II-11: Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Article II-12: Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article II-13: Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article II-14: Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article II-15: Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article II-16: Freedom to conduct a business

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

Article II-17: Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

Article II-18: Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Constitution.

Article II-19: Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

TITLE III: EQUALITY**Article II-20: Equality before the law**

Everyone is equal before the law.

Article II-21: Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

Article II-22: Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article II-23: Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article II-24: The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private Institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article II-25: The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article II-26: Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

TITLE IV: SOLIDARITY

Article II-27: Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

Article II-28: Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Article II-29: Right of access to placement services

Everyone has the right of access to a free placement service.

Article II-30: Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

Article II-31: Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article II-32: Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article II-33: Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article II-34: Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

Article II-35: Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Article II-36: Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Constitution, in order to promote the social and territorial cohesion of the Union.

Article II-37: Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article II-38: Consumer protection

Union policies shall ensure a high level of consumer protection.

TITLE V: CITIZENS' RIGHTS

Article II-39: Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Article II-40: Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article II-41: Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the Institutions, bodies and agencies of the Union.
2. This right includes:
 - (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - (c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its Institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the Institutions of the Union in one of the languages of the Constitution and must have an answer in the same language.

Article II-42: Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the Institutions, bodies and agencies of the Union, in whatever form they are produced.

Article II-43: European Ombudsman

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 refer to the European Ombudsman cases of maladministration in the activities of the Institutions, bodies or agencies of the Union, with the exception of the European Court of Justice and the High Court acting in their judicial role.

Article II-44: Right to petition

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.

Article II-45: Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Constitution, to nationals of third countries legally resident in the territory of a Member State.

Article II-46: Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

TITLE VI: JUSTICE

Article II-47: Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Article II-48: Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Article II-49: Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

Article II-50: Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

TITLE VII: GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

Article II-51: Field of application

1. The provisions of this Charter are addressed to the Institutions, bodies and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the other Parts of the Constitution.
2. This Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks defined in the other Parts of the Constitution.

Article II-52: Scope and interpretation of rights and principles

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter for which provision is made in other Parts of the Constitution shall be exercised under the conditions and within the limits defined by these relevant Parts
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by Institutions and bodies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.
6. Full account shall be taken of national laws and practices as specified in this Charter.

Article II-53: Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article II-54: Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

THE EUROPEAN CONVENTION**Brussels, 18 July 2003**

THE SECRETARIAT

CONV 828/1/03**REV 1****COVER NOTE**

from :	Praesidium
to :	Convention
No. prev. doc. :	WD N° 27 WGII
Subject :	Updated Explanations relating to the text of the Charter of Fundamental Rights.

Members of the Convention will find attached, for information, the updated explanations relating to the text of the Charter of Fundamental Rights, produced under the authority of the Chairman of Working Group II and endorsed by the Praesidium (this revised version contains adapted cross-references to Articles in Parts I and III of the Constitution).

UPDATED EXPLANATIONS,
RELATING TO THE COMPLETE TEXT OF THE CHARTER OF FUNDAMENTAL
RIGHTS OF THE EUROPEAN UNION (AS AMENDED BY THE
EUROPEAN CONVENTION AND INCORPORATED AS PART II
OF THE TREATY ON A CONSTITUTION FOR EUROPE)

These explanations were originally prepared at the instigation of the Praesidium of the Convention which drafted the Charter of Fundamental Rights of the European Union. They have been updated at the instigation of the Praesidium of the European Convention, in the light of the drafting adjustments made to the text of the Charter by that Convention (notably to Articles 51 and 52) and of further developments of Union law. Although they do not as such have the status of law, they are a valuable tool of interpretation intended to clarify the provisions of the Charter.

PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

TITLE I. DIGNITY

Article 1

Human dignity

Human dignity is inviolable. It must be respected and protected.

Explanation

The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights. The 1948 Universal Declaration of Human Rights enshrined human dignity in its preamble: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." In its judgment of 9 October 2001 in case C-377/98 Netherlands v. European Parliament and Council, 2001 ECR 7079, at grounds n° 70 - 77, the Court of Justice confirmed that a fundamental right to human dignity is part of Union law.

It results that none of the rights laid down in this Charter may be used to harm the dignity of another person, and that the dignity of the human person is part of the substance of the rights laid down in this Charter. It must therefore be respected, even where a right is restricted.

Article 2

Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Explanation

1. Paragraph 1 of this Article is based on the first sentence of Article 2(1) of the ECHR, which reads as follows:

"1. Everyone's right to life shall be protected by law..."

2. The second sentence of the provision, which referred to the death penalty, was superseded by the entry into force of Article 1 of Protocol No 6 to the ECHR, which reads as follows:

"The death penalty shall be abolished. No-one shall be condemned to such penalty or executed."

Article 2(2) of the Charter is based on that provision.

3. The provisions of Article 2 of the Charter correspond to those of the above Articles of the ECHR and its Protocol. They have the same meaning and the same scope, in accordance with Article 52(3) of the Charter. Therefore, the "negative" definitions appearing in the ECHR must be regarded as also forming part of the Charter:

- (a) Article 2(2) of the ECHR:

"Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

- (b) Article 2 of Protocol No 6 to the ECHR:

"A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions..."

Article 3

Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:

the free and informed consent of the person concerned, according to the procedures laid down by law,

- the prohibition of eugenic practices, in particular those aiming at the selection of persons,
- the prohibition on making the human body and its parts as such a source of financial gain,
- the prohibition of the reproductive cloning of human beings.

Explanation

1. *In its judgment of 9 October 2001 in case C-377/98 Netherlands v. European Parliament and Council, 2001 ECR 7079, at grounds n° 70, 78 - 80, the Court of Justice confirmed that a fundamental right to human integrity is part of Union law and encompasses, in the context of medicine and biology, the free and informed consent of the donor and recipient.*

2. *The principles of Article 3 of the Charter are already included in the Convention on Human Rights and Biomedicine, adopted by the Council of Europe (ETS 164 and additional protocol ETS 168). The Charter does not set out to depart from those principles, and therefore prohibits only reproductive cloning. It neither authorises nor prohibits other forms of cloning. Thus it does not in any way prevent the legislature from prohibiting other forms of cloning.*

3. *The reference to eugenic practices, in particular those aiming at the selection of persons, relates to possible situations in which selection programmes are organised and implemented, involving campaigns for sterilisation, forced pregnancy, compulsory ethnic marriage among others, all acts deemed to be international crimes in the Statute of the International Criminal Court adopted in Rome on 17 July 1998 (see its Article 7(1)(g)).*

Article 4

Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Explanation

The right in Article 4 is the right guaranteed by Article 3 of the ECHR, which has the same wording: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". By virtue of Article 52(3) of the Charter, it therefore has the same meaning and the same scope as the ECHR Article.

Article 5

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

Explanation

1. *The right in Article 5(1) and (2) corresponds to Article 4(1) and (2) of the ECHR, which has the same wording.*

It therefore has the same meaning and scope as the ECHR Article, by virtue of Article 52(3) of the Charter. Consequently:

– no limitation may legitimately affect the right provided for in paragraph 1;

– in paragraph 2, "forced or compulsory labour" must be understood in the light of the "negative" definitions contained in Article 4(3) of the ECHR:

"For the purpose of this article the term "forced or compulsory labour" shall not include:

- (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;*
- (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;*
- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;*
- (d) any work or service which forms part of normal civic obligations."*

2. *Paragraph 3 stems directly from human dignity and takes account of recent developments in organised crime, such as the organisation of lucrative illegal immigration or sexual exploitation networks. The annex to the Europol Convention contains the following definition which refers to trafficking for the purpose of sexual exploitation: "traffic in human beings: means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children". Chapter VI of the Convention implementing the Schengen Agreement, which has been integrated into the Union's *acquis*, in which the United Kingdom and Ireland participate, contains the following wording in Article 27(1) which refers to illegal immigration networks: " The Contracting Parties undertake to impose appropriate penalties on any person who, for financial gain, assists or tries to assist an alien to enter or reside within the territory of one of the Contracting Parties in breach of that Contracting Party's laws on the entry and residence of aliens." On 19 July 2002, the Council adopted a framework decision on combating the trafficking in human beings (O.J. L 203/1) whose Article 1 defines in detail the offences*

concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation, which the Member States must make punishable by virtue of that framework decision.

TITLE II. FREEDOMS

Article 6

Right to liberty and security

Everyone has the right to liberty and security of person.

Explanation

The rights in Article 6 are the rights guaranteed by Article 5 of the ECHR, and in accordance with Article 52(3) of the Charter, they have the same meaning and scope. Consequently, the limitations which may legitimately be imposed on them may not exceed those permitted by the ECHR, in the wording of Article 5:

- "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:*
- (a) the lawful detention of a person after conviction by a competent court;*
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;*

- (c) *the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*
 - (d) *the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;*
 - (e) *the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*
 - (f) *the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.*
2. *Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.*
 3. *Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.*
 4. *Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*
 5. *Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation."*

The rights enshrined in Article 6 must be respected particularly when the European Parliament and the Council adopt laws and framework laws in the area of judicial cooperation in criminal matters, on the basis of Articles [III-171, III-172 and III-174] of the Constitution, notably to define common minimum provisions as regards the categorisation of offences and punishments and certain aspects of procedural law.

Article 7

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Explanation

The rights guaranteed in Article 7 correspond to those guaranteed by Article 8 of the ECHR. To take account of developments in technology the word "correspondence" has been replaced by "communications".

In accordance with Article 52(3), the meaning and scope of this right are the same as those of the corresponding article of the ECHR. Consequently, the limitations which may legitimately be imposed on this right are the same as those allowed by Article 8 of the ECHR:

- "1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
- 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

Article 8

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.

2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Explanation

This Article has been based on Article 286 of the Treaty establishing the European Community and Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995) as well as on Article 8 of the ECHR and on the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which has been ratified by all the Member States. Article 286 EC Treaty is now replaced by Article [50] of the Constitution. Reference is also made to regulation N° 45/2001 of the European Parliament and the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001). The above-mentioned directive and regulation contain conditions and limitations for the exercise of the right to the protection of personal data.

Article 9

Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Explanation

This Article is based on Article 12 of the ECHR, which reads as follows: "Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right." The wording of the Article has been modernised to cover cases in which national legislation recognises arrangements other than marriage for founding a family. This Article neither prohibits nor imposes the granting of the status of marriage to unions between people of the same sex. This right is thus similar to that afforded by the ECHR, but its scope may be wider when national legislation so provides.

Article 10

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Explanation

The right guaranteed in paragraph 1 corresponds to the right guaranteed in Article 9 of the ECHR and, in accordance with Article 52(3) of the Charter, has the same meaning and scope. Limitations must therefore respect Article 9(2) of the Convention, which reads as follows: "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

The right guaranteed in paragraph 2 corresponds to national constitutional traditions and to the development of national legislation on this issue.

Article 11

Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Explanation

1. *Article 11 corresponds to Article 10 of the European Convention on Human Rights, which reads as follows:*

- "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
- 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."*

Pursuant to Article 52(3) of the Charter, the meaning and scope of this right are the same as those guaranteed by the ECHR. The limitations which may be imposed on it may therefore not exceed those provided for in Article 10(2) of the Convention, without prejudice to any restrictions which competition law of the Union may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR.

- Paragraph 2 of this Article spells out the consequences of paragraph 1 regarding freedom of the media. It is based in particular on Court of Justice case law regarding television, particularly in case C-288/89 (judgment of 25 July 1991, Stichting Collectieve Antennevoorziening Gouda and others [1991] ECR I-4007), and on the Protocol on the system of public broadcasting in the Member States annexed to the EC Treaty and now to the Constitution, and on Council Directive 89/552/EC (particularly its seventeenth recital).*

Article 12

Freedom of assembly and of association

- Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
- Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Explanation

Paragraph 1 of this Article corresponds to Article 11 of the ECHR, which reads as follows:

- "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*

2. *No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."*

The meaning of the provisions of paragraph 1 is the same as that of the ECHR, but their scope is wider since they apply at all levels including European level. In accordance with Article 52(3) of the Charter, limitations on that right may not exceed those considered legitimate by virtue of Article 11(2) of the ECHR.

2. *This right is also based on Article 11 of the Community Charter of the Fundamental Social Rights of Workers.*
3. *Paragraph 2 of this Article corresponds to Article [45 § 4] of the Constitution.*

Article 13

Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Explanation

This right is deduced primarily from the right to freedom of thought and expression. It is to be exercised having regard to Article 1 and may be subject to the limitations authorised by Article 10 of the ECHR.

Article 14

Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Explanation

1. *This Article is based on the common constitutional traditions of Member States and on Article 2 of the Protocol to the ECHR, which reads as follows:*

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

It was considered useful to extend this article to access to vocational and continuing training (see point 15 of the Community Charter of the Fundamental Social Rights of Workers and Article 10 of the Social Charter) and to add the principle of free compulsory education. As it is worded, the latter principle merely implies that as regards compulsory education, each child has the possibility of attending an establishment which offers free education. It does not require all establishments which provide education or vocational and continuing training, in particular private ones, to be free of charge. Nor does it exclude certain specific forms of education having to be paid for, if the State takes measures to grant financial compensation. Insofar as the Charter applies to the Union,

this means that in its training policies the Union must respect free compulsory education, but this does not, of course, create new powers. Regarding the right of parents, it must be interpreted in conjunction with the provisions of Article 24.

- 2. Freedom to found public or private educational establishments is guaranteed as one of the aspects of freedom to conduct a business but it is limited by respect for democratic principles and is exercised in accordance with the arrangements defined by national legislation.*

Article 15

Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Explanation

Freedom to choose an occupation, as enshrined in Article 15(1), is recognised in Court of Justice case law (see inter alia judgment of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraphs 12 to 14 of the grounds; judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 8 October 1986, Case 234/85 Keller [1986] ECR 2897, paragraph 8 of the grounds).

This paragraph also draws upon Article 1(2) of the European Social Charter, which was signed on 18 October 1961 and has been ratified by all the Member States, and on point 4 of the Community Charter of the Fundamental Social Rights of Workers of 9 December 1989. The expression "working conditions" is to be understood in the sense of Article [III-107] of the Constitution.

The second paragraph deals with the three freedoms guaranteed by Articles [4] and [III-18, III-22 and III-29] of the Constitution, namely freedom of movement for workers, freedom of establishment and freedom to provide services.

The third paragraph has been based on TEC Article 137(3), fourth indent, now replaced by Article [III-104 (1) (g)] of the Constitution, and on Article 19(4) of the European Social Charter signed on 18 October 1961 and ratified by all the Member States. Article 52(2) of the Charter is therefore applicable. The question of recruitment of seamen having the nationality of third States for the crews of vessels flying the flag of a Member State of the Union is governed by Union law and national legislation and practice.

Article 16

Freedom to conduct a business

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

Explanation

This Article is based on Court of Justice case law which has recognised freedom to exercise an economic or commercial activity (see judgments of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraph 14 of the grounds, and of 27 September 1979, Case 230-78 SPA Eridiana and others [1979] ECR 2749, paragraphs 20 and 31 of the grounds) and freedom of contract (see inter alia Sukkerfabriken Nykøbing judgment, Case 151/78 [1979] ECR I, paragraph 19 of the grounds, and judgment of 5 October 1999, C-240/97 Spain v. Commission, [1999] ECR I-6571, paragraph 99 of

the grounds) and Article [3 (2)] of the Constitution, which recognises free competition. Of course, this right is to be exercised with respect for Union law and national legislation. It may be subject to the limitations provided for in Article 52(1) of the Charter.

Article 17

Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

Explanation

This Article is based on Article 1 of the Protocol to the ECHR:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

This is a fundamental right common to all national constitutions. It has been recognised on numerous occasions by the case law of the Court of Justice, initially in the Hauer judgment (13 December 1979, ECR [1979] 3727). The wording has been updated but, in accordance with Article 52(3), the meaning and scope of the right are the same as those of the right guaranteed by the ECHR and the limitations may not exceed those provided for there.

Protection of intellectual property, one aspect of the right of property, is explicitly mentioned in paragraph 2 because of its growing importance and Community secondary legislation. Intellectual property covers not only literary and artistic property but also inter alia patent and trademark rights and associated rights. The guarantees laid down in paragraph 1 shall apply as appropriate to intellectual property.

Article 18

Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Constitution.

Explanation

The text of the Article has been based on TEC Article 63, now replaced by Article [III-167] of the Constitution, which requires the Union to respect the Geneva Convention on refugees. Reference should be made to the Protocols relating to the United Kingdom and Ireland annexed to the [Treaty of Amsterdam] Constitution and to Denmark to determine the extent to which those Member States implement Union law in this area and the extent to which this Article is applicable to them. This Article is in line with the Protocol on Asylum annexed to the Constitution.

Article 19

Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

Explanation

Paragraph 1 of this Article has the same meaning and scope as Article 4 of Protocol No 4 to the ECHR concerning collective expulsion. Its purpose is to guarantee that every decision is based on a specific examination and that no single measure can be taken to expel all persons having the nationality of a particular State (see also Article 13 of the Covenant on Civil and Political Rights).

*Paragraph 2 incorporates the relevant case law from the European Court of Human Rights regarding Article 3 of the ECHR (see *Ahmed v. Austria*, judgment of 17 December 1996, [1996] ECR VI-2206 and *Soering*, judgment of 7 July 1989).*

TITLE III. EQUALITY

Article 20

Equality before the law

Everyone is equal before the law.

Explanation

This Article corresponds to a general principle of law which is included in all European constitutions and has also been recognised by the Court of Justice as a basic principle of Community law (judgment of 13 November 1984, Case 283/83 Racke [1984] ECR 3791, judgment of 17 April 1997, Case 15/95 EARL [1997] ECR I-1961, and judgment of 13 April 2000, Case 292/97 Karlsson, [2000] ECR 2737).

Article 21

Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

Explanation

Paragraph 1 draws on Article 13 of the EC Treaty, now replaced by [Article III-8] of the Constitution, Article 14 of the ECHR and Article 11 of the Convention on Human Rights and Biomedicine as regards genetic heritage. Insofar as this corresponds to Article 14 of the ECHR, it applies in compliance with it.

There is no contradiction or incompatibility between paragraph 1 and Article [III-8] of the Constitution which has a different scope and purpose: Article [III-8] confers power on the Union to adopt legislative acts, including harmonisation of the Member States' laws and regulations, to combat certain forms of discrimination, listed exhaustively in that Article. Such legislation may cover action of Member State authorities (as well as relations between private individuals) in any area within the limits of the Union's powers. In contrast, the provision in paragraph 1 does not create any power to enact anti-discrimination laws in these areas of Member State or private action, nor does it lay down a sweeping ban of discrimination in such wide-ranging areas. Instead, it only addresses discriminations by the institutions and bodies of the Union themselves, when exercising powers conferred under other articles of Parts I and III of the Constitution, and by Member States only when they are implementing Union law. Paragraph 1 therefore does not alter the extent of powers granted under Article [III-8] nor the interpretation given to that Article.

Paragraph 2 corresponds to Article [4 (2)] of the Constitution and must be applied in compliance with that Article.

Article 22

Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Explanation

This Article has been based on Article 6 of the Treaty on European Union and on Article 151(1) and (4) of the EC Treaty, now replaced by Article [III-181 (1) and (4)] of the Constitution, concerning culture. Respect for cultural and linguistic diversity is now also laid down in Article [3 (3)] of the Constitution. The Article is also inspired by declaration No 11 to the Final Act of the Amsterdam Treaty on the status of churches and non-confessional organisations, now taken over in Article [51] of the Constitution.

Article 23

Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Explanation

The first paragraph has been based on Articles 2 and 3(2) of the EC Treaty, now replaced by Articles [3] and [III-2] of the Constitution which impose the objective of promoting equality between men and women on the Union, and on Article 141 (1) of the EC Treaty, now replaced by Article [III-108 (1)] of the Constitution. It draws on Article 20 of the revised European Social Charter of 3 May 1996 and on point 16 of the Community Charter on the rights of workers. It is also based on Article 141(3) of the EC Treaty, now replaced by Article [III-108 (3)] of the Constitution, and Article 2(4) of Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Paragraph 2 takes over in shorter form Article [III-108 (4)] of the Constitution which provides that the principle of equal treatment does not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers. In accordance with Article 52 (2), the present paragraph does not amend Article [III-108 (4)].

Article 24

The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Explanation

This Article is based on the New York Convention on the Rights of the Child signed on 20 November 1989 and ratified by all the Member States, particularly Articles 3, 9, 12 and 13 thereof.

Paragraph 3 takes account of the fact that, as part of the establishment of an area of freedom, security and justice, Union legislation on civil matters having cross-border implications, for which Article [III-170] of the Constitution confers power, may include notably visiting rights ensuring that children can maintain on a regular basis a personal and direct contact with both his or her parents.

Article 25

The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Explanation

This Article draws on Article 23 of the revised European Social Charter and Articles 24 and 25 of the Community Charter of the Fundamental Social Rights of Workers. Of course, participation in social and cultural life also covers participation in political life.

Article 26

Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

Explanation

The principle set out in this Article is based on Article 15 of the European Social Charter and also draws on point 26 of the Community Charter of the Fundamental Social Rights of Workers.

TITLE IV. SOLIDARITY

Article 27

Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

Explanation

This Article appears in the revised European Social Charter (Article 21) and in the Community Charter on the rights of workers (points 17 and 18). It applies under the conditions laid down by Union law and by national laws. The reference to appropriate levels refers to the levels laid down by Union law or by national laws and practices, which might include the European level when Union legislation so provides. There is a considerable Union acquis in this field: Articles [III-105 and III-106] of the Constitution, and Directives 2002/14/EC (general framework for informing and consulting employees in the European Community), 98/59/EC (collective redundancies), 2001/23/EC (transfers of undertakings) and 94/45/EC (European works councils).

Article 28

Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Explanation

This Article is based on Article 6 of the European Social Charter and on the Community Charter of the Fundamental Social Rights of Workers (points 12 to 14). The right of collective action was recognised by the European Court of Human Rights as one of the elements of trade union rights laid down by Article 11 of the ECHR. As regards the appropriate levels at which collective negotiation might take place, see the explanation given for the above Article. The modalities and limits for the exercise of collective action, including strike action, come under national laws and practices, including the question of whether it may be carried out in parallel in several Member States.

Article 29**Right of access to placement services**

Everyone has the right of access to a free placement service.

Explanation

This Article is based on Article 1(3) of the European Social Charter and point 13 of the Community Charter of the Fundamental Social Rights of Workers.

Article 30**Protection in the event of unjustified dismissal**

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

Explanation

This Article draws on Article 24 of the revised Social Charter. See also Directive 2001/23/EC on the safeguarding of employees' rights in the event of transfers of undertakings, and Directive 80/987/EEC on the protection of employees in the event of the insolvency of their employer, as amended by Directive 2002/74/EC.

Article 31

Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Explanation

1. *Paragraph 1 of this Article is based on Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work. It also draws on Article 3 of the Social Charter and point 19 of the Community Charter on the rights of workers, and, as regards dignity at work, on Article 26 of the revised Social Charter. The expression "working conditions" must be understood in the sense of Article [III-107] of the Constitution.*
2. *Paragraph 2 is based on Directive 93/104/EC concerning certain aspects of the organisation of working time, Article 2 of the European Social Charter and point 8 of the Community Charter on the rights of workers.*

Article 32

Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Explanation

This Article is based on Directive 94/33/EC on the protection of young people at work, Article 7 of the European Social Charter and points 20 to 23 of the Community Charter of the Fundamental Social Rights of Workers.

Article 33

Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Explanation

Article 33(1) is based on Article 16 of the European Social Charter. The second paragraph draws on Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are

breastfeeding and Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC. It is also based on Article 8 (protection of maternity) of the European Social Charter and draws on Article 27 (right of workers with family responsibilities to equal opportunities and equal treatment) of the revised Social Charter. "Maternity" covers the period from conception to weaning.

Article 34

Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

Explanation

The principle set out in Article 34(1) is based on Articles 137 and 140 of the EC Treaty, now replaced by Articles [III-104 and III-107] and on Article 12 of the European Social Charter and point 10 of the Community Charter on the rights of workers. The Union must respect it when exercising the powers conferred on it by Articles [III-104 and III-107] of the Constitution. The reference to social services relates to cases in which such services have been introduced to provide certain advantages but does not imply that such services must be created where they do not exist. "Maternity" must be understood in the same sense as in the preceding Article.

The second paragraph is based on Articles 12 (4) and 13(4) of the European Social Charter and point 2 of the Community Charter of the Fundamental Social Rights of Workers and reflects the rules arising from Regulation No 1408/71 and Regulation No 1612/68.

The third paragraph draws on Article 13 of the European Social Charter and Articles 30 and 31 of the revised Social Charter and point 10 of the Community Charter. The Union must respect it in the context of policies based on Article [III-104] of the Constitution.

Article 35

Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Explanation

The principles set out in this Article are based on Article 152 of the EC Treaty, now replaced by Article [III-179] of the Constitution, and on Articles 11 and 13 of the European Social Charter. The second sentence of the Article takes over Article [III-179 (1)].

Article 36

Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Constitution, in order to promote the social and territorial cohesion of the Union.

Explanation

This Article is fully in line with Article [III-6] of the Constitution and does not create any new right. It merely sets out the principle of respect by the Union for the access to services of general economic interest as provided for by national provisions, when those provisions are compatible with Union law.

Article 37

Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Explanation

The principles set out in this Article have been based on Articles 2, 6 and 174 of the EC Treaty, which have now been replaced by Articles [3 (3), III-4 and III-129] of the Constitution. It also draws on the provisions of some national constitutions.

Article 38

Consumer Protection

Union policies shall ensure a high level of consumer protection.

Explanation

The principles set out in this Article have been based on Article 153 of the EC Treaty, now replaced by Article [III-132] of the Constitution.

TITLE V. CITIZENS' RIGHTS**Article 39**

Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Explanation

Article 39 applies under the conditions laid down in Parts I and III of the Constitution, in accordance with Article 52(2) of the Charter. Article 39(1) corresponds to the right guaranteed in Article [8 (2)] of the Constitution (cf. also the legal base in Article [III-10] for the adoption of detailed arrangements for the exercise of that right) and Article 39(2) corresponds to Article [19 (2)] of the Constitution. Article 39(2) takes over the basic principles of the electoral system in a democratic State.

Article 40

Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Explanation

This Article corresponds to the right guaranteed by Article [8 (2)] of the Constitution (cf. also the legal base in Article [III-10] for the adoption of detailed arrangements for the exercise of that right). In accordance with Article 52(2) of the Charter, it applies under the conditions set out in these Articles of Parts I and III of the Constitution.

Article 41

Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the Institutions, bodies and agencies of the Union.
2. This right includes:
 - the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its Institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the Institutions of the Union in one of the languages of the Constitution and must have an answer in the same language.

Explanation

Article 41 is based on the existence of the Union as subject to the rule of law whose characteristics were developed in the case law which enshrined inter alia good administration as a general principle of law (see inter alia Court of Justice judgment of 31 March 1992 in Case C-255/90 P, Burbán [1992] ECR I-2253, and Court of First Instance judgments of 18 September 1995 in Case T-167/94 Nölle [1995] ECR II-2589, and 9 July 1999 in Case T-231/97 New Europe Consulting and others [1999] ECR II-2403). The wording for that right in the first two paragraphs results from the case law (Court of Justice judgment of 15 October 1987 in Case 222/86 Heylens [1987] ECR 4097, paragraph 15 of the grounds, judgment of 18 October 1989 in Case 374/87 Orkem [1989] ECR 3283, judgment of 21 November 1991 in Case C-269/90 TU München [1991] ECR I-5469, and Court of First Instance judgments of 6 December 1994 in Case T-450/93 Lisrestal [1994] ECR II-1177, 18 September 1995 in Case T-167/94 Nölle [1995] ECR II-258) and the wording regarding the obligation to give reasons comes from Article 253 of the EC Treaty, now replaced by Article [37(2)] of the Constitution (cf. also the legal base in Article [III-304] of the Constitution for the adoption of legislation in the interest of an open, efficient and independent European administration).

Paragraph 3 reproduces the right now guaranteed by Article [III-337] of the Constitution.

Paragraph 4 reproduces the right now guaranteed by Articles [8, fourth indent, and III-12] of the Constitution. In accordance with Article 52(2) of the Charter, those rights are to be applied under the conditions and within the limits defined by Part III of the Constitution.

The right to an effective remedy, which is an important aspect of this question, is guaranteed in Article 47 of this Charter.

Article 42

Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the Institutions, bodies and agencies of the Union, in whatever form they are produced.

Explanation

The right guaranteed in this Article has been taken over from Article 255 of the EC Treaty, on the basis of which Regulation 1049/2001 has subsequently been adopted. The European Convention has extended this right to documents of institutions, bodies and agencies generally, regardless of their form, see Article [49 (3)] of the Constitution. In accordance with Article 52(2) of the Charter, the right of access to documents is exercised under the conditions and within the limits for which provision is made in Articles [49 (3) and III-305].

Article 43**Ombudsman**

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 refer to the European Ombudsman cases of maladministration in the activities of the Institutions, bodies or agencies of the Union, with the exception of the European Court of Justice and the High Court acting in their judicial role.

Explanation

The right guaranteed in this Article is the right guaranteed by Articles [8 and III-237 of the Constitution]. In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these two Articles.

Article 44**Right to petition**

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.

Explanation

The right guaranteed in this Article is the right guaranteed by Articles [8 and III-236] of the Constitution. In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these two Articles.

Article 45

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Constitution, to nationals of third countries legally resident in the territory of a Member State.

Explanation

The right guaranteed by paragraph 1 is the right guaranteed by Article [8, first indent] of the Constitution (cf. also the legal base in Article [III-9]); and the judgement of the Court of Justice of 17 September 2002, C-413/99 Baumbast, [2002] ECR 709). In accordance with Article 52(2) of the Charter, it applies under the conditions and within the limits defined for which provision is made in Part III of the Constitution.

Paragraph 2 refers to the power granted to the Union by Articles [III-166 to III-168] of the Constitution. Consequently, the granting of this right depends on the institutions exercising that power.

Article 46

Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

Explanation

The right guaranteed by this Article is the right guaranteed by Article [8] of the Constitution; cf. also the legal base in Article [III-11]. In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these Articles.

TITLE VI. JUSTICE

Article 47

Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Explanation

The first paragraph is based on Article 13 of the ECHR:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

However, in Union law the protection is more extensive since it guarantees the right to an effective remedy before a court. The Court of Justice enshrined that right in its judgment of 15 May 1986 as a general principle of Union law (Case 222/84 Johnston [1986] ECR 1651; see also judgment of 15 October 1987, Case 222/86 Heylens [1987] ECR 4097 and judgment of 3 December 1992, Case C-97/91 Borelli [1992] ECR I-6313). According to the Court, that general principle of Union law also applies to the Member States when they are implementing Union law. The inclusion of this precedent in the Charter has not been intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to admissibility for direct actions before the Court of Justice of the European Union. The European Convention has considered the Union's system of judicial review including the rules on admissibility, and confirmed them while amending them as to certain aspects, as reflected in Articles [III-258 to III-289] of the Constitution, and in particular in Article [III-270 (4)]. Article 47 applies to the institutions of the Union and of Member States when they are implementing Union law and does so for all rights guaranteed by Union law.

The second paragraph corresponds to Article 6(1) of the ECHR which reads as follows:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

In Union law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations. That is one of the consequences of the fact that the Union is a community based on the rule of law as stated by the Court in Case 294/83, "Les Verts" v. European Parliament (judgment of 23 April 1986, [1988] ECR 1339). Nevertheless, in all respects other than their scope, the guarantees afforded by the ECHR apply in a similar way to the Union.

With regard to the third paragraph, it should be noted that in accordance with the case law of the European Court of Human Rights, provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy (ECHR Judgment of 9.10.1979, Airey, Series A, Volume 32, 11). There is also a system of legal assistance for cases before the Court of Justice of the European Union.

Article 48

Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Explanation

Article 48 is the same as Article 6(2) and (3) of the ECHR, which reads as follows:

- "2. *Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
3. *Everyone charged with a criminal offence has the following minimum rights:*
 - (a) *to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
 - (b) *to have adequate time and facilities for the preparation of his defence;*
 - (c) *to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
 - (d) *to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
 - (e) *to have the free assistance of an interpreter if he cannot understand or speak the language used in court."*

In accordance with Article 52(3), this right has the same meaning and scope as the right guaranteed by the ECHR.

Article 49

Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

Explanation

This Article follows the traditional rule of the non-retroactivity of laws and criminal sanctions. There has been added the rule of the retroactivity of a more lenient penal law, which exists in a number of Member States and which features in Article 15 of the Covenant on Civil and Political Rights.

Article 7 of the ECHR is worded as follows:

"1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. *This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."*

In paragraph 2, the reference to "civilised" nations has been deleted; this does not change the meaning of this paragraph, which refers to crimes against humanity in particular. In accordance with Article 52(3), the right guaranteed here therefore has the same meaning and scope as the right guaranteed by the ECHR.

Paragraph 3 states the general principle of proportionality between penalties and criminal offences which is enshrined in the common constitutional traditions of the Member States and in the case law of the Court of Justice of the Communities.

Article 50

Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

Explanation

Article 4 of Protocol No 7 to the ECHR reads as follows:

- "1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.*
2. *The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and the penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.*

3. *No derogation from this Article shall be made under Article 15 of the Convention."*

The "non bis in idem" rule applies in Union law (see, among the many precedents, the judgment of 5 May 1996, Cases 18/65 and 35/65, Gutmann v. Commission [1966] ECR 103 and a recent case, the decision of the Court of First Instance of 20 April 1999, Joined Cases T-305/94 and others, Limburgse Vinyl Maatschappij NV v. Commission [1999] ECR II-931). The rule prohibiting cumulation refers to cumulation of two penalties of the same kind, that is to say criminal law penalties.

*In accordance with Article 50, the "non bis in idem" rule applies not only within the jurisdiction of one State but also between the jurisdictions of several Member States. That corresponds to the *acquis* in Union law; see Articles 54 to 58 of the Schengen Convention and the judgment of the Court of Justice of 11 February 2003, C-187/01 Gözütok (not yet published), Article 7 of the Convention on the Protection of the European Communities' Financial Interests and Article 10 of the Convention on the fight against corruption. The very limited exceptions in those Conventions permitting the Member States to derogate from the "non bis in idem" rule are covered by the horizontal clause in Article 52(1) of the Charter concerning limitations. As regards the situations referred to by Article 4 of Protocol No 7, namely the application of the principle within the same Member State, the guaranteed right has the same meaning and the same scope as the corresponding right in the ECHR.*

TITLE VII. GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

Article 51

Scope

1. The provisions of this Charter are addressed to the Institutions, bodies and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the other Parts of the Constitution.
2. This Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks defined in the other Parts of the Constitution.

Explanation

The aim of Article 51 is to determine the scope of the Charter. It seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union, in compliance with the principle of subsidiarity. This provision was drafted in keeping with Article 6(2) of the Treaty on European Union, which required the Union to respect fundamental rights, and with the mandate issued by Cologne European Council. The term "institutions" is enshrined in Part I of the Constitution. The expression "bodies and agencies" is commonly used in the Constitution to refer to all the authorities set up by the Constitution or by secondary legislation (see, e.g., Article [49 or 50] of the Constitution).

As regards the Member States, it follows unambiguously from the case law of the Court of Justice that the requirement to respect fundamental rights defined in a Union context is only binding on the Member States when they act in the scope of Union law (judgment of 13 July 1989, Case 5/88 Wachauf [1989] ECR 2609; judgment of 18 June 1991, ERT [1991] ECR I-2925); judgment of 18 December 1997 (C-309/96 Annibaldi [1997] ECR I-7493). The Court of Justice confirmed this case law in the following terms: "In addition, it should be remembered that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on

Member States when they implement Community rules..." (judgment of 13 April 2000, Case C-292/97, [2000] ECR 2737, paragraph 37 of the grounds). Of course this rule, as enshrined in this Charter, applies to the central authorities as well as to regional or local bodies, and to public organisations, when they are implementing Union law.

Paragraph 2, together with the second sentence of paragraph 1, confirms that the Charter may not have the effect of extending the competences and tasks which the other Parts of the Constitution confer on the Union. Explicit mention is made here of the logical consequences of the principle of subsidiarity and of the fact that the Union only has those powers which have been conferred upon it. The fundamental rights as guaranteed in the Union do not have any effect other than in the context of the powers determined by Parts I and III of the Constitution. Consequently, an obligation, pursuant to the second sentence of paragraph 1, for the Union's institutions to promote principles laid down in the Charter, may arise only within the limits of these same powers.

Paragraph 2 also confirms that the Charter may not have the effect of extending the field of application of Union law beyond the powers of the Union as established in the other Parts of the Constitution. The Court of Justice has already established this rule with respect to the fundamental rights recognised as part of Union law (judgment of 17 February 1998, C-249/96 Grant, 1998 ECR I-621, paragraph 45 of the grounds). In accordance with this rule, it goes without saying that the incorporation of the Charter into the Constitution cannot be understood as extending by itself the range of Member State action considered to be "implementation of Union law" (within the meaning of paragraph 1 and the above-mentioned case law).

Article 52

Scope and interpretation of rights and principles

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

2. Rights recognised by this Charter for which provision is made in other Parts of the Constitution shall be exercised under the conditions and within the limits defined by these relevant Parts.
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by Institutions and bodies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.
6. Full account shall be taken of national laws and practices as specified in this Charter.

Explanation

The purpose of Article 52 is to set the scope of the rights and principles of the Charter, and to lay down rules for their interpretation. Paragraph 1 deals with the arrangements for the limitation of rights. The wording is based on the case law of the Court of Justice: "...it is well established in the case law of the Court that restrictions may be imposed on the exercise of fundamental rights, in particular in the context of a common organisation of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights" (judgment of 13 April 2000, Case C-292/97, paragraph 45 of the grounds). The reference to general interests recognised by the Union covers both the objectives mentioned in Article [2] of the Constitution and other interests protected by specific provisions of the Constitution such as Articles [5 (1), III-18 (3), III-43, III-342].

Paragraph 2 refers to rights which were already expressly guaranteed in the Treaty establishing the European Community and have been recognised in the Charter, and which are now found in other Parts of the Constitution (notably the rights derived from Union citizenship). It clarifies that such rights remain subject to the conditions and limits applicable to the Union law on which they are based, and for which provision is now made in Parts I and III of the Constitution. The Charter does not alter the system of rights conferred by the EC Treaty and now taken over by Parts I and III of the Constitution.

Paragraph 3 is intended to ensure the necessary consistency between the Charter and the ECHR by establishing the rule that, insofar as the rights in the present Charter also correspond to rights guaranteed by the ECHR, the meaning and scope of those rights, including authorised limitations, are the same as those laid down by the ECHR. This means in particular that the legislator, in laying down limitations to those rights, must comply with the same standards as are fixed by the detailed limitation arrangements laid down in the ECHR, which are thus made applicable for the rights covered by this paragraph, without thereby adversely affecting the autonomy of Union law and of that of the Court of Justice of the European Union.

The reference to the ECHR covers both the Convention and the Protocols to it. The meaning and the scope of the guaranteed rights are determined not only by the text of those instruments, but also by the case law of the European Court of Human Rights and by the Court of Justice of the European Union. The last sentence of the paragraph is designed to allow the Union to guarantee more extensive protection. In any event, the level of protection afforded by the Charter may never be lower than that guaranteed by the ECHR.

The Charter does not affect the possibilities of Member States to avail themselves of Article 15 ECHR, allowing derogations from ECHR rights in the event of war or of other public dangers threatening the life of the nation, when they take action in the areas of national defence in the event of war and of the maintenance of law and order, in accordance with their responsibilities recognised in Articles [5 (1), III-16, III-163] of the Constitution.

The list of rights which may at the present stage, without precluding developments in the law, legislation and the Treaties, be regarded as corresponding to rights in the ECHR within the meaning of the present paragraph is given hereafter. It does not include rights additional to those in the ECHR.

1. Articles of the Charter where both the meaning and the scope are the same as the corresponding Articles of the ECHR:

- Article 2 corresponds to Article 2 of the ECHR
- Article 4 corresponds to Article 3 of the ECHR
- Article 5(1) and (2) correspond to Article 4 of the ECHR
- Article 6 corresponds to Article 5 of the ECHR
- Article 7 corresponds to Article 8 of the ECHR
- Article 10(1) corresponds to Article 9 of the ECHR
- Article 11 corresponds to Article 10 of the ECHR without prejudice to any restrictions which Union law may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR
- Article 17 corresponds to Article 1 of the Protocol to the ECHR
- Article 19(1) corresponds to Article 4 of Protocol No 4
- Article 19(2) corresponds to Article 3 of the ECHR as interpreted by the European Court of Human Rights
- Article 48 corresponds to Article 6(2) and(3) of the ECHR
- Article 49(1) (with the exception of the last sentence) and (2) correspond to Article 7 of the ECHR

2. Articles where the meaning is the same as the corresponding Articles of the ECHR, but where the scope is wider:

- Article 9 covers the same field as Article 12 of the ECHR, but its scope may be extended to other forms of marriage if these are established by national legislation
- Article 12(1) corresponds to Article 11 of the ECHR, but its scope is extended to European Union level
- Article 14(1) corresponds to Article 2 of the Protocol to the ECHR, but its scope is extended to cover access to vocational and continuing training
- Article 14(3) corresponds to Article 2 of the Protocol to the ECHR as regards the rights of parents
- Article 47(2) and (3) correspond to Article 6(1) of the ECHR, but the limitation to the determination of civil rights and obligations or criminal charges does not apply as regards Union law and its implementation
- Article 50 corresponds to Article 4 of Protocol No 7 to the ECHR, but its scope is extended to European Union level between the Courts of the Member States.

- *Finally, citizens of the European Union may not be considered as aliens in the scope of the application of Union law, because of the prohibition of any discrimination on grounds of nationality. The limitations provided for by Article 16 of the ECHR as regards the rights of aliens therefore do not apply to them in this context.*

The rule of interpretation contained in paragraph 4 has been based on the wording of Article 6 § 2 of the Treaty on European Union (cf. now the wording of Article [7 § 3] of the Constitution) and takes due account of the approach to common constitutional traditions followed by the Court of Justice (e.g., judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 18 May 1982, Case 155/79, AM&S, [1982] ECR 1575). Under that rule, rather than following a rigid approach of "a lowest common denominator", the Charter rights concerned should be interpreted in a way offering a high standard of protection which is adequate for the law of the Union and in harmony with the common constitutional traditions.

Paragraph 5 clarifies the distinction between "rights" and "principles" set out in the Charter. According to that distinction, subjective rights shall be respected, whereas principles shall be observed (Article 51 (1)). Principles may be implemented through legislative or executive acts (adopted by the Union in accordance with its powers, and by the Member States only when they implement Union law); accordingly, they become significant for the Courts only when such acts are interpreted or reviewed. They do not however give rise to direct claims for positive action by the Union's institutions or Member States authorities. This is consistent both with case law of the Court of Justice (Cf. notably case law on the "precautionary principle" in Article 174 (2) TEC (replaced by [Article III-129] of the Constitution): judgment of the CFI of 11 September 2002, T-13/99, Pfizer vs. Council, with numerous references to earlier case law; and a series of judgments on Article 33 (ex-39) on the principles of agricultural law, e.g. judgment of the Court of Justice C-265/85, Van den Berg, 1987 ECR 1155: scrutiny of the principle of market stabilisation and of reasonable expectations) and with the approach of the Member States' constitutional systems to "principles" particularly in the field of social law. For illustration, examples for principles recognised in the Charter include e.g. Articles 25, 26 and 37. In some cases, an Article of the Charter may contain both elements of a right and of a principle, e.g., Articles 23, 33 and 34.

Paragraph 6 refers to the various Articles in the Charter which, in the spirit of subsidiarity, make reference to national laws and practices.

Article 53

Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Explanation

This provision is intended to maintain the level of protection currently afforded within their respective scope by Union law, national law and international law. Owing to its importance, mention is made of the ECHR.

Article 54

Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

Explanation

This Article corresponds to Article 17 of the ECHR:

"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

IV.1.d. NGOs and Others' Amendments and Contributions

Editors' note to CONV 112/02,
**Digest of contributions to the forum ahead
of the plenary session on civil society 24-25 June 2002:**

On the structure of NGO engagement generally, see CONV 48/02 (not included in this collection).

THE EUROPEAN CONVENTION**Brussels, 17 June 2002**

THE SECRETARIAT

GM**CONV 112/02****COVER NOTE**

from : Secretariat

to : Convention

Subject : Digest of contributions to the Forum

In order to prepare for the plenary session devoted to civil society which will take place on 24-25 June 2002, members of the Convention will find attached a digest of the contributions which have been submitted to the Forum since the inaugural session of the Convention, up to and including 7 June 2002.

DIGEST OF CONTRIBUTIONS TO THE FORUM

Introduction

1. The Laeken declaration setting up the Convention on the future of the European Union also set up a Forum to allow organisations representing civil society to provide input into the wider debate. The Forum takes the form of a structured network, through a dedicated website, where organisations may register and post their contributions. It has been operational since the inaugural session of the Convention at the end of February.
2. So far 160 organisations have registered and contributed to the debate. Registration has been at the average rate of about eight per week, rising rapidly over the last few weeks as organisations were encouraged to apply in time for their contribution to be taken into account for the second June plenary session.
3. The 160 organisations represent a wide cross section of civil society. The majority of them have interests which are Europe-wide, although there are also many national organisations which have chosen to register. There is a rather uneven spread of national organisations, with several Member States not being represented at all, and only a limited number originating in the candidate countries.

4. The Forum is divided into four categories, and organisations are invited to select the most appropriate category when registering. The breakdown of the 160 organisations by category is as follows:

political or public authority (including at sub-national level)	17
socio-economic interests (social partners, professional groups etc)	16
academic interests and think tanks	28
other civil society organisations, NGOs etc	<u>99</u>
TOTAL	<u>160</u>

5. Each organisation is invited to submit a contribution, together with a one page summary. Both of these are posted on the website. Given the number and range of the contributions, this digest of them makes no claim to be comprehensive. Its aim is rather to distil some of the key issues and concerns which are reflected in the input to the forum as a whole. This should provide Members of the Convention with an overview of the Forum, and thereby help civil society contribute to the work of the Convention. Those wishing to have a complete view of the Forum will need to turn to the contributions themselves on the website.
6. The range of contributions does not lend itself to drawing substantive conclusions from the Forum. But certain broad themes run through many contributions. The first is the wish to see the Union operating more closely to those it seeks to serve. That means both taking decisions at the appropriate level and ensuring that Europe's citizens have a greater stake in those decisions, at whatever level they are taken. Secondly, and linked to the first, is the concern to improve the level of involvement of civil society, through its constituent organisations, in the European decision-making process, and to recognise in the Treaty its particular role. Thirdly, there is a strong emphasis on the Union both respecting fundamental

rights as they are currently defined, and where appropriate, extending them. Many organisations believe this can only be fully achieved by incorporating the Charter of Fundamental Rights into the Treaty. Fourthly, each sectoral interest group puts particular emphasis on effective and legitimate decision-making, often calling for a move to decision-taking by QMV coupled with co-decision in the relevant policy area.

7. Beyond these broad themes, there are many other issues raised. These will be considered below according to the four categories, which although designed to make the Forum easier to manage, are to some extent arbitrary, with a number of organisations not fitting obviously into any one particular category (hence the large number which have opted for the fourth or 'other' category).

Political or public authorities

8. The majority of organisations which have registered under this heading represent regional or sub-regional organisations. As such, much of the content of their contributions relates to the issue of the role and status of sub-national bodies within the European Union. A number take as their starting point the need to include in the Treaty a recognition of the right of citizens to local democracy, possibly by integrating into the Treaty the Charter of the Council of Europe on local autonomy. Many also look for concrete implementation of the local democracy provisions in Article 1 of the Treaty on European Union, which call for decisions to be taken as closely as possible to the citizen, as well as simplification in particular of those legislative provisions which require implementation at the sub-national level (implying a very close involvement of regional and local authorities at all stages of the legislative process).
9. Some call for a clear recognition of the four levels of government: European, national, regional and local. Others seek explicit recognition in the Treaty of the role of regions and local authorities, and several consider that, in the absence of a detailed list of competences, an effective system of subsidiarity control (both ex-ante and ex-post) needs to be established.

10. Several contributions refer to the need to take greater account of the financial consequences on sub-national bodies of decisions taken at a European level. There are a number of calls to give regions with legislative power the right of access to the European Court of Justice, special recognition in the Treaty, and the right to participate in meetings of COSAC.

Socio-economic interests

11. A relatively small number of organisations registered in this category. They mostly represent the interests of employees or particular sectors of the economy such as cooperatives and public services.
12. A number of these organisations argue for a greater balance between economic policy and social objectives. There is a call for some core elements of the European social model, for example the goal of full employment, to be explicitly included in the Treaty. Some organisations call for greater recognition for the cooperative sector, as well as the area of services of general interest. There is a demand for institutionalised dialogue with social partners, including enlarging the number of interlocutors to make them more representative. The issue of greater employee participation is also raised. Several organisations call for integrating the Charter of Fundamental Rights into the Treaty in order to provide for greater recognition of basic social rights.

Academic interests and Think-tanks

13. The contributions to the Forum from academic institutions and think tanks are inevitably of a rather different nature than many of the non-governmental organisations. Many of their proposals are not necessarily designed to serve a particular interest, but rather to help take

forward the broader debate on the future structure of the European Union. Several have outlined possible models for a future constitution, including proposals on how to merge the Communities and the Union and to adapt the pillar structure. A number have addressed specific issues which the Convention has already examined (e.g. the delimitation of competences).

14. Several student groups have submitted a draft constitution or 'manifesto' for Europe. A number of think tanks have submitted ideas on future institutional arrangements, including some detailed proposals on the issue of the election of the President of the Commission and the future role of the High Representative for CFSP. The idea of a common language has been floated, as has the possibility of creating regional unions to act as groups within the EU as a whole. There is also a call for greater transparency in lobbying practices.

Other Civil society organisations.

15. By far the largest number of organisations registered under this category. As a result a wide variety of issues is covered. Several distinct areas of interest can however be identified.
16. A number of organisations from the 'social' sector registered in this category. Many of their concerns overlap with those raised under the social-economic category (see above). However also included are organisations particularly concerned with issues of gender equality and support for families. There is a call for a more active policy of gender equality, including gender mainstreaming in all major policy areas. A number of organisations call for a greater emphasis on human development policies, including support for families and the fight against poverty. Some refer to the increasing use of an 'open coordination' approach in the social sector, and ask that this be formally recognised in the Treaty. Several contributions call for the Union to recognise explicitly the objective of greater social cohesion. There is a call for a more coherent and sustainable common agricultural policy.

17. There are a number of organisations with an interest in the field of development. Many of them underline the importance of placing development policy and poverty eradication at the heart of external policy, and wish to maintain a distinct development organisational framework within both Commission and Council. A number call for the Treaties to be amended to reflect the central role of development policy, and to give a legal base for consultation with civil society. There is a call for the European Development Fund to be integrated into the Community budget, and for development policy to become a shared Community/Member State competence.
18. In the environment sector, a number of organisations call for better recognition of the importance of environmental protection and sustainable development. In particular there were calls to take better account of sustainability in CAP reform, extend QMV with co-decision for environmental decisions (in particular Article 175 (2) of the EC Treaty), and include environmental rights in the Charter of Fundamental Rights.
19. This category also includes a number of contributions from organisations working in the field of human rights. In general, these organisations seek to maintain and strengthen concern for human rights as a key element in all policies. Most call for the incorporation of the Charter of Fundamental Rights into the Treaty, and many consider that this should be accompanied by some strengthening of the Charter. Some also ask for the Union to accede to the European Convention on Human Rights. A number call for better provisions for ensuring gender equality, the rights of the child, and the protection of the family and of handicapped persons.
20. Several organisations in the cultural field submitted contributions under this category. They call for a much stronger cultural element in the European Union of the future, with a stronger commitment to the existing provisions in Article 151 TEC, and a move to decision-making by QMV and co-decision. Several call for the formal recognition in the Treaty of the plurality of education, and of access to education under equal conditions. There is also a call for a specific legal basis for support for sport.

21. There are calls from a number of religious organisations for a future constitutional treaty to contain a spiritual element, with an explicit recognition of the religious and spiritual heritage of Europe. Several also want to see Declaration number 11, on the respect for the status of churches, incorporated into the Treaty.

22. A number of citizens organisations have sent contributions under this category. They call in general for greater transparency in the functioning of the Union, as well as greater participation of individual citizens, making use as far as possible of new technology. A number call for a single referendum, or a guarantee of national referenda, on the Treaty which they consider should be the outcome of the Convention. There are also contributions from several political parties as well as 'European' organisations (both 'pro-European/federalist' and 'eurosceptic'). A number of them call for a federal constitution for Europe, and some contain detailed proposals on possible future institutional structures. On the other hand, there are several organisations which express concern in particular at the continuing lack of democratic accountability within the Union, and call for a greater involvement of national parliaments.

Follow-up

23. This digest covers all contributions sent to the Forum by the first June plenary session (7 June 2002). Organisations are continuing to register, and are encouraged to do so. The site can of course be accessed by everyone, including members of the Convention, and the Convention secretariat will also continue to monitor contributions closely.

THE EUROPEAN CONVENTION

THE SECRETARIAT

Brussels, 19 June 2002**CONV 112/02****ADD 1****ADDENDUM TO COVER NOTE**

from : Secretariat

to : Convention

Subject : List of contributions to the Forum

Members of the Convention will find attached, as a complement to the digest of contributions (document CONV 112/02), a complete list of organisations registered with the Forum up to and including 7 June 2002.

ANNEX

Contributions by category of organisation:

- **Political or public authority**
- **Academic and think - tank**
- **Socio-economic**
- **Other, civil society, NGOs and schools of thought**

Political or public authority

Assembly of European Regions - AER

Association européenne des élus de montagne - AEM

Bundeskammer für Arbeiter und Angestellte Federal Chamber of Labour

Conférence des Régions Périphériques Maritimes d'Europe - CRPM

Council of European Municipalities and Regions - CEMR

Deutscher Staedtetag, Deutscher Staedte- und Gemeindebund, Deutscher Landkreistag

Europabüros der Baden-Württembergischen, Bayerischen und Sächsischen Kommunen

Europäische Union Christlich Demokratischer Arbeitnehmer - EUCDA

European Community Organisation of Socialist Youth - ECOSY

The European network of major cities - EUROCITIES

The Evangelical Lutheran Church of Finland

JuniBevægelsen Mod Union

Local Government International Bureau

Northern Ireland Executive

Presidencia de Eusko Legebiltzarra - Parlamento Vasco

Scottish Executive EU Office

Südtiroler Volkspartei - SVP

Youth of the European People's Party - YEPP

Academic and think - tank

Association Internationale des Amis de Robert Schuman en Grèce

Bertelsmann Stiftung

The Bow Group

Business Advisors International - BAI Inc.

Center for Research on Geopolitics

Centre for European Reform

Centre for European Policy Studies - CEPS
 Cercle Condorcet de Bourges et du Cher
 Cercle Condorcet de Limoges
 Chaire Européenne de Recherche et d'Enseignement - CERE
 Conservative Democratic Alliance
 Escuela de Ingenieros de San Sebastián - TECNUN
 European Academy Bolzano/Bozen - EURAC
 European Documentation and Research Centre
 European Research Advisory Board - EURAB
 Facoltà di Scienze Politiche dell'Università Statale di Milano
 Fondazione Lelio e Lisli Basso
 The Foreign Policy Centre
 Initiative & Referendum Institute - IRI Europe
 Institut européen de Cluny - ENSAM
 National Centre for Marine Research
 Pan-European Circle "Coudenhove-Kalergi" - a Citizen's Europe !
 Study Group on a European Civil Code
 Study Group for European Policies
 Turkish Economic and Social Studies Foundation - TESEV
 Torhout Sint-Jozefsinstituut
 United Nations University -UNU Comparative Regional Integration Studies -CRIS

Socio-economic

Bundesverband Deutscher Privatschulen - VDP
 Bundesverband Informationswirtschaft, Telekommunikation, Neue Medien e.V. - BITKOM
 Bundesverband der freien Berufe - BFB
 Confédération Générale du Travail (France) - CGT
 The Confederation of Unions for Academic Professionals in Finland - Akava ry
 Conseil Européen des Professions Libérales - CEPLIS
 Deutscher Gewerkschaftsbund
 EUROCOMMERCE a.i.b.s.
 European federation of employee share ownership - EFES
 Fédération Belge des Coopératives - FEBECOOP
 Initiative for public utility services - ISUPE

International and European Public Services Organisation - IPSO

VIVANT

Other, civil society, NGOs and schools of thought

Active Citizenship (Cittadinanzattiva)

Arbeiterwohlfahrt Bundesverband e. V. - AWO

Asociación para la Cooperación con el Sur " Las Segovias " - ACSUR Las Segovias

Asociación para la Defensa del Derecho al Desnudo - ADDAN

Association des Femmes de l'Europe Méridionale - AFEM

Association Internationale de la Mutualité - AIM

Association internationale pour la promotion des Femmes d'Europe - AIPFE

Association pour la taxation des transactions financières et l'aide aux citoyens - ATTAC

AUTISME-EUROPE

Birdlife International, Climate Action Network Europe, European Environmental Bureau, Friends of Nature International, European Federation for Transport and Environment, Friends of the Earth Europe, Greenpeace EU Unit, WWF European Policy Office

Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege - BAGFW

Caritas Europa

The Catholic European Study and Information Centre - OCIPE

Citizens Union Paremvasi

Church of Greece

Commission of the Bishops' Conferences of the European Community - COMECE

Comité Européen de la Cause Arménienne - CDCA Europe

Comité européen des associations d'intérêt général - CEDAG

Comité de liaison des organisations non-gouvernementales de développement auprès de l'Union Européenne - CL ONG

Comité des Organisations Professionnelles Agricoles de l'Union Européennes - COPA
Comité Général de la Coopération Agricole de l'Union Européenne - COGECA

Comité Pauvreté et Politique

Confédération des organisations familiales de l'union européenne - COFACE

Conference of European Churches - CEC

Conférence Européenne Permanente des Coopératives, Mutualités, Associations et Fondations -
CEP-CMAF

Conseil des Associations d'Europe - CAE Convention Européenne des Etudiants de Sciences Po

Deutsche Vereinigung für Parlamentsfragen - DVParl
 Deutscher Juristinnenbund - DJB
 Diakonisches Werk der EKD - DIAKONIE
 Euro Citizen Action Service - ECAS
 EURODIACONIA
 Eurogroup for Animal Welfare
 Europäisches Forum für Freiheit im Bildungswesen e.V. - EFFE
 Europa-Union Deutschland e. V.
 European AgriCultural Convention
 The European Alliance of EU-critical Movements - TEAM
 European Anti-Poverty Network
 European Bureau for Lesser Used Languages - EBLUL
 The European Children's Network - Euronet
 European Network Church on the Move
 European Citizen's Network EUROPE NOW !
 European Cultural Foundation
 The European Disability Forum
 European Foundation Centre - EFC
 European Forum for the Arts and Heritage - EFAH
 European Landowners Organisation
 European liaison Committee for social housing
 European Non-Governmental Sporta Organisation - ENGSO
 European Organisation of Military Associations
 The European Region of the International Lesbian and Gay Association - ILGA-Europe
 European Round Table of Charitable Social Welfare Associations - ETWelfare
 European Social Action Network
 European Solidarity Towards Equal Participation of People - EUROstep
 European Women Lawyers Association - EWLA
 European Women's Lobby
 Evangelische Kirche in Deutschland -EKD
 Fédération Humaniste Européenne - EHF-FHE
 Federal Union of European Nationalities - FUEN
 Fondazione offidani - mestralletta vigna del gerbino
 FONDA - Carrefour pour une Europe Civique et Sociale (1)
 Forum Menschenrechte

Fundacion Nahumpro siglo XXI
Secrétariat Général du GESAC
Gesellschaft für bedrohte Völker Südtirol - GFBV
Groupe des douze
Human Rights, Democracy and Conflict Prevention NGO Network
Hungarian Civil Society Council
Initiativkreis zur Förderung des öffentlichen Rundfunks, Köln
International European Movement - IEM
International Movement ATD Fourth World
International Planned Parenthood Federation, European Network - IPPF EN
Junge Europäische Föderalisten Deutschland e. V. - JEF
Les Jeunes Européens - France
Kolpingwerk Europa
La Maison de l'Europe de Lyon et du Rhône
Mouvement Mondial des Mères - délégation européenne - MMM
The North-South Institute
Organisation Mondiale Contre la Torture - OMCT Europe
Organizacion Nacional de Ciegos Españoles - ONCE
Organisation internationale pour le developpement de la liberte d'enseignement - OIDEL
Paideia Foundation
Permanent Forum of European Civil Society
The Platform of European Social NGOs
Polish NGO Office in Brussels
The Polish Robert Schuman Foundation
Quaker Council for European Affairs - QCEA
Red Cross EU Office
Région Paris-Ile de France - UEF France
Réseau des chrétiens sociaux européens
Réseau EUROMED - Femmes
Società laica e plurale
SOLIDAR
SOS DemocracyStiftung Europaverständigung e. V. - SEV
Transparency International-Brussels asbl
Union of European Federalists - U.E.F
Women Citizens of Europe Network - RCE
Youth Forum

THE EUROPEAN CONVENTION

THE SECRETARIAT

Brussels, 19 June 2002 (21.06)
(OR. en,fr)**CONV 120/02****INFORMATION NOTE**

from : Secretariat

to : Convention

Subject : Contact groups (Civil Society)

Members of the Convention will find attached reports from the meetings of the eight contact groups, covering different sectors of civil society, which took place between 10 and 18 June 2002.

SOCIAL SECTOR

Chairman: Klaus Hänsch

No of participants registered: 105 (74 organisations)

A meeting with representatives of non-governmental organisations working in the "social" sector took place in the morning of Thursday 13 June, under the chairmanship of Mr Klaus Hänsch, member of the Praesidium of the Convention. 74 organisations had registered to attend the meeting – about eighty individuals were present on the day, of whom 30 took the floor.

The participants were drawn from a wide range of interest groups, and this was reflected in the scope of subjects covered in the discussion. Mr Hänsch opened the discussion by underlining the importance of the various contact group meetings as an opportunity for organisations from civil society to provide input into the work of the Convention. There would be a further opportunity at the plenary session on 24 and 25 June, in preparation for which each contact group was invited to designate a number of representatives to speak on behalf of their sector. Mr Hänsch provided the group with information about the organisation of the plenary session.

This summary is not an exhaustive record of all the points raised in the discussion. There were however a number of issues which were mentioned by several participants, and a few themes which can be identified as being of general concern to the sector as a whole. These are as follows:

- A number of speakers called for the full incorporation of the Charter of Fundamental Rights into the Treaty, and some called for extending its scope to include issues such as the right to education.
- Many sought formal recognition in the Treaty of the role of civil society, including a right to be consulted.
- References were made to the increasing use of the open method of coordination, and a number of speakers called for this to be formally recognised in the Treaty.

- Several called for a greater balance between economic and social policy, with explicit recognition in the Treaty of a "social" economy, and the inclusion of objectives such as full employment, the eradication of poverty and social exclusion, and sustainable development.
- Some proposed that there should be a more coherent approach to the Lisbon process, with a synchronisation of economic and employment guidelines at the Spring European Council. There was also a request for greater involvement of the European Parliament in these processes.
- Several speakers called for more support for services of general interest, cooperatives and non-profit-making organisations.
- There was a call for greater recognition of, and support for, families, and more emphasis on improving the treatment of migrants.
- There were several calls for concrete measures to end discrimination on grounds of gender and sexual orientation, as well as discrimination against the handicapped.
- Several speakers involved in scientific research establishments underlined the importance of science as a motor for the European economy and called for greater support from the Union for basic scientific research.

The Chairman welcomed the various contributions, which constituted a substantive input to the work of the Convention. After commenting briefly on a number of specific points, he invited those present to designate speakers to represent the sector at the plenary session on 24 and 25 June.

It was agreed that the social platform would themselves designate three representatives to speak for five minutes each. In addition, issues of non-discrimination would be addressed by Mary McPhail of the European Women's Lobby, and Economic/Social issues would be addressed by Rita Kessler from the Association Internationale de la Mutualité.

ENVIRONMENT

Chairman: Giorgos Katiforis

Number of organisations registered: 14

Number of participants registered: 20

The meeting was chaired by Mr Giorgos KATIFOROS, member of the Praesidium of the Convention.

After an introduction by Mr Katiforis on the aims and method of the contact group, the floor was taken by Mr David Lawrence, Director of Directorate-General A: Sustainable Development and Policy support of the Commission's Environment DG, who gave an unofficial account of some of the projects and objectives of the Environment Directorate-General.

Statements were then made by representatives of the following organisations: Eurogroup for Animal Welfare, European Agricultural Convention, European Landowners Organisation, European Women's Lobby, European Environmental Bureau.

Main proposals put forward by the representatives of organisations:**Fundamental rights**

1. Include environmental rights in the Charter of Fundamental Rights, amending it to be worded in terms of rights.
2. Add to fundamental rights the right of access to healthy food, the right to information, the right to a clean environment and clean water, the right to environmental services, the right to food free from GMOs.
3. Introduce the concept of animal welfare into the Treaty.

The Union's tasks

1. Maintain objectives and principles essential for environment and sustainable development, in particular as laid down in Articles 2, 6, 174 and 228 of the EC Treaty.
2. Review objectives of the Agriculture Policy, by bringing Art. 33 into line with the requirements of sustainability, quality food production, health and environmental protection, appropriate and sensitive rural development.
3. Establish no fixed list of competencies.
4. Jointly develop agricultural and rural policies incorporating the concept of sustainable development and ensuring biodiversity and land and water management, moving away from the aim of production and towards the aim of rural development.
5. Promote local traditions and traditional trades, particularly in relation to food, and promote rural tourism.
6. Abolish the Euratom Treaty.

Instruments

1. Replace unanimity by qualified majority with codecision for environmental decisions by changing Art. 175(2) and Art. 99 of the EC Treaty, as for any other matters.
2. Open the door to the European Court of Justice for environmental cases.
3. Include a general provision in the Treaty for broad, open and timely public participation.
4. Extend transparency requirements to all EU institutions and bodies.
5. End secrecy in the Council, which should meet in public.
6. Give the Economic and Social Committee no additional role as representative of civil society.
7. Strengthen the existing institutions: improve the transparency and democratic working of the existing institutions. Extend codecision powers to the EP, as well as a (limited) right of initiative.

Subsidiarity and competence

Decentralise agricultural policy.

ANNEXE III**ACADEMIA**

Chairman: Giuliano Amato

Number of organisations registered: 43

Number of participants registered: 65

1. Mr Giuliano Amato, Vice-Chairman of the European Convention, chaired the meeting of the contact group bringing together representatives of the academic world and "think tanks" in preparation for the meeting of the Convention on 24 and 25 June 2002 devoted to hearing from civil society. Around forty organisations had registered to take part in the meeting (see attached list), of whom about thirty were actually represented.

2. Mr Amato began by saying that this was a first meeting designed to put the various organisations in touch with one another. He encouraged them to collaborate and organise themselves during the Convention's proceedings and in particular to react promptly to the documents it produced. The Chairman pointed out that it was possible to identify five sub-groups within the contact group:
 - the academic world (universities, research centres, other ad hoc groups)
 - "think tanks"
 - movements promoting the European ideal, several of which were made up of young people or students
 - scientific research organisations
 - other NGOs from civil society representing various interests (European citizenship, women's movement, etc.), often participating in other sectoral contact groups as well.

3. The Chairman underlined the importance of the expertise provided by the academic world and also of the support of civil society in legitimising the final outcome of the Convention's work. It would therefore be necessary to consider, after the Convention meeting on 24 and 25 June, how to continue interacting with civil society in general and, possibly, with a contact group from academic circles and think tanks. The membership of the contact group might vary depending on the subjects raised. Experts could also be invited to take part in the working groups which had been set up, while the Convention Forum would continue to collect contributions.

4. The Chairman then invited participants to give an introduction to the organisation or network (for example AGORA or CEPS/EPIN) they represented and talk about their current and future activities which had a bearing on the Convention. They were also able to give their general views on the running of the Convention and the various topics it dealt with. The following points may be made at this stage:
 - Several participants raised the question of the final result of the Convention, in, particular the method to be used for drafting any basic Treaty and the structure of the Union which it would embody. The representatives of the European University Institute in Florence drew attention to their expertise in treaty reorganisation and said they were available to continue their work, taking into account the new context offered by the Convention. Other university centres or think tanks also declared their willingness to contribute to this undertaking, particularly with regard to questions of a more institutional nature or relating to European defence. The Chairman nevertheless pointed out that the Convention's financial resources were very limited.

- The participants also raised the matter of how to involve citizens more in the constitutional process now under way. Several supported the idea of holding a Europe-wide referendum to approve the outcome of the Convention or the IGC, or even of distributing a questionnaire in advance to all Europeans on what they expected from the European Union (based on an experiment already conducted in Hungary by ECOSTAT). Several youth groups mentioned their initiatives (for example, AEGEE, "Génération européenne"), in particular the drafting of a manifesto (international students of Political Sciences, Paris), and their desire to increase opportunities for mobility and language training. Another idea put forward was to make provision in the Treaties for systematic participation by civil society in the European decision-making process.
- Several institutional questions were raised, in particular relating to the executive function (relations between the Commission and the Council), the consistency of external action, and the problems of European public finances. Some suggested identifying the Council's legislative function and universalising the codecision procedure.
- The European organisations involved in scientific research drew attention to the important role of research and innovation in European society and its interaction with the industrial world. The intergovernmental research organisations (EIROForum) stressed the importance of a common European vision in this context. The GALILEO programme was a good example of closer collaboration between research organisations (in this case the European Space Agency) and the European Community. The latter could be represented more often, for example by the Commission, in these various organisations. In the case of the ESA, this would no doubt mean that the Treaties would have to include an indication of the Union's competence with regard to space policy. Finally, emphasis was placed on the need for mobility, not only of researchers, but also of staff of European institutions and intergovernmental research organisations.

- Women's organisations (for example, European Women's Lobby, Women citizens of Europe network) stressed the need to raise the profile of the principle of gender equality, particularly by including it in the preamble to the Treaties, or even by adding another Title. There was also a proposal to incorporate in the Charter of Fundamental Rights a general provision on non-discrimination between the sexes which citizens would be able to invoke directly, as in the case of the principle of non-discrimination on the basis of nationality.
5. Following that exchange of views, Mr Amato invited participants to appoint those in the contact group who would take the floor during the Convention meeting on 24 and 25 June. He suggested that participants should confer within the various sub-groups identified above and told them that, like the seven other groups representing civil society, they would have a total of 25 to 30 minutes. Mr Amato also proposed that one organisation from the candidate countries be represented.

The result is that eight people will take the floor, each for around three minutes:

Academic world:

- Mr Jean-Victor Louis (AGORA and European University Institute, Florence)
- Ms Florence Deloche-Gaudez (Political Sciences, Paris)

Think tank :

- Ms Kirsty Hughes (Centre for European Policy Studies / European Policy Institutes Network – CEPS/EPIN)
- Mr Stanley Crossick (European Policy Centre – EPC)

European /Youth movements:

- Ms Pascale Joannin (Robert Schuman Foundation)

Scientific Research:

- Mr Antonio Rodota (European Intergovernmental Research Organisations EIROForum)

Academic women's movements:

- Ms Teresa Freixes (Women Citizens of Europe Network)

Candidate countries

- Mr Karoly Lorant (Institute for Economic Analysis and Informatics, Hungary – ECOSTAT)

CITIZENS AND INSTITUTIONS

Chairman: Jean-Luc Dehaene

Number of organisations registered: 66

Number of participants registered: 94

1. The meeting was chaired by Mr Jean-Luc Dehaene, vice-Chairman of the Convention; 94 participants were registered, representing 66 organisations.
Most of the contributions focussed on institutional questions, or those relating to citizenship and participatory democracy.

2. As regards the institutions, the organisations which took the floor called in particular for:
 - a Constitution for Europe, which would be clear and readable for citizens
 - the Community method to be maintained and a simple and clear decision-making process to be introduced
 - the Council not to be the government of the Union, since it was the institution least capable of taking decisions and was not democratically answerable to any elected European assembly
 - for the government of the Union to be in the hands of the Commission, which alone was capable of representing the common interests of citizens
 - the President of the Commission to be elected by the European Parliament
 - the Union's competence in the area of economic and social policy to be reinforced
 - for the Union to take on the role of co-regulator of the globalisation process
 - the European Constitution to be approved by a European referendum or national referendums (one organisation was opposed).

3. On the question of citizenship and participatory democracy, the organisations in particular asked for the following to be incorporated in the Treaty:
- the right of citizens to be informed about Europe
 - the Charter of fundamental rights
 - the "pursuit of the common good" as one of the Union's basic objectives
 - the principles of sustainable development, which must include the economic and social dimension of the environment
 - regular holding of a "civil dialogue" similar to the Social Dialogue
 - parity democracy
 - the importance of services of general interest for social cohesion and in the interests of European citizens
 - principles of horizontal subsidiarity
 - the right of citizens to participate in all stages of European decision-making and implementation of decisions, particularly via consultation in the context of a real partnership and joint evaluation of the political results achieved
 - the statute of European association
 - recognition of the role of non-profit-making organisations (cooperatives, mutual societies, associations).

There was also a call for religious freedom to be incorporated in the Charter of Fundamental Rights and also to tighten up Article 13 dealing with racism and xenophobia.

4. At the close of the meeting, the following were chosen to speak at the plenary:
- Mr Fernand HERMAN (Federalist Voice)
 - Ms Alison WESTON (JEF – Europe)
 - Ms Charlotte ROFFIAEN (A.C.N. – Forum de la Société civile)
 - Ms Maria MIGUEL SIERRA (European Network Against Racism)
 - Mr Pawel KRZECZUNOWICZ (Polish NGO Office in Brussels).

REGIONS AND LOCAL AUTHORITIES

Chairwoman: Ana Palacio

Number of organisations registered: 18

Number of organisations or local authorities registered: 138

Number of participants registered: 187

The meeting was chaired by Ms Ana PALACIO, member of the Praesidium of the Convention. The first speaker was Mr Eduardo ZAPLANA, first vice-Chairman of the Committee of the Regions. The European organisations representing local and regional authorities which had submitted a contribution to the Forum had the opportunity to present their work at the beginning of the discussions.

A. Proposals on which there was consensus among the organisations

The organisations thanked Ms PALACIO for setting up the contact group and called unanimously for the group to hold **regular meetings** until the Convention had completed its proceedings. They also asked that the Convention set up a special **working group** to deal with matters relating to regional and local authorities.

The regional and local governments, having been elected by universal suffrage, pointed out that they were part of the system of government of the Union and were very frequently responsible for implementing Community legislation.

Fundamental rights

1. Incorporate the Charter of Fundamental Rights, and in particular the Preamble thereto, into the Treaty
2. Include regions and local authorities in Article 6 of the TEC
3. Incorporate into the Treaty (in accordance with methods still to be defined) guarantees of local democracy, **a common European cultural heritage**, in particular by incorporating the Council of Europe's European Charter of Local Self-government, which has already been signed and ratified by all candidate countries and most Member States.

The Union's tasks

1. Draw up a constitutional Treaty which clarifies and specifies the Union's task
2. Among the Union's objectives, special importance to be attached to the task of ensuring economic, social and territorial cohesion.
3. Establish a legal instrument to facilitate cross-border cooperation between territorial authorities within the EU and at its external borders.
4. Treaty to include positive discrimination in favour of the Union's outermost regions.

Instruments

5. All participants call for excessively detailed legislation which then has to be implemented by local and regional authorities to be dropped (for example in Sweden the counties have to implement between 60 and 70% of Community legislation)
6. All participants request that, in line with the current excellent practice in Austria, there should be systematic *ex ante* consultation very early on in the legislative process, in the spirit of true partnership between the institutions and local and regional authorities. The Treaty should make it compulsory for there to be consultation on all policies with major regional or local effects and on all policies with financial consequences for regions and cities. Moreover, there should be a "consultation code" to guarantee that practices are fair and transparent.

Participants denounced the shortcomings of consultation by means of Green or White Papers and called for the principles of good governance to be written into the Treaty.

Subsidiarity and Competence

7. The words in Article 1 of the TEU, "as closely as possible to the citizen" to be translated into reality;
8. Introduce **true subsidiarity**, which should recognise the **four levels** of government in Europe: European, national, regional and local;
9. Amend Article 5 of the TEC so that the role of local and regional authorities is recognised, with due regard for the internal structures of the Member States;
10. Amend Article 10 of the TEC as regards fair cooperation which must also be applied to local and regional authorities;
11. In the absence of a precise list of different types of competence, a system of ex-ante and ex-post checking should be introduced **as a top priority**, the best guarantee of proper control of subsidiarity being as described in paragraph 15 below;
12. The "**principle of relation**", a concept of German constitutional law, to be recognised in the Treaty; according to that principle the European legislator should be responsible for the financial consequences of his decisions or give the territorial authorities, when they have to apply the decisions, as is often the case, the means to do so (e.g. the European Council in Lisbon said that each school should have an Internet connection, but the resulting cost has to be borne by local authorities).

Requests relating to the Committee of the Regions

13. Recognition of the CdR as a Union institution (in practice recognition of the right of appeal to the Court in defence of its prerogatives).
14. Adjustment of the balance of the CdR because of the under-representation of the local level in some delegations.

B. Special requests from regions with legislative powers (RPL)

15. Right of individual appeal to the European Court of Justice by RPLs (appeal to check legality)
16. As a minimum, right of appeal via the Committee of the Regions (it should be noted that the European Parliament was given active legal capacity by the Treaty of Nice).
17. Special status for RPLs in the Treaty/or LAMASSOURE proposal that the regions should be "partners of the Union".
18. Participation of regional assemblies in COSAC.
19. Participation of regional ministers in the Council on the basis of Article 203 of the TEC.

C. Nominations for organisations to speak at the plenary:

- Assembly of European Regions
 - Association des Régions Frontalières de l'Europe
 - Conference of Peripheral Maritime Regions of Europe
 - Council of European Municipalities and Regions
 - EUROCITIES
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HUMAN RIGHTS

Chairman: António Vitorino

No of participants registered: 94 (64 organisations)

1. The contact group, facilitated by Commissioner Vitorino, covered a wide range of issues, notably human rights aspects of the Union's internal and external policies. Sixty-four organisations (ninety-four persons) registered to participate in the meeting. A number of participating organisations represent a wider international network of organisations.
2. All participants highlight that the European Union is a Union of values and that the protection and promotion of these values have to be put at the centre stage of the Union's policies, both internally and externally. There is also a general acknowledgement that enhanced transparency and accountability of the institutions, more focus on gender equality in the EC Treaty and in the Union's policies and an intensified dialogue with the civil society are of major importance when it comes to putting human rights into practise.
3. As regards human rights within the European Union, a vast majority of speakers calls for incorporation of the Charter of Fundamental Rights into the treaties to make it legally binding. Many of them believe that the text of the Charter should be amended to include or strengthen a number of rights, and that the Convention should address this issue. Others mentioned the risk that reopening the Charter might lead to weakening of the text and proposed to provide for a possibility of future review of the text after its incorporation.

4. Cataloguing rights is not sufficient and many speakers agree that concrete protection of rights depends on effective implementation and control mechanisms, as well as mainstreaming human rights into all EU policies. In this context, some call for an extension of the competences of the Court of Justice, notably in the current "third pillar". The Union's accession to the European Convention on Human Rights (as well as to other international human rights instruments, such as the revised European Social Charter) is recommended by a large number of participants.
5. As regards the external dimension, a number of speakers called for an active and consistent human rights policy, based on the principles of universality and indivisibility of fundamental rights. International human rights standards should guide the Union's relations with third countries.

A number of participants feel that due attention should be given to social, economic and cultural rights and that these rights should be strengthened both in the Union's legal framework and in its policies.

DEVELOPMENT

Chairman: Henning Christophersen

Co-Chairs: Ms Anne Van Lancker, Lord Tomlinson, Mr Kimmo Kiljunen

No of participants registered: 42 (29 organisations)

- All the participants welcomed the idea of consulting civil society through contact groups and the plenary session. Some participants mentioned the need to institutionalise the dialogue with civil society, though some warned about the need to avoid this slowing down the decision-making process.
- Need to strengthen the EU's policy and establish a relationship between development and the objectives of the external policy in terms of policy objectives, decision-making process and implementing mechanisms to recognise development policy more clearly as one of the elements of the EU's external policy.
- Need to ensure consistency of other EU policies with its development objectives.
- The Development Council should not, at least at this stage, be abolished.
- The eradication of poverty should be given highest priority in the new Treaty.
- The social aspects should be more strongly emphasised in the external as well as internal dimension of the EU.
- Focus on democracy and respect for human rights should be deeply rooted in EU development policy.
- The European Development Found should be incorporated into the Community Budget and subject to the same procedures as the rest of EU development assistance.
- The Charter of Fundamental Rights should be incorporated into the Treaty.

- All the participants expressed their satisfaction at the candidate countries' participation in the work of the Convention. The candidate countries' presence creates a new situation not only by the fact that they are less developed in terms of income but also in terms of development policy. This will however change over time as pre-accession policy also helps to build up their development policy.
 - Focus on equal treatment and equal opportunities for men and women.
 - The Chairman and Co-Chairs expressed their willingness to continue the dialogue through contributions from contact group members, especially concrete proposals related to the issues raised.
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ANNEX VIII**CULTURE**

Chairman: Alojz Peterle

Number of organisations registered: 53

Number of participants registered: 71

1. On 12 June Mr Peterle, member of the Praesidium of the European Convention chaired a hearing ("contact group") at the European Parliament in Brussels of civil society organisations engaged in the cultural area. He was assisted by Mr van Mierlo, member and by Ms Birzniece, alternate. Mr van der Linden, member and Ms Palacio, member of the Praesidium also participated in all or part of the hearing. Secretariat support was provided by the Convention secretariat.
2. 53 organisations had registered to take part in this hearing (see attached list of participants). Five discussion topics had been selected to take account of the diversity of governmental and non-governmental organisations attending the hearing:
 - arts and heritage;
 - cultural cooperation;
 - languages and minorities;
 - churches and religious associations;
 - education.
3. In his introduction, the Chairman asked the organisations and NGOs to give their views on the topics and issues appearing in the Laeken declaration and on those tackled during the initial Convention sessions. An exhaustive account of contributions is unnecessary, but the following points may be noted:

- the actions conducted by the Union in the cultural field were deemed generally inadequate. A European action did not jeopardise decisions taken at national level but rather supplemented them. There should be encouragement for actions which would enhance a feeling of European cultural belonging;
- many speakers urged that the Charter of Fundamental Rights be included in the Treaty. Some suggested that it be amended by including a reference to the right to culture or a mention of the spiritual or cultural values which provided the impetus for European integration;
- several speakers wanted the provisions of the Treaty relating to culture (Article 151) to be maintained and made subject to a decision by qualified majority (instead of the current unanimity with a European Parliament codecision procedure). A number of speakers stated that the most important measures adopted by the Union in the field of culture had often had a legal basis other than Article 151, in order, in their view, to get round the unanimity obligation. Some speakers spoke of their support for the Protocol on the system of public broadcasting in the Member States annexed to the Treaties and wanted it to be maintained;
- a number of speakers deplored the fact that insufficient account was taken in the European Treaties of the special nature of cultural property, which could not be regarded in the same way as other goods and should receive or continue to receive special treatment, especially as regards the rules on State aids for the film industry;
- those speaking on behalf of Churches or religious communities expressed their support for declaration No 11 amended to the Final Act of the Amsterdam Treaty on the status of churches and non-confessional organisations. They furthermore considered that the values uniting the European continent and which were to be found in European principles (values such as peace, liberty, human dignity, solidarity and democracy) owed much to the religious and in particular Christian heritage of Europe. This heritage and link should not be overlooked and should appear in European texts. One speaker pointed out, however, that an increasingly large proportion of the population no longer referred to this religious heritage and that if it were mentioned it would create divisions between believers and non-believers;

- several speakers recalled the existence of minority languages or cultures within the European Union. Their place should be recognised and support given for their further development.
4. At the end of the statements and discussions, the Chairman reminded participants that the Convention session on 24 and 25 June would be devoted to hearing representatives of civil society. Organisations engaged in the cultural field would have 25 to 30 minutes to present their views, followed by a discussion of the same length with members of the Convention. The Chairman asked the attending organisations to inform him of the way in which they would be using their speaking time. Following brief consultations, the following arrangements were adopted:
- cultural cooperation, arts and heritage, education: 10 minutes to be shared between Mr von des Gablentz (Europa Nostra) and Ms Chabaud (European Forum for the Arts and Heritage);
 - Churches and religions: 10 minutes, Mr Jenkins (Conference of European Churches);
 - languages and minorities: 5 minutes.

All speakers are invited to take account of the suggestions made by participants on the content of their contributions to the European Convention.

THE EUROPEAN CONVENTION
THE SECRETARIAT

Brussels, 4 July 2002 (08.07)
(OR. fr,en)

CONV 167/02

NOTE

Subject : Note on the plenary session
Brussels, 24 and 25 June 2002 ¹

I. Report by the Chairman on Seville meeting with the European Council

1. The Chairman outlined the main elements of the report given by him to the Seville European Council. These covered the launch of the Convention, its progress to date, and the preliminary conclusions which could be drawn from the work so far. On the last point, the Chairman had reported that there was general agreement that there should be no new transfer of competences to the Community (with the exception of cross-border aspects of Justice and Home Affairs), that there should be a stronger control over the respect for subsidiarity, that both the instruments and language of the Union/Community needed simplifying, that consideration needed to be given to deepening activity in three specific areas (External Relations, Justice and Home Affairs and possibly Economic and Financial affairs) and that democratic legitimacy should be made clearer. A written copy of the Chairman's report was subsequently circulated to Members of the Convention. The Chairman said that his report had been warmly received by Heads of State/Government who had expressed broad support for the objective of simplification, and had stressed the need for the Convention to respect the timetable set.

¹ A verbatim record of the plenary session is to be found on the website www.european-convention.eu.int.

2. In response to two interventions from Members of the Convention, the Chairman agreed that democratic legitimacy within the Union had two sources, the European Parliament and national parliaments. He also confirmed that his report to Seville represented his assessment as Chairman, and did not necessarily represent a view shared by each Member of the Convention.

II. Opening of session devoted to civil society

3. The session devoted to civil society was opened by Vice-Chairman Dehaene as Chairman. He underlined the importance attached by the Convention to the views of civil society. The plenary session was neither the beginning nor the end of a process of consultation which would continue throughout the period of the Convention. He underlined the four building blocks of this process. Firstly, the Forum allowed non-governmental organisations to provide written contributions to the Convention, and a summary of the contributions to date had been circulated to Convention members (CONV 112/02). Secondly, the debates organised at a national level were a vital component of the process; written reports on these debates had been received and circulated. It was important that they should continue. Thirdly, eight contact groups had been established to allow for an exchange of views with specific sectors of civil society. They had also allowed representatives to be designated who would speak on behalf of each sector at the plenary session. The contact groups were complementary to the briefing meetings being organised for civil society by the Economic and Social Committee. Finally the session itself was an opportunity for the Convention as a whole to hear the views of civil society.

Social Sector Contact Group

4. The Chairman of the group (Mr HÄNSCH) said that the meeting of the contact group with organisations from the social sector had underlined a number of points of concern. In particular there had been many calls for incorporation of the Charter on Fundamental Rights into the Treaty, the expectation that the Convention would prepare a draft constitutional treaty, a strong emphasis on the need for wider social and employment issues to be more central objectives of the EU, inclusion of the open coordination method in the Treaty, and a formalisation in the Treaty of the dialogue with civil society. There had also been calls for stronger support for services of general interest.

5. The following five representatives took the floor on behalf of this sector :

Mr ALHADEFF, on behalf of the social platform,

Ms WILKINSON, also on behalf of the social platform,

Ms SUTTON, also representing the social platform,

Ms McPHAIL, representing the European Women's Lobby,

Ms DAVID, representing the European Standing Conference of Cooperatives, Mutual Societies, Associations and Foundations.

The following issues were raised.

6. It was considered important that the Convention should be a fully open process. A legal basis in the Treaty for the dialogue with civil society was requested, though it was made clear that this in no way undermined the normal democratic process, but rather enriched it, since civil society had the potential to contribute a great deal to the development of the Union.
7. Concern was expressed that the European social model was being dismantled. Europe's citizens sought security in its widest sense. All of Europe's internal policies should be at the service of social development. It was proposed that the open method of coordination should be incorporated in the Treaty, but it was underlined that the open character of the process also implied full consultation of NGOs, social partners, and regions/local authorities. A request was made for a specific commitment to combating poverty to be included in the Treaty.
8. There were calls for extending the scope of the Charter of Fundamental Rights, as well as for including it in the Treaty. The accession of the Community to the European Convention on Human Rights was proposed. The importance of ensuring freedom from discrimination for all Europe's citizens was underlined.
9. The developments so far to bring about gender equality were described as erratic. Gender equality should become an explicit objective of the Union, and a new title covering gender equality provisions should be included in the Treaty. Participation and representation in the institutions should be on a gender parity basis.

10. The important role of public and non-profit making companies within the Union was underlined. There should be more explicit recognition in the Treaty of the role of services of general interest, and a derogation for them from competition rules.
11. The Observers representing the social partners were then invited to take the floor.

Mr JACOBS, representing UNICE, welcomed the initiative of convening a session devoted to civil society. He urged the Convention to rethink and clarify the process of consultation with key stakeholders. UNICE was in favour of a constitutional Treaty, supported moves to greater transparency, favoured maintenance of the Community method, a single legal personality and more extensive use of QMV. It did not wish to see a catalogue of competences.

12. Mr GABAGLIO, representing ETUC, urged the Convention to strike a balance between economic and social policy. The Lisbon process was important, and further policy coordination should be encouraged. European citizenship should be strengthened. Consultation of social partners should be formalised. In addition the Union needed to strengthen its role globally in order to support fairer globalisation.
13. Mr CRAVINHO, representing CEEP, supported calls for formal Treaty recognition of services of general interest, given their importance within the European economy. Specifically public costs should be considered compatible with competition rules. The social dialogue should be developed further, and the open method of coordination should be supported.
14. In response to these interventions, a number of members of the Convention expressed support for the general call for greater emphasis on social dialogue, the maintenance of the European social model and the incorporation into the Treaty of the Charter of Fundamental Rights. However a question was raised about the practical implications of incorporating the Charter, and doubts were expressed by one member over the extent to which the organisations which had taken the floor were representative; their source of financing was relevant to this and should be declared.

Environment Contact Group

15. The Group Chairman, Mr KATIFORIS, referred to the importance of environmental issues which had been underlined by the contact group; this reflected an increasing recognition that natural resources were not available in limitless abundance. The following three representatives took the floor on behalf of this sector:

Mr HALLO, representing the European Environment Bureau,

Mr SPOONER, representing the European Agricultural Convention,

Ms de JONCKHEERE, representing the European Landowners Organisation,

16. It was stressed that environmental protection should be a top priority for the Union. The existing Treaty provided a secure basis for environmental policy and should not be changed. But the following issues should be addressed: inclusion of a Treaty article on dialogue with civil society, opening up the work of the Council, inclusion of environmental rights in the Charter, extending the role of QMV and co-decision, replacement of the Euratom Treaty, and the introduction of a Treaty provision on animal welfare.
17. The common agriculture and rural policy (CARP) should be reformed. Decision-making should be made more transparent and accountable. The CAP was much too complex. A new CARP should be decided on the basis of co-decision, and stakeholders should be involved. The basis of the CARP should be widened to include such areas as access to healthy food and clean water, and should be based on the principles of sustainable development. Developing countries should be given greater access to agricultural markets.
18. Furthermore, policies to bridge the gap between urban and rural interests were considered necessary. The right to own property and land should be included in the Charter, which should be incorporated into the Treaty. There should be an extension of co-decision, and subsidiarity should be reinforced and a body to monitor it should be established.
19. In response, support was expressed by one member of the Convention for the call for a more fully integrated agricultural and rural policy. It was also noted that environmental policy was almost invariably a transnational issue.

The Observers representing the Economic and Social Committee were then invited to take the floor.

20. Mr FRERICHS referred to the need for the composition of the ESC, as a representative body, to be clearly redefined and the criteria clarified. The ESC and the Committee of the Regions had complementary roles and should work efficiently together.
21. Mr BRIESCH underlined the essential role of the ESC. It was not part of civil society but achieved full legitimacy through the fact that its members were mandated by their organisations in the Member States. The ESC looked for a constitutional Treaty encompassing the objective of full employment, equality, recognition for the particular role of services of general interest, and an extension of QMV.
22. Ms SIGMUND stressed the importance of social cohesion, which should be included in the Treaty, and of culture as a basis of social activity. Greater emphasis should be placed on developing the social dialogue, though full participation in this should be limited to fully representative organisations. This dialogue should include the subject of subsidiarity.

Academia and Think Tanks sector and Citizens and Institutions sector

23. The discussions concerning these sectors were led by Mr Giuliano AMATO and Mr Jean-Luc DEHAENE respectively. The following had been designated to represent the first sector:

Academic world:

- Mr Jean-Victor LOUIS (AGORA and European University Institute, Florence)
- Ms Florence DELOCHE-GAUDEZ (Political Sciences, Paris)

Think Tanks:

- Ms Kirsty HUGHES (Centre for European Policy Studies / European Policy Institutes Network – CEPS/EPIN)
- Mr Stanley CROSSICK (European Policy Centre – EPC)

European /Youth movements:

- Ms Pascale JOANNIN (Robert Schuman Foundation)

Scientific Research:

- Mr Antonio RODOTA (European Intergovernmental Research Organisations EIROForum and European Research Advisory Board - EURAB)

Women's academic movements:

- Ms Teresa FREIXES (Women Citizens of Europe Network)

Candidate countries:

- Mr Karoly LORANT (Institute for Economic Analysis and Informatics, Hungary – ECOSTAT)

24. The second sector had designated:

- Mr Fernand HERMAN (Federalist Voice)
- Ms Alison WESTON (Young European Federalists)
- Ms Charlotte ROFFIAEN (Active Citizenship Network - Forum of Civil Society)
- Ms Maria MIGUEL SIERRA (European Network Against Racism)
- Mr Pawel KRZECZUNOWICZ (Polish NGO Office in Brussels)

25. The presentations in these two sectors were largely along the same lines as both of them focussed on matters closely related to the Convention's work, concerning the institutions, the future of Europe and participatory democracy.

26. Emphasis was placed on the importance of the Convention's working methods, and particularly the working party structure, and on the time constraints weighing upon the Convention. Questions were asked, and suggestions made, concerning methods and time limits.

27. Majority support was expressed for the Convention's search for daring solutions, and there was consensus on the need to frame a constitutional Treaty or Charter in simple and clear language. Various speakers raised the idea of holding a referendum or referendums to approve the founding text resulting from the Convention.

28. The Academia and Think Tanks sector offered its services to the Convention, and would be available for any specific work or research that might be required of them. Various statements were made in support of that sector's imminent role in the training of young people, who were Europe's driving and initiating force.

29. Several variants were suggested for the architecture of the institutions, including more widespread use of majority voting and the codecision procedure, election of the Commission President by the European Parliament, opening up to the public the debates of a – reformed – Council when acting as legislator, and strengthening of the Commission's executive role and authority to control application of the subsidiarity principle.
30. Agreeing that more action than legislation would be required in the coming period, all speakers wanted to strengthen the Union's political nature, as well as its capacity to act in the field of foreign and defence policy and to take decisions on political issues reflecting European citizens' expectations.
31. The safeguarding and promotion of more participatory democracy featured in many statements, as did the inclusion in the Treaty of the principle of a regular dialogue with civil society, which should in practice lead to consultation of the relevant representative organisations at an early stage in the framing of Union legislation.
32. Various women's and young people's networks also adopted positions on the architecture of the institutions along the lines stated previously.
33. In the ensuing debate speakers expressed broad support for the work of the organisations in these sectors, organisations, highlighting their role, although some found that the organisations involved were insufficiently representative of opinions in Europe, and a number of them were receiving financial support from the institutions.
34. On this matter Mr Söderman, the European Ombudsman, said that since he had taken up his duties (almost 7 years ago) he had received 10 000 applications from citizens on cases of maladministration by Community institutions. He stressed that considerable progress had been made to make European citizenship a reality today. In particular, rules had been drawn up on public access to documents, and the Charter had been adopted. The European Parliament had accordingly adopted a code of good administrative behaviour in September 2001. Yet citizens were not yet very aware of how to ensure respect for their rights. This was due to the fact that there was little information on this in the Treaty. He suggested that the Treaty include a Chapter on citizens' (judicial and non-judicial) means of redress in cases where their rights

(including their fundamental rights) were not respected. That chapter would then also contain provisions on possible means available before national courts, the Court of Justice's constitutional role, the right to petition the European Parliament and the right to contact a national ombudsman or the European Ombudsman. He suggested that the latter be enabled to seize the Court of Justice if he considered that a fundamental right had been violated.

The session on 25 June 2002 was opened by the Chairman, Valéry Giscard d'Estaing, who then passed the chair to Mr Jean-Luc Dehaene.

Regional and Local Authorities sector

35. The discussions concerning this sector were led by Ms Ana PALACIO.

The first speakers were the Observers from the Committee of the Regions, namely:

Mr Eduardo ZAPLANA, Vice-Chairman of the Committee of the Regions, President of the Region of Valencia

Mr Jos CHABERT, former Chairman of the Committee of the Regions

Mr Patrick DEWAELE, Minister-President of the Flemish Region

Mr Manfred DAMMEYER, Member of the Nordrhein-Westfalen State Parliament

Mr Claude du GRANRUT, Regional Councillor (Picardie)

Mr Claudio MARTINI, President of the Tuscany Region.

36. The following were subsequently designated as speakers:

– Dr Heinrich HOFFSCHULTE, First Vice-President of the Council of European Municipalities and Regions

– Mr Anders GUSTAV, Member of the Bureau of the Conference of Peripheral Maritime Regions of Europe;

– Mr Lambert VAN NISTELROOIJ, Vice-Chairman of the Assembly of European Regions;

– Ms Eva-Riitta SIITONEN, President of EUROCITIES;

– Mr Jens GABBE, Secretary-General of the Association of European Border Regions;

– Mr Manfred DÖRLER, President of the Voralberg Parliament, for the Conference of Legislative Assemblies of the Regions of Europe (CALRE).

37. Both the Observers and the representatives of the organisations highlighted the special nature of local and regional entities as citizens' elected representatives, and called for respect for their areas of competence and their tasks, which consisted largely in implementing Union legislation. It was further emphasised that Europe was being governed at four levels: local, regional, national and European.
38. The Observers said that the Committee of the Regions ought to become a Union institution and have the right to bring actions before the Court of Justice of the European Communities. They wanted the areas in which consultation of the Committee of the Regions was mandatory to be extended and the Committee's opinions to be given greater importance by obliging the institutions to give reasons where they disagreed with those opinions.
39. All speakers representing the sector underlined the need to bolster the Union's institutions, calling for a constitutional Treaty and stating their commitment to policies with a strong territorial impact, including cross-border policies, which they felt should not be re-nationalised.
40. There were also calls to make Union legislation less detailed and to associate territorial entities, which were most frequently required to implement that legislation, closely at an early stage of legislative drafting. All manifested their commitment to strict control of the subsidiarity principle, to be understood first and foremost as a principle of closeness to citizens. Here, it was proposed that the Treaty include the "principle of connexity" whereby the legislator should assume the financial consequences of its decisions or give territorial entities, when they had to apply the decisions, the means to do so.
41. A number of representatives of regions with legislative competence called for the right of individual referral to the Court of Justice of the European Communities, greater presence of regional ministers in the Council (Art. 203 TEC) and participation by their regional assemblies in the COSAC. Lastly, several requests were made for a special session of the Convention to be devoted to the role of regional and local entities.

Human Rights sector

42. This sector, headed by Mr António VITORINO, had chosen the following representatives;
- Mr Dick OOSTING (Amnesty International);
 - Ms Laëtitia SEDOU (OMTC – World Organisation Against Torture-Europe);
 - Ms Sophie SPILIOTOPOULOS (Association of Women of Southern Europe and EWLA).
43. Here, statements made suggested in particular that it was not enough to protect human rights by sound texts (such as the Charter or the ECHR), but that this also required the proper functioning of the institutions (more transparency, notably on internal matters and accountability), effective control by parliaments (national and European) and by the Ombudsman, respect for the principle of gender equality and greater involvement of civil society. Some statements also emphasised that the Union ought to make human rights the key component of all its policies. It was suggested that "human rights" be replaced by "rights of the individual".
44. Respect for human rights by the Union in the Justice and Home Affairs sector was highlighted. The criticism was made that Union activity in this sector was not sufficiently transparent and that control by the Court of Justice was incomplete.
45. By and large, this sector's representatives suggested that the new Treaty (particularly its preamble) incorporate the Charter of Fundamental Rights. Some proposed a review of the Charter's provisions, in particular those that were less protective of the *acquis communautaire*, whilst others felt that in the present circumstances it was more appropriate not to reopen the discussion on all the Charter's provisions, but to consider only technical adaptations.
46. It was further stressed that incorporation of the Charter could not be viewed as an alternative to the Union's accession to the European Convention on Human Rights, the benefits of which were underscored. Reference was made here to explicit recognition of the Union's legal personality. A further consequence of the Charter's incorporation into the Treaty was that Member States would be required to comply with its provisions when implementing Community law.

47. Mr Söderman, the European Ombudsman, stated that he had tried to encourage the institutions to apply the Charter since its adoption. He had done so in particular in the following areas: right to freedom of expression for Union officials, right to paternity leave, non-discrimination on grounds of age in recruitment matters, no indirect discrimination concerning women, secondment of national officials, right to good administration by the Institutions.

Development sector

48. This sector, headed by Mr CHRISTOPHERSEN, had chosen the following representatives:
- Mr Simon STOCKER (Eurostep);
 - Ms Claire GODIN (Equilibres et Populations);
 - Ms Meral GEZGIN ERIS (Economic Development Foundation).
49. It was proposed that a legal basis be included in the Treaty which would allow for more vigorous action and to link the Union's internal policy more closely to its external development policy. The principles of sustainable development and adequate social protection should be incorporated into the Treaty.
50. Eradication of poverty should also be made a component of the Union's external policy. The point was made that 20% of the world's population owned 86% of the world's wealth whereas 20% of the poorest countries owned only 1,4% of it.
51. At present, development matters were covered by complementary competences. It was emphasised that a clearer definition of the Member States' and the Union's competences would make the Union's development policy more effective and that greater transparency of the institutions was needed.
52. The principle of gender equality should be guaranteed in development programmes (here, a practical guide could be drawn up on how to mainstream the principle of gender equality in development policy).
53. It was considered essential to provide for more programmes on education in third-world countries. It was also mentioned that undertakings based in the EU should be prohibited

from becoming involved in activities where there was abuse of child labour in developing countries.

Cultural sector

54. For this sector, headed by Mr Aloiz PETERLE, the following representatives were selected:
- for cultural cooperation, art and heritage and education: Mr von der GABLENTZ (Europa Nostra) and Ms CHABAUD (European Forum for the Arts and Heritage);
 - for churches, religion and beliefs: Mr JENKINS (Conference of European Churches);
 - For languages and minorities: Mr BREZIGAR (European Bureau for Lesser-Used Languages).
55. It was proposed that the Treaty should mention the fundamental values which form the common basis of our societies and which should contain references in particular to: human dignity, the promotion of peace and reconciliation, freedom and justice, solidarity and sustainable development, tolerance, democracy, human rights, the rule of law, respect for minorities and cultural diversity. The Union should, moreover, strengthen its capabilities and resources in the area of conflict prevention in the world and as regards the peaceful settlement of conflicts.
56. The defence of fundamental values, human dignity and cultural diversity are at the heart of European integration. It was suggested that a People's Europe could be constructed only if Europe plays a role in culture and education. For enlargement to succeed, the citizens of the candidate countries must feel that they belong to the Union, and culture is the means to achieve this.
57. It was suggested that Article 151 EC should be amended to provide for qualified majority voting rather than unanimity as at present, and that Articles 149 and 150 of the EC Treaty should be merged.
58. Furthermore, the wish was expressed that the principle of cultural diversity should figure explicitly in the Treaty and that national public policies on culture should be regarded as forming part of services of general interest. To this end, Article 87 (State aids) and Article 133 (common commercial policy) of the EC Treaty should take

account of the specific nature of cultural and educational activities. The latter cannot reasonably be viewed solely from a commercial perspective or a competition standpoint.

59. It was also proposed that the Protocol annexed to the Treaty of Amsterdam on Public Service Broadcasting in the Member States should be incorporated into the text of the Treaty, inasmuch as pluralism of information and media should be listed among the common fundamental values of the Union, in the same way as cultural diversity.
60. Mr Dehaene, Vice-Chairman, closed the debates by stating that the proceedings had been a milestone in a long-term process. He indicated that the dialogue with civil society would be pursued, that the forum website would continue and remain open to the contribution that civil society might wish to make to the work of the Convention. He also mentioned the importance of the debates at national level. Lastly, speaking on behalf of the Praesidium, he announced that the latter would take other initiatives aimed at pursuing the dialogue with civil society, which he regarded as highly enriching, above all for the Convention.
61. Closing the session, the Chairman underlined the importance of this debate and congratulated all the participants. He then provided some information on the organisation of the Youth Convention. He emphasised the importance of the latter for a Europe orientated towards the future in an ever-changing world.

ANNEX

List of speakers following order of intervention

Plenary session 24 and 25 June 2002**LIST OF SPEAKERS****Monday 24 June 2002**

Valéry GISCARD D'ESTAING, Chairman

Johannes VOGGENHUBER, Elio DI RUPO

Jean-Luc DEHAENE, Chairman

Mr Klaus HÄNSCH, European Parliament

Mr Giampiero ALHADEFF, Social Platform

Ms Marie-Françoise WILKINSON, Social Platform

Ms Diana SUTTON, Social Platform

Ms Mary Mc PHAIL, European Women's Lobby

Ms Anne DAVID, European Standing Conference of Co-operatives, Mutual Societies, Associations and Foundations

Georges JACOBS (UNICE)

Emilio GABAGLIO (ESC)

Joao CRAVINHO (CEEP)

Mr Peter HAIN – United Kingdom (Government)

Ms Anne Van LANCKER – European Parliament

Mr Alain BARRAU - France (Parliament)

Mr Ernani LOPES - Portugal (Government)

Ms Helle THORNING-SCHMIDT – European Parliament * alternate for Mr MARINHO

Mr Hannes FARNLEITNER – Austria (Government)

Ms Pervenche BERES – European Parliament

Blue cards: Barnier, Bruton, Heathcoat-Amory, Fayot, Spini

Mr Jan FIGEL – Slovak Republic (Government)

Mr Giorgos KATIFORIS - Greece (Government)

Mr Ralph HALLO (European Environmental Bureau)

Ms Sharon SPOONER (European AgriCultural Convention)

Ms Sophie DE JONCKHEERE (European Landowners Organisation)

Mr Michael FRENDON - Malta (Parliament)

Blue cards: Basile, Voggenhuber

Göke FRERICHS

Roger BRIESCH

Anne-Marie SIGMUND

Blue card: Maij-Waggen

Mr Giuliano Amato, Vice-Chairman

Mr Jean-Victor LOUIS de AGORA (European University Institute in Florence)

Ms Florence DELOCHE-GAUDEZ (Political Sciences, Paris)

Ms Kirsty HUGHES (Centre for European Policy Studies – CEPS/EPIN)

Mr Stanley CROSSICK (European Policy Centre – EPC)

Ms Pascale JOANNIN (Robert Schuman Foundation)

Mr Antonio RODOTA (European Intergovernmental Research Organisations EIROFORUM)

Ms Teresa FREIXES (Women Citizens of Europe Network)

Mr Karoly LORANT (Institute for Economic Analysis and Informatics, Hungary – ECOSTAT)

Mr Michel ATTALIDES – Cyprus (Government)
 Mr Andrew DUFF – European Parliament
 Ms Danuta HÛBNER – Poland (Government)
 Ms Cristiana MUSCARDINI – European Parliament
 Mr Peter SERRACINO INGLOTT – Malta (Government)
Blue cards: Duhamel, Carnero-Gonzalez, Spini, Kirkhope, Giscard d'Estaing)
 Ms Inese BIRZNIECE - Latvia (Parliament)
 Mr Jean-Luc DEHAENE – Vice-Chairman
 Mr Fernand HERMAN (Federalist Voice)
 Ms Alison WESTON (Young European Federalists)
 Ms Charlotte ROFFIAEN (Active Citizenship Network - Forum de la Société civile)
 Mr Pawel KRZECZUNOWICZ (Polish NGO Office in Brussels)
 Mr Jacob SÖDERMANN - European Ombudsman
 Mr ORIOL (European Network Against Racism)
 Mr William ABITBOL – European Parliament * alternate for Mr BONDE
 Mr Proinsias DE ROSSA – Ireland (Parliament)
 Mr Pierre MOSCOVICI - France (Government)
Blue cards: Speroni, Kauppi, MacCormick, Bruton, Hjelm-Wallen
 Mr Matjaz NAHTIGAL – Slovenia (Government)

Tuesday 25 June 2002

Ms Ana PALACIO, Spain (Government)
 Eduardo ZAPLANA, Vice-Chairman of the Committee of the Regions, President of the Region of Valencia
 Jos CHABERT, Former Chairman of the Committee of the Regions
 Patrick DEWAEL, Minister-President of the Flemish Region
 Manfred DAMMEYER, Member of the Nordrhein-Westfalen State Parliament
 Claude du GRANRUT, Regional Councillor (Picardie)
 Claudio MARTINI, President of the Tuscany Region
 Mr Lambert VAN NISTELROOIJ, Vice-President of the Assembly of European Regions
 Mr Heinrich HOFFSCHULTE, Vice-President of the Council of European Municipalities and Regions
 Mr Anders GUSTAV, Conference of Peripheral Maritime Regions of Europe
 Mr Jens GABBE, Secretary-General of the Association of European Border Regions
 Ms Eva-Riitta SIITONEN, President of EUROCITIES
 Mr Manfred DÖRLER, Conference of Legislative Assemblies of the Regions of Europe (CALRE)
 Mr Erwin TEUFEL – Germany (Parliament)
Blue cards: Bonde, Siitonen, Dörler, Teufel
 Mr Francesco SPERONI – Italy (Government) * alternate for Mr FINI
 Mr Edmund WITTBRODT – Poland (Parliament)
Blue cards: Barnier, Duhamel, Einem, Berger, Rack, MacCormick, Amato
 Mr Antonio VITORINO (Commission)
 Dick OOSTING (Amnesty International)
 Laëtitia SÉDOU (OMCT - World Organisation Against Torture – Europe)
 Sophie SPILIOTOPOULOS (Association of Women of Southern Europe and EWLA).
 Ms Cristiana MUSCARDINI – European Parliament
 Mr Matjaz NAHTIGAL – Slovenia (Government)
 Mr Frans TIMMERMANS – Netherlands (Parliament)
 Ms Hanja MAIJ-WEGGEN – European Parliament
 M. Jacob SÖDERMAN, European Ombudsman
Blue cards: A. Yilmaz, Bruton, Berès

Mr Henning CHRISTOPHERSEN, Denmark (Government)
Mr Simon STOCKER, Director of Eurostep
Ms Claire GODIN (*Equilibres et Populations, Chargée de Mission Politique*)
Ms Meral GEZGIN ERIS, President of the Economic Development Foundation, IKV Turkey
Baroness SCOTLAND OF ASTHAL – United Kingdom (Government) * alternate for
Mr HAIN
Blue cards: Kiljunen, Palacio, Akyol, De Rossa, Basile, Lennmarker
Aloiz PETERLE - Slovenia (Parliament)
Mr von der GABLENTZ (Europa Nostra)
Ms CHABAUD (European Forum for the Arts and Heritage)
Mr JENKINS (Conference of European Churches)
Mr BREZIGAR (European Bureau for Lesser-Used Languages)
Mr Hans van MIERLO – Netherlands (Government)
Mr Tunne KELAM – Estonia (Parliament)
Blue cards: Tekin, Demetriou, Spini
Mr Filadelfio BASILE – Italy (Parliament)

DA

DET EUROPÆISKE KONVENT

MANDAG DEN 24. JUNI 2002

DE

EUROPÄISCHER KONVENT

MONTAG, 24. JUNI 2002

EL

ΕΥΡΩΠΑΪΚΗ ΣΥΝΕΛΕΥΣΗ

ΔΕΥΤΕΡΑ 24 ΙΟΥΝΙΟΥ 2002

EN

EUROPEAN CONVENTION

MONDAY, 24 JUNE 2002

ES

CONVENCIÓN EUROPEA

LUNES, 24 DE JUNIO DE 2002

FR

CONVENTION EUROPÉENNE

LUNDI 24 JUIN 2002

IT

CONVENZIONE EUROPEA

LUNEDI' 24 GIUGNO 2002

NL

EUROPESE CONVENTIE

MAANDAG 24 JUNI 2002

PT

CONVENÇÃO EUROPEIA

SEGUNDA-FEIRA, 24 DE JUNHO DE 2002

FI

EUROOPPA-VALMISTELUKUNTA MAANANTAINA 24. KESÄKUUTA 2002

SV

EUROPEISKA KONVENTET

MÅNDAGEN DEN 24 JUNI 2002

1-002

FR

PRESIDENCE DE Mr GISCARD D'ESTAING*(La réunion est ouverte à 14.57 h)*

Le Président.- Notre session d'aujourd'hui est essentiellement dédiée à l'audition de la société civile. Ceci explique d'ailleurs son organisation particulière : d'une part, le fait que nous siégeons dans ce grand hémicycle afin que chacune et chacun puisse y prendre place, et d'autre part le fait que les conventionnels sont de part et d'autre, ce qui n'est pas leur situation habituelle tandis que les représentants de la société civile occupent le centre de l'hémicycle.

Notre ordre du jour prévoit que je vous informe tout d'abord en quelques mots, du rapport que j'ai présenté au Conseil européen de Séville. La présentation de ce rapport est une des obligations qui résultent de la déclaration de Laeken. Il y est décrit comme étant un rapport oral. Il ne fait donc pas l'objet d'une discussion préalable. Par contre, une fois qu'il est prononcé, étant donné le grand nombre de participants, il acquiert un caractère public. Par conséquent, il sera adressé personnellement, à chacun des membres de la convention, dans un délai de vingt-quatre heures. Il sera donc disponible pour la séance de demain.

1-003

DA

Redegørelse fra formanden om Det Europæiske Råds møde i Sevilla

DE

Bericht des Präsidenten über die Tagung des Europäischen Rates in Sevilla

EL

Έκθεση του Προέδρου σχετικά με το Ευρωπαϊκό Συμβούλιο τη Σεβίλλης

EN

President's report on the European Council meeting in Seville

ES

Informe del Presidente sobre la reunión del Consejo Europeo de Sevilla

FR

Rapport par le Président sur la réunion du Conseil européen à Séville

IT

Relazione del Presidente sulla riunione del Consiglio europeo di Siviglia

NL

Verslag van de voorzitter over de vergadering van de Europese Raad van Sevilla

PT

Relatório do Presidente sobre o Conselho Europeu em Sevilha

FI

Puheenjohtajan kertomus tapaamisesta Sevillan Eurooppa-neuvoston kanssa

SV

Ordförandens redogörelse för Europeiska rådets möte i Sevilla

1-004

FR

Le Président. – Je vais vous faire un bref compte-rendu de ce que j'ai dit d'une part, et des réactions du Conseil d'autre part.

Mon compte-rendu a porté sur trois points: le démarrage de la convention, le déroulement de ses travaux et les premières orientations qu'on peut en tirer. Sur le démarrage de convention, ce n'est pas la peine d'y revenir puisque vous avez participé à ce démarrage. Je dirais simplement que j'ai souligné le fait que les Etats Membres et les pays candidats participent à ces travaux sur un pied d'égalité et que c'est actuellement la seule enceinte européenne où cette situation s'observe. J'ai indiqué d'autre part que les contributions des conventionnels des pays membres et des pays candidats sont d'une grande qualité. C'était pour moi l'occasion de vous en remercier.

J'ai noté qu'il semblait qu'un esprit de la Convention commençait à se créer : via un dialogue interne dans la convention, et parfois via des échanges d'arguments en vue d'aboutir à des positions plus proches. J'ai rappelé que la composition de la Convention souligne le caractère binaire de l'Union Européenne, avec ses deux sources de légitimité : la source historico-identitaire, avec les gouvernements et les parlements nationaux et la source euro-continentale avec le Parlement européen et les Institutions européennes. J'ai rappelé que nous avons décidé de procéder en trois phases: phase d'écoute, phase d'étude et phase de recommandations et de propositions. J'ai également souligné que les sessions d'aujourd'hui et de demain, consacrées à l'écoute de la société civile et préparées par le vice-président Monsieur Jean-Luc Dehaene, allaient clôturer cette phase d'écoute. J'ai donné des indications sur nos cinq sessions et la création de nos groupes de travail.

En ce qui concerne les premiers enseignements qu'ont apporté nos débats, j'ai retenu les points suivants: tout d'abord, la nécessité d'accroître la légitimité de l'Union Européenne, c'est-à-dire donner une définition précise des compétences de l'Union, qui puisse être connue de tous, en précisant qu'il n'y avait pas eu à la Convention de demande de compétences nouvelles dans la vie intérieure des Etats, à l'exception de la compétence sur l'action judiciaire et policière transfrontalière. J'ai noté que le consensus paraissait marquer une préférence pour affirmer que les compétences de l'Union sont exclusivement celles qui résultent des traités, toutes les autres restant de la compétence des Etats Membres. J'ai fait remarquer au Conseil Européen que ceci supposait une réécriture des articles des Traités qui ne définissent pas le caractère européen de la compétence, ou qui en tout cas, le définissent en des termes trop imprécis. J'ai souligné qu'il existait une demande forte, j'ai même dit qu'elle était quasi unanime, pour la mise en place d'un mécanisme efficace et transparent, qu'il soit politique ou juridictionnel, en vue d'assurer le respect du principe de subsidiarité. Et enfin, j'ai fait remarquer que, compte tenu de l'évolution du monde, il paraissait exister un consensus afin de ménager, à l'avenir, une possibilité d'évolution des compétences, à condition que ces modifications fassent l'objet d'une procédure transparente et démocratique. J'ai indiqué que les seuls domaines où s'exprimaient une demande supplémentaire, une demande "pour plus d'Europe", pour utiliser l'expression de la présidence espagnole, étaient les trois domaines suivants: le renforcement de la politique extérieure et la présence internationale de l'Union, le renforcement de l'action transfrontalière dans le domaine de la sécurité et de la justice et de la lutte contre la criminalité organisée et l'immigration illégale, et enfin une meilleure coordination en matière économique et financière. J'ai signalé que cette dernière émanait d'un certain nombre de conventionnel.

Pour ce qui est de la simplification, j'ai indiqué que la demande portait sur une réduction significative du nombre des procédures de décision et pour ce qui est de la législation communautaire, la demande portait sur la généralisation de la procédure de codécision et du vote à la majorité qualifiée. Et enfin, et j'espère que nous en donnerons un exemple ici-même cet après-midi et demain, j'ai plaidé pour la simplification du langage afin de le rendre compréhensible à nos concitoyens, en remplaçant, par exemple, les expressions de directive et de règlement par loi-cadre et loi européenne. J'ai également parlé de l'établissement de bases juridiques pour la simplification nécessaire des traités. Le dernier point que j'ai évoqué est la légitimité démocratique. En effet, il existe une demande de davantage d'efficacité et de démocratie dans la prise de décisions. Je rappelais que contrairement à des affirmations rapides et parfois injustes, la légitimité démocratique existe. Elle existe à la fois dans le rôle des parlements nationaux dans l'exercice de leur pouvoir par rapport à leur gouvernement représenté au Conseil et grâce à l'action du Parlement Européen, qui joue un rôle essentiel dans la définition de la législation européenne. Mais j'ai indiqué que cette légitimité démocratique est insuffisamment perçue ou mal perçue par l'opinion européenne.

Ce sont là les éléments que j'ai indiqués en répondant à deux critiques que nous avons entendu s'exprimer, dans notre enceinte ou à l'extérieur de celle-ci, et que j'ai tenu à mentionner. La première critique est de ne pas aller plus vite. J'ai indiqué, avec l'approbation du Conseil européen, que nous refusons de sacrifier la phase d'écoute, et que si nous n'allions pas plus vite dans la formulation de certaines positions, c'était pour attendre d'avoir entendu les membres de la société civile. La deuxième critique est le fait de ne pas prendre position sur les contributions qui nous sont adressées. Certaines d'entre elles ont attiré, à juste titre, l'attention médiatique. J'ai rappelé que ces contributions nous sont précieuses et j'ai d'ailleurs remercié leur auteurs, notamment le Parlement Européen, la Commission Européenne et certains Etats ou groupes d'Etats membres. Mais j'ai précisé que notre mission à la Convention est différente. Elle n'est pas de réagir au jour le jour sur les contributions qui nous sont adressées mais de parvenir à une vue globale pour aboutir à une proposition globale. Et j'ai indiqué que le fait qu'il y ait des contributions nombreuses et importantes montre que l'onde de rénovation engendrée par la mise en place de la convention se propage désormais dans l'ensemble du dispositif européen, ce qui est une excellente chose. Enfin j'ai conclu en essayant de répondre à la question suivante : "Pourrions-nous parvenir à une proposition globale et équilibrée?" Et la réponse a été de dire qu'il est encore trop tôt pour l'affirmer, mais que la convention avance dans le chemin qu'elle s'est tracé en vue de l'élaboration d'un traité constitutionnel.

Voilà donc le compte-rendu que j'ai présenté à Séville, au Conseil Européen. Ce n'est pas à moi de dire comment il a été accueilli. Cette tâche revient naturellement aux Membres du Conseil. J'ai ressenti, personnellement, l'expression d'une approbation forte et chaleureuse. On la retrouve d'ailleurs dans les conclusions de la Présidence où il est dit que le Conseil européen appuie la démarche

générale suivie par la convention et qu'il souhaite qu'elle poursuive sur cette voie et aboutisse, dans les délais prévus, à un résultat positif, dans la perspective de la conférence intergouvernementale décidée à Laeken. Je souligne les trois derniers mots "en vue de la révision des traités". Ce point est très important puisqu'il s'agit d'une proposition dont l'utilité est qu'elle puisse s'inscrire dans cette perspective de révision des traités. Le texte est un texte de style diplomatique. C'est pourquoi, j'ai ajouté l'ambiance du Conseil Européen, et notamment cette approbation que j'ai ressentie comme forte et chaleureuse.

Les Membres du Conseil européen rendront compte eux-mêmes de leurs interventions. La majorité d'entre eux est intervenue. Ils ont insisté sur trois points. Tout d'abord, ils souhaitent une participation accrue des représentants nommés par les gouvernements aux travaux de la convention. Ensuite, ils appuient très fortement le travail de simplification, à la fois des textes et des instruments, engagée par la convention. En enfin, ils insistent sur le respect du calendrier. Concernant le respect du calendrier, je leur ai indiqué que nous ferions tout notre possible pour respecter celui qui nous avait été fixé mais que néanmoins, nous ne le ferions pas en sacrifiant la qualité de nos travaux. Ainsi, ce serait au début de l'année deux mille trois, en phase rédactionnelle des textes, que nous serions à même de les informer plus complètement des modalités et des délais d'achèvement complet de nos travaux.

Voilà donc, Mesdames et Messieurs les Conventionnels, le compte-rendu de ce que j'ai indiqué au Conseil Européen et la réaction qui l'a suivi. S'il y a des questions brèves sur ce sujet, je me tiens à la disposition de ceux qui lèveraient leur carton pour leur répondre. Je vous demanderai toutefois de ne pas être trop nombreux parce que nous ne voulons pas retarder la phase de l'audition.

1-005

DE

Voggenhuber (PE). - Herr Präsident! Ich entnehme Ihrer schriftlichen Unterlage und auch Ihrer Aussage, dass Sie vor allem die historische Legitimation durch nationale Parlamente betont haben. Davon abgesehen, dass im Konvent eine solche historische Legitimation gar nicht zur Sprache kam, im Gegenteil, das Demokratiedefizit massiv angesprochen wurde, möchte ich Sie fragen, ob Sie dabei bedacht haben, dass die nationalen Parlamente ihre Kontrolle und Legitimation gar nicht mehr ausüben können, weil der Rat geheim tagt, weil sie in der Praxis völlig überfordert sind, beispielsweise eine Europol zu kontrollieren, weil Mehrheitsentscheidungen des Rates diese Parlamente präjudizieren und die mittelbare Legitimationskette längst durchbrochen haben und dass daher diese historische Legitimation in keiner Weise mehr für einen angemessenen demokratischen Standard sorgt?

1-006

FR

Di Rupo (Parl.-BE). – J'ai trouvé votre exposé extrêmement intéressant, voire brillant. Mais comme vous nous demandez notre avis, nous ne sommes bien entendu pas engagés par vos propos. Ceux-ci sont bien ceux du Président de la Convention, car ne serait-ce que sur les compétences, la manière avec laquelle les choses ont été exprimées mériterait certainement de longs débats qu'il n'est pas question de mener pour l'heure. Vous nous avez donc fait part de votre compte-rendu au Conseil, du climat, ce qui n'est jamais sans intérêt ainsi que des réactions formelles. Je voulais juste dire que le fait que nous ne réagissions pas aujourd'hui dans le détail sur tel ou tel point, en particulier dans le domaine des compétences, ne nous empêchait pas d'y revenir dans le futur. Je pense que c'était implicite. Toutefois, comme je suis d'un style plutôt lent et que j'aime les choses explicites, je me suis autorisé à vous poser cette question. J'espère que vous ne l'avez pas trouvée outreucidante, Monsieur le Président.

1-007

FR

Le Président. – Tout d'abord, Monsieur Voggenhuber, à propos de la légitimité, ou plutôt du rôle du Parlement dans la légitimité démocratique, j'ai indiqué la chose suivante. Je cite mon texte, puisque je ne suis pas allé plus loin que cela. Les deux sources de légitimité démocratique de l'Union, c'est-à-dire les Parlements nationaux et le Parlement Européen, doivent être vécues comme complémentaires et non comme antagonistes, ce qui est souvent, ou ce qui a été parfois, la tendance. Je dis également qu'une initiative forte devra être prise afin de rapprocher ces deux sources de légitimité démocratique de l'Union en leur donnant en même temps une plus grande lisibilité dans l'opinion publique. J'indique que lorsque la Convention aura progressé sur ce point, je ferai part au Conseil Européen de ses réflexions. La Convention progressera notamment grâce aux travaux du groupe de travail, présidé par Madame Stewart, qui désormais est en charge d'approfondir vos réflexions sur cette question.

Ensuite, la remarque de Monsieur Di Rupo est tout à fait judicieuse mais il n'y a pas d'ambiguïté. Le texte de Laeken dit que le Président de la Convention présente un compte-rendu. Il s'agit donc d'un compte-rendu présenté par lui-même, qui a un caractère oral et qui donc n'a pas valeur contraignante en ce qui concerne les travaux ultérieurs de la convention. Et donc, à cet égard, vous pourrez, comme vous le souhaitez, continuer à apporter votre contribution, notamment en matière de compétences, sujet important et sensible.

Nous pouvons maintenant passer au deuxième point de notre ordre du jour, à savoir l'écoute de la société civile. Je voudrais simplement, avant de transmettre la présidence à Monsieur Jean-Luc Dehaene, dire aux représentants de la société civile que nous attachons, et que personnellement j'attache, la plus grande importance à leur contribution. Nous l'avons d'ailleurs prouvé en refusant de nous laisser entraîner dans une démarche précipitée concernant les orientations de notre Convention. Nous avons d'abord voulu écouter les représentants de la société civile. Nous nous sommes efforcés d'apporter le plus grand soin possible dans le travail de

préparation. A cet effet, je remercie les membres du Praesidium et les Conventionnels eux-mêmes qui ont participé à cette préparation. Dans ce débat, il n'y aura que deux règles. La première est la liberté d'expression. Et la seconde est le respect des autres. La première de ces règles, est donc la liberté d'expression. Cela signifie que chacun s'exprimera comme il l'entendra. Il n'y a eu, il n'y a et il n'y aura aucune censure sur le contenu des propos tenus ici. Chacun peut ressentir ou avoir le besoin d'exprimer des convictions, des jugements, des préférences qui sont les siens. La seule limite est apportée par le deuxième principe, à savoir le respect des autres, qui a lui même une double forme. D'abord, une attitude de tolérance vis-à-vis des points de vue ou des propositions qui peuvent être aimés par les uns et pas par les autres, et qui ne correspondent pas à sa propre conviction. Et ensuite le respect très scrupuleux des temps de parole, puisque nous avons huit heures de débat pour huit groupes de sujets, et que tout débordement des temps de parole, notamment au début, empièterait sur le temps qui reste pour les derniers groupes de contact ou pour les derniers sujets. Ceci mutilerait ou amputerait les travaux d'audition de la société civile. Ce n'est pas pour nous un exercice de style, c'est un enrichissement de la Convention, à un stade où elle n'a pas encore arrêté ses orientations et ses propositions et où elle veut écouter avec soin les représentantes et les représentants de la société civile.

1-008

DA

Civilsamfundet

DE

Zivilgesellschaft

EL

Κοινωνία των πολιτών

EN

Civil society

ES

Sociedad civil

FR

Société civile

IT

Società civile

NL

Civiele samenleving

PT

Sociedade civil

FI

Kansalaisyhteiskunta

SV

Det civila samhället

1-009

FR

Dehaene (Vice-Président). – Monsieur le Président, je voudrais souligner qu'effectivement, cette session d'écoute avec la société civile fait partie intégrante des travaux de la Convention et que, d'ailleurs, la déclaration de Laeken et par conséquent, le Conseil Européen nous a donné comme mission d'être à l'écoute de la société civile. Je pense pouvoir affirmer aussi que, si nous voulons que les résultats de la Convention soient portés par la société civile, celle-ci doit être associée de fort près aux travaux de la Convention.

Tout d'abord, je voudrais souligner que cette session n'est ni le début du forum de la société civile ni sa fin, car je pense qu'il est effectivement important que nous trouvions les moyens pour que, tout au long de la Convention, la société civile puisse régulièrement se faire entendre et réagir par rapport à l'avancée de nos travaux. Par ailleurs, la société civile a déjà eu l'occasion d'apporter sa contribution à la Convention. Les nombreuses interventions au niveau du web le prouvent. Selon moi, le forum a pris quatre dimensions : le forum sur internet, les débats nationaux, les divers groupes d'écoute avec les ONG et enfin la séance d'aujourd'hui. Tout d'abord, en ce qui concerne le forum sur le net, toutes les organisations ont reçu l'occasion, ou ont l'occasion, d'apporter des contributions, de réagir. Nous avons essayé de regrouper ces organisations en quatre groupes. Pour le moment, il y a dix-sept organisations qui se sont inscrites comme étant politiques ou de collectivité publique, seize comme groupe à caractère socio-économique, vingt-huit comme appartenant au monde académique et aux cercles de réflexion et quatre-vingt-dix-neuf comme appartenant à la société civile, aux ONG ou autres. Le secrétariat s'est efforcé de synthétiser les contributions des différentes ONG, même si ce fut loin d'être aisé. Dans le cadre du forum, on compte, pour l'instant cent-soixante contributions provenant de diverses organisations. Lors du travail de synthèse, nous avons dû nous en tenir aux grandes lignes. Néanmoins, il est clair que chaque membre de la Convention peut prendre connaissance de l'ensemble des contributions en consultant le forum. Le secrétariat a dégagé quatre thèmes généraux ressortant des contributions au forum. Premièrement, il s'agit du souhait d'une Europe plus proche du citoyen. On entend par là une Union qui est à l'écoute, mais aussi des décisions qui sont prises au niveau approprié. On souligne par là, comme d'ailleurs à la Convention, le principe de subsidiarité. Deuxièmement, il s'agit du renforcement du rôle de la société civile et sa reconnaissance dans les Traités. Troisièmement, il s'agit de l'importance des droits fondamentaux et le souhait qu'ils soient intégrés dans les Traités et même étendus. Quatrièmement, il s'agit de l'importance d'un processus de décision efficace. On entend par là qu'à l'avenir, le vote à la majorité qualifiée et la codécision soient appliqués dans de plus nombreux cas. Comme je l'ai déjà dit, il est impossible de donner ici un résumé de toutes les contributions. Je recommande dès lors de lire attentivement l'aperçu donné par le secrétariat, et surtout de consulter les contributions elles-mêmes.

Ensuite, il faut parler de la deuxième voie que nous avons suivie, à savoir celle des débats nationaux. Les débats nationaux sont vitaux. Nous l'avons souligné en Convention à plusieurs reprises. Et il existe le danger que la convention ne soit à l'écoute que d'ONG organisées au niveau européen. C'est fort important, mais je pense qu'il faut que nous décentralisons et que nous ayons également des contacts avec les ONG au niveau national. A cet effet, nous avons demandé aux divers membres de la convention de nous donner un aperçu de ce qui s'organise au niveau national. D'ailleurs, vous avez reçu les vingt-deux contributions que nous avons reçues et qui vous donneront un aperçu de l'organisation des débats nationaux. Vous pouvez également en prendre connaissance sur le web. Je pense qu'il est intéressant aussi de lire cet aperçu. En effet, il peut donner des idées sur la manière d'organiser et d'alimenter le débat national. Il va de soi que nous demandons que ces débats nationaux continuent dans les semaines à venir. Nous sommes également prêts, à partir de la convention, du secrétariat, du praesidium et des membres, à participer à ces forums nationaux.

La troisième voie suivie est celle des contacts avec les ONG européennes, et là aussi vous savez que nous avons, avec la participation du secrétariat du Comité économique et social, déjà organisé deux réunions où l'ensemble des ONG ont pu s'exprimer, mais aussi rencontrer des membres de la convention pour s'entretenir des thèmes dont nous discutons ici. Mais avant d'en venir à cela, je voudrais également souligner que nous avons des observateurs provenant du Comité des Régions, du Comité économique et social et du monde des partenaires sociaux qui participeront aux débats d'aujourd'hui. Ils représentent des parties importantes de la société civile. Non seulement ils participent à la Convention en tant qu'observateur, mais ils se chargent également d'assurer un feed-back des travaux de la Convention auprès de leurs organisations. Nous espérons qu'ils continueront à le faire durant l'ensemble de la Convention. Avec l'aide du Comité économique et social, nous continuerons à avoir des réunions, en suivant un rythme plus ou moins mensuel, où l'ensemble des ONG seront invitées et pourront rencontrer des membres du praesidium, échanger des opinions ainsi que réagir aux propositions qui seront faites par la Convention, une fois la phase d'écoute terminée.

Pour la réunion d'aujourd'hui, nous avons organisé des groupes de contact, huit en tout, qui permettra à l'ensemble des ONG de s'exprimer. Chacun de ces groupes de contact, a fait une synthèse qui a été mise à votre disposition, de telle sorte que vous avez également une vue générale de ce qui s'est dit lors des différents débats. Environ quatre cents organisations y ont participé. Cela représente plus de six cents participants. Un grand nombre de ces organisations correspond d'ailleurs à un réseau encore plus large et chacune d'elle représente aussi plusieurs ONG nationales. Ces réunions ont également permis de désigner les portes-parole qui interviendront aujourd'hui et référeront de ce qui s'est dit dans les différents groupes de contact. Je vous rappelle que nous poursuivrons les travaux et que, dès mercredi prochain, une réunion est prévue, où nous pourrions évaluer les débats d'aujourd'hui. Monsieur Vitorino participera également au débat dans le prolongement de la dernière session dont un des thèmes était le troisième pilier. Voilà où nous en sommes à ce stade et voilà la façon dont le forum de la société civile a été organisé. Je répète que ceci n'est pas un point final du forum de la société civile. L'effort doit se poursuivre. Nous le poursuivrons et nous espérons qu'il se poursuivra aussi bien au niveau national qu'au niveau européen avec les membres de la convention. J'en viens alors au déroulement de la session d'aujourd'hui. Nous avons regroupé les interventions par groupe de contact. Nous souhaitons également donner la parole aux observateurs dans le prolongement du groupe de contact avec lequel ils ont le plus de liens. Nous prévoyons également un moment où les membres de la Convention pourront intervenir dans le débat, après chacun des huit groupes qui se sont réunis avant la Convention. Le membre du Praesidium, qui a présidé à ces débats, ouvrira chaque partie, après quoi nous donnerons la parole aux orateurs désignés. Nous avons prévu un même laps de temps pour chacun des groupes. Ce sont les groupes qui ont désigné leur porte-parole. Le résultat est que normalement, il y aura un temps de parole plus long que prévu si un groupe n'a désigné, par exemple, que trois intervenants au lieu de huit. Ces choix ont été fait par les groupe, en connaissance de cause puisque nous avons défini l'organisation des débats. A l'instar du Président, je tiens à souligner que, dans un souci de respect de chacun, nous devons strictement nous limiter au temps de parole imparti. Vous avez reçu l'ordre du jour. Il prévoit que nous commençons par le groupe de contact « secteur social ». Je donnerai donc immédiatement la parole à Monsieur Klaus Hänsch qui va présider le groupe. Après quoi, prendront

successivement la parole Monsieur Alhadeff , Madame Wilkinson, Madame Sutton, Madame Mc Phail et Madame David en qualité de portes-parole désignés par ce groupe de contact. Je donne sans plus attendre la parole à Monsieur Klaus Hänsch.

1-010

DE

Hänsch (PE). - Herr Präsident, Herr Vorsitzender! Die Nichtregierungsorganisationen aus dem sozialen Sektor haben sich am 13. Juni getroffen, um die heutige Sitzung vorzubereiten. Wir hatten einen sehr intensiven und informativen Dialog. Ungefähr 30 Teilnehmer an dem Vorbereitungstreffen haben sich an diesem Dialog beteiligt, und was wir heute hören werden, kann natürlich nur ein Ausschnitt aus dem sein, was die Kontaktgruppe am 13. Juni diskutiert hat, ein Ausschnitt aus der Vielfalt der verschiedenen Positionen und Meinungen. Aber wir glauben, dass das ein repräsentativer Ausschnitt sein wird. Wir haben uns einvernehmlich auf die Sprecher geeinigt, die Sie jetzt gleich aus der Kontaktgruppe "Sozialer Sektor" hören werden.

Es steht mir nicht zu, Schlussfolgerungen zu ziehen. Aber lassen Sie mich doch ein paar Hauptelemente aus der Diskussion am 13. Juni nennen. Das erste und einvernehmliche war, dass alle die Integration der Charta der Europäischen Grundrechte als verbindliches Recht in den neuen Vertrag gefordert haben. Das zweite war eine klare Forderung nach dem Entwurf eines Verfassungsvertrages. Die dritte Grundlinie, die in der Diskussion erkennbar war: der Wunsch und die Forderung nach einer stärkeren Betonung der Sozial- und Beschäftigungspolitik in den Zielen der Europäischen Union und eine Einbindung der Sozial- und Beschäftigungspolitik über den Lissabon Prozess in den neuen europäischen Verfassungsvertrag.

Einvernehmlich war auch die Forderung nach einer Verbesserung und Vereinfachung der Entscheidungsverfahren, insbesondere im sozialen Bereich, schließlich die Aufnahme des Prinzips der offenen Koordinierung in den Vertrag und letztlich die vertragliche Absicherung des Dialogs und der Kooperation der Europäischen Union mit der Zivilgesellschaft.

Wir haben uns geeinigt, dass durch Redner folgende Fragen vertreten werden: erstens, die Fragen, die mit der Rolle der Dienste von allgemeinem Interesse in der künftigen Politik der Europäischen Union zusammenhängen, zweitens, die Probleme der Gleichberechtigung von Männern und Frauen, drittens, die soziale Dimension der Europäischen Union, die hier durch die soziale Plattform dargestellt und diskutiert wird.

Es gab ein klares erkennbares Drängen darauf, dass der Dialog zwischen dem Konvent und den Nichtregierungsorganisationen im sozialen Sektor mit der heutigen Veranstaltung nicht beendet ist, sondern dass dieser Kontakt und dieser Dialog weitergeht. Wir brauchen ihn beide, die sozialen Organisationen und der Konvent!

1-011

EN

Alhadeff (NGO-SOC). – Mr President, I congratulate the Convention in taking this initiative of inviting representatives of civil society to address you about their concerns over the future of Europe.

The Social Platform is here with three representatives, and we have divided our speaking time between us. The Platform brings together 38 networks and federations of NGOs, active in the social sector at European level. Our members represent over 1,800 individual organisations and many millions of citizens. For example, our membership includes the European Anti-Poverty Network, the European Disability Forum, the European Network Against Racism, the Women's Lobby, the International Lesbian and Gay Association, as well as other well known groups such as Save the Children, the Red Cross, Caritas, or my own organisation Solidar.

Our members have campaigned for the Charter of Fundamental Rights and argued, after the Nice Summit, that it was a great disservice to our Union to have such a secretive way of taking important decisions. One of the Laeken objectives is to bring Europe closer to the citizen. From where we stand, it would be a great start if our fellow citizens felt that this Union did a good job in protecting them, their values and their way of life. Unfortunately, that does not seem to be the case.

The mere decision to launch this Convention, welcome as it is, will in itself change little. That will depend on the outcome of your work and will take time. We argue that even if the results are good, we believe the European Union will need to engage with civil society to ensure that it creates a real connection with its citizens.

Shortly, my colleagues from the Social Platform, Mrs Wilkinson and Mrs Sutton will present our key demands on social issues.

My main point is to ask you to support the call of the Civil Society Contact Group for a Treaty article giving a legal base to the civil dialogue. We recognise the primacy of political dialogue and the very special role of social dialogue in our concept of European democracy. We also believe that it is time the Union recognises that civil society is an important component in this quest to regain the affections of its citizens.

You will hear some citizens oppose this position. Some say that it is a threat to democracy. We argue quite the contrary. Without our partnership, politicians will simply not be able to take forward the idea of Europe. What a waste, what an under-used asset we have: millions of citizens and thousands of associations throughout Europe, from small island communities to town centres, committed to the public good and ready to be engaged in the European policy debate.

You must give us the tools; recognise the role of civil society at European level in the Treaty and give a strong signal to the Commission to work with us to put in place and learn to use this terrific potential. Until that is done, we will continue to hear politicians lament how remote the European Union is and how so very few bother to vote in European elections.

The Laeken Summit and this Convention are just the beginning; turning around the apathy of our citizens will take more than a few words in a few summit conclusions. By your decision to invite us here today you have broken new ground. Our challenge to you is to break yet more ground by having a Treaty article on civil dialogue. In this task, you can be sure of our support and our continued work with you.

1-012

FR

Wilkinson (NGO-SOC). – En effet, vous cherchez à rapprocher l'Europe des citoyens. Je crois que tout le monde veut cela. Pour que l'Europe puisse être plus proche de ses citoyens, l'Europe doit commencer à faire sens pour les citoyens. Dans un monde incertain, l'Europe doit apporter des sécurités ; je dis bien des sécurités, et non pas la sécurité. Or, les citoyens ont l'impression que l'Europe ne contribue pas à la construction de ces sécurités, mais qu'au contraire l'Europe apporte un risque. Par exemple, le risque du démantèlement des modèles sociaux construits dans chaque Etat membre, sans reconstruction de sécurités équivalentes au niveau européen.

Pour que l'Europe commence à faire sens pour tous les citoyens, il est nécessaire de repenser complètement les objectifs de l'Union. L'Union doit être repensée autour de l'accès de tous aux droits fondamentaux. Ceci sera abordé plus en détails par Diana, qui va me succéder. Je ne m'y attarderai donc pas. On doit trouver au centre des objectifs de l'Union un développement social durable. Pour y parvenir, les politiques, économiques, monétaires, le marché intérieur, la politique de la concurrence doivent être au service du développement social. Le développement social ne peut être traité comme un sous-produit du développement économique, mais il doit être intégré dans toutes les politiques de l'Union. Pour y arriver, il faut introduire la pratique de l'évaluation des politiques au regard de leur effet sur le développement social. Pour rééquilibrer l'économique et le social, il est souhaitable que les conclusions des Conseils européens de Lisbonne et de Göteborg soit intégrées dans le nouveau Traité. Je vous rappelle que le Conseil Européen de Lisbonne a décidé, entre autres, de faire dans les dix ans qui viennent, des progrès significatifs dans l'éradication de la pauvreté. Le Conseil de Lisbonne a aussi décidé d'utiliser la méthode ouverte de coordination pour la lutte contre la pauvreté et l'exclusion sociale. Il nous paraît important que cette avancée soit inscrite dans les Traités. L'éradication de la pauvreté devra également figurer parmi les objectifs de l'Union. Et le Traité devra intégrer la méthode ouverte de coordination. Mais pour que cette méthode soit effectivement ouverte, il faut que tous les acteurs concernés (partenaires sociaux, collectivités locales et ONG bien entendu, qui sont concernées au premier chef) puissent participer à cette méthode ouverte, à la fois au niveau européen et au niveau national. Et je vous demande, Messieurs les Conventionnels et Mesdames les Conventionnelles, d'inscrire cette participation dans les Traités.

1-013

EN

Sutton (NGO-SOC). – Mr President, the Convention's stated aim is to bring Europe closer to its citizens. What really is the future for the European project? On what basis should we develop a European Union which is closer to its citizens and their expectations?

The Social Platform does not pretend to have all the answers to these questions, but we want to make recommendations which come directly from our work with some of Europe's most disadvantaged and excluded citizens. The Laeken Declaration poses the question of incorporation of the Charter of Fundamental Rights. The Charter plays an important part within the work of EU, with the EU institutions systematically evaluating proposals with reference to the Charter. It is clear now that it has important political weight. We believe it must now be given important legal status and be incorporated into the Treaty.

The Social Platform therefore recommends incorporation of the Charter into the Treaty. The Charter is an excellent document, as it recognises for the first time some key new rights, such as recognition for the rights of the child. However, it still contains some gaps, such as the right to housing, the right to family unity and protection against poverty. It must therefore remain a living document, capable of being amended in the future.

When the Charter is incorporated into the Treaty, a mechanism for amending and improving the Charter must be included. This could, for example, be via a system of additional protocols adopted by all Member States and annexed to the Charter with the same legal force. This process must be undertaken with the explicit guarantee of rights that have already been expressed in the Charter.

The Platform believes that the EU should be given the legal personality and competence to ratify the European Convention on Human Rights - as the most comprehensive human rights instrument - and also other relevant international and European texts. In our view, this would be complementary to the incorporation of the Charter into the Treaty.

Even if the Charter were to be incorporated into the Treaty, it would still mean that the EU lacks the competence to develop a human rights policy as such - although competences do exist in a fragmented way. The Convention should therefore also recommend adding a competence to take action to promote the respect of fundamental rights within the EU. This would not only create an obligation for the EU to refrain from violating human rights, but also create a positive obligation to ensure that these rights are respected throughout

Europe. Creating a positive obligation for the EU to ensure that human rights are respected within the Union is an efficient way to develop a proactive approach and could reduce the need for individuals to complain to the Court of Justice.

It is unacceptable that citizens in the EU today still face significant discrimination. Treaty revision must strengthen the basis for fighting discrimination. Article 13 must be strengthened and given direct effect. Discrimination today in the EU seriously affects lesbians and gays, people from ethnic minorities, women, young people and older people.

In conclusion, Europe must be brought closer to its citizens. The Convention must not miss an opportunity to do this by recommending the specific inclusion of a legal base on civil dialogue. The Charter must be incorporated into the Treaty, and the European Union must accede to the ECHR. Finally, the fight against poverty should be an explicit objective of the Union.

1-014

EN

McPhail, (NGO-SOC). – Mr President, I welcome this opportunity to participate in this meeting of the Convention representing the European Women's Lobby which brings together over 3,000 women's organisations across Europe working to achieve equality of women and men.

The European Women's Lobby is also a member of the Platform of European Social NGOs and an active contributor to the Civil Society Contact Group. This Group has brought together a common statement which is available to you outside on the NGO stands.

Points from this statement will be picked by the different groups during the course of this afternoon and tomorrow morning.

Turning to issues of gender equality, it is clear that while there have been many positive developments for women in recent decades in Europe and globally, these developments have often been uneven, erratic and reversible in times of economic and political instability. While the lives of many women have improved, there are still millions of women and girls whose lives and aspirations are crushed by the weight of poverty and economic deprivation, exclusion from political participation, violations of basic human rights - in particular through violence and sexual exploitation in times of war and peace - and by restrictions to their personal autonomy, in access to reproductive rights, as well as in many other ways.

We all know that achieving equality of women and men requires changes at many different levels including changes in personal attitudes and relationships, changes in social institutions and legal frameworks, changes in economic institutions and changes in political and decision-making structures.

Today, I will highlight only four of the key recommendations brought forward by the European Women's Lobby and by other women's NGOs in relation to changes in the future Treaty that will support the achievement of equality of women and men.

Firstly, it is essential that the right to equality of women and men is established as one of the ultimate aims of the European Union and as a fundamental prerequisite for European democracy and should therefore be written into the preamble of a future Treaty.

Secondly, we are calling for the introduction of a new provision in the Treaty, with direct effect, prohibiting discrimination based on sex, as is the model currently for the provision prohibiting discrimination on grounds of nationality.

Thirdly, we are calling for the introduction of a new title on equality of women and men which will provide a firm legal basis for all actions in relation to gender equality, with a clear commitment to the full implementation of the human rights of all women and girls and recognising the diversity of women's lives and experiences. Amongst others, the following rights should be recognised: the right to individual social protection at all stages of life including during periods of caring for children and other dependants; the rights of women and men to control all aspects of their health, in particular sexual and reproductive health; the right of women and men to reconcile family and working life and the right to pregnancy and maternity protection.

In this new title, we also call for the specific recognition that violence against women constitutes a major obstacle to gender equality. This must lead to the development of a comprehensive policy combating all forms of violence against women, including trafficking in women and prostitution, which are fundamental violations of women's human rights.

Fourthly, we believe that the equal participation of women and men in all democratic processes is a prerequisite for democracy. We are therefore calling for the introduction of effective mechanisms which will ensure the equal participation of women and men in decision-making, and in the composition of all assemblies, bodies and institutions of the European Union.

We want to see a successful enlargement of the European Union leading to a union that is a dynamic and effective political body and that is seen as legitimate, accessible and accountable by all the people of Europe, a Europe where justice, solidarity, equality of women and men, respect for human rights, poverty eradication and sustainable development are the political priorities shaping all political, economic and security actions both within Europe and globally.

Finally, I take this opportunity to wish you well in the challenging work ahead. We are relying on your continued openness to dialogue with civil society, your positive vision of the future of Europe and your political leadership to ensure success.

1-015

FR

David (NGO-SOC). – L'Europe est bien plus qu'un marché. Elle est porteuse d'un modèle de société, à la recherche d'un équilibre entre compétitivité et solidarité ainsi que d'un mode de vie social et culturel, fruit de son histoire. Les coopératives, mutualités, associations et fondations, organisations à but non lucratif qui forment l'économie sociale représentent huit pourcent de l'ensemble des entreprises européennes et dix pourcent de l'emploi total. Leur succès ne se mesure pas seulement à leur poids et à leurs performances économiques qui sont un moyen pour réaliser leur finalité. Ils se mesurent surtout au vu de leur participation à l'intérêt général, au vu de leur rapport en terme de solidarité, de cohésion sociale et d'ancrage sur les territoires. Un Européen sur trois en est membre. Coopérative, mutualité, associations et fondations participent de ce modèle économique et social européen original car pluraliste dans ses formes d'entreprendre, modèle qu'il ne faut absolument pas faire disparaître en ne retenant qu'un seul type d'entreprise. L'enjeu est tellement important qu'il mérite d'être inscrit dans le Traité. Il convient également d'ajouter à l'endroit définissant l'action de l'Union, l'adoption de règles permettant la mise en oeuvre de la pluralité des formes d'organisation pour entreprendre dans le respect de la spécificité de chacune.

Les services d'intérêt général, plus particulièrement les services sanitaires et sociaux, que les coopératives, mutualités, associations et fondations mettent en oeuvre à côté d'autres acteurs publics, concourent à garantir les droits fondamentaux, que toutes nos organisations demandent d'intégrer dans le Traité (Charte de Nice). Ces services d'intérêt général contribuent également à réaliser les objectifs que l'Union devrait préciser en préambule au Traité, en plus de la paix, de la recherche du plein emploi, du progrès social, de l'exercice d'une véritable démocratie participative et du développement durable pour tous, au niveau de l'Union et aussi au niveau mondial dans les négociations internationales.

Je suis donc ici la porte-parole, non seulement de la Conférence européenne permanente des coopératives, mutualités, associations et fondations, que j'ai l'honneur de présider, et de leurs membres actifs sur tous le territoire de l'Union, mais aussi de nombreuses associations qui l'ont exprimé lors de la réunion de préparation de cette audition telles que Caritas Europa, Eurodiacona, ITI Welfare et des associations dont l'objet est la promotion des services d'intérêt général au niveau européen telles que ISUP etc. Nous vous demandons avec force de proposer d'intégrer dans le Traité la reconnaissance du rôle des services d'intérêt général. Ceci permettrait à tous ceux qui assurent de tels services de participer à leur définition, à leur mise en oeuvre et d'être financés dans le cadre de règles de transparence, de proportionnalité, d'évaluation pluraliste, de participation démocratique des citoyens. Ceci implique également la possibilité de dérogation aux règles de la concurrence, notamment au regard des aides d'Etat. Ceci sécuriserait leur fonctionnement dans un environnement juridique adapté à leur vocation, au service de l'intérêt général. Dans cette perspective, un article du Traité, qui se situe actuellement à l'article 16, devrait être complété par le paragraphe suivant: « A cet effet, le Conseil statuant à la majorité qualifiée, sur proposition de la Commission, propose toute disposition en vue de clarifier les modalités d'application des règles de concurrence à ses services. Ce faisant, il prend en compte les spécificités de ces services, ainsi que les spécificités des opérateurs à but non lucratif qui fournissent ces services ». Seule la reconnaissance de nos organisations et des services d'intérêt général qu'elles rendent, leur reconnaissance dans le Traité leur permettrait de remplir pleinement leurs objectifs, qui correspondent à ceux de l'Union.

1-016

FR

Le Président. – Merci beaucoup. Cela conclut avec une discipline remarquable l'écoute des orateurs désignés par le groupe de contact « secteur social ». Je donne maintenant la parole aux observateurs des partenaires sociaux, et tout d'abord, à Monsieur Georges Jacobs.

1-017

EN

Jacobs (NGO-SOC). – Mr President, as a social partner, UNICE regards the work of the Convention as a priority, and we welcome this initiative to enable civil society to participate actively in the Convention.

Companies are an important part of civil society, and UNICE represents more than 16 million companies, mostly small and medium-sized, providing employment for more than 106 million people. UNICE considers the process of economic integration to be the main dynamic behind the peace, stability and prosperity achieved in Europe over the past 50 years.

From a business perspective, the EU must deliver a business-friendly environment in which companies can operate and compete on a level playing field and adapt to the increasing challenges that globalisation brings. This will lead to wealth-creation and employment opportunities.

Firstly, since today we are discussing the interaction between the EU and civil society, it is crucial that the Convention recommends ways to rethink the methods for consulting relevant stakeholders. The current system for the consultation of civil society is not satisfactory. UNICE proposes the adoption of a comprehensive code for consultation. This code should set out clear guidelines for the definition of core stakeholders, the purpose, content, methodology and timeframe of the consultation. The representation of organisations should also be duly taken into account.

In addition, UNICE, as a social partner at European level, calls for a clear distinction to be made between social dialogue and consultation with civil society. Social dialogue at European level is clearly structured and is an autonomous process involving the social partners. UNICE believes that Articles 138 and 139 provide an appropriate framework for agreements made by social partners and do not need to be modified.

Secondly, we need a single text providing a clear division of competences and a related decision-making procedure. The structure of this should be comprehensive in order to clarify the basic values, objectives and competences of the EU. We need a European Union which is capable of refocusing its actions on to its main task, not necessarily a detailed catalogue of competences that would deprive it of the flexibility it needs to adapt to new tasks and challenges.

Thirdly, the European Union must improve the efficiency and transparency of its institutions. In order to guarantee quick and efficient decision making, UNICE calls for the preservation of the Community method and a strong, independent Commission which acts as a guardian of the Treaties, proposing legislation to the Council and Parliament in the interest of the whole Community. We are also in favour of qualified majority voting as a general rule.

Finally, we would welcome a stronger emphasis on the international dimension in the framing of EU policy: discussion in the Convention has shown the need for stronger representation in international political and economic affairs. In order to make the European Union's external commercial policy more effective and coherent, UNICE supports giving the EU a legal personality.

In conclusion, I would like to thank the Praesidium for inviting representatives of civil society to contribute to the current debate. We encourage the Convention to maintain close links with this forum.

1-018

IT

Gabaglio (NGO-SOC). - Signor Presidente, alla vigilia dei Consigli europei di Laeken e di Barcellona, la Confederazione europea dei sindacati ha convocato grandi manifestazioni per chiedere - un po' controcorrente rispetto a certi umori dell'opinione pubblica - più Europa: più Europa sociale, naturalmente, del lavoro e dei cittadini. Questa presa di posizione riflette un'adesione al processo di integrazione europea che viene da lontano, ma riflette anche, con pari forza, la necessità di cambiamenti. Rispondere a queste attese del mondo del lavoro comporta, secondo noi, un riequilibrio tra le diverse dimensioni - economica, monetaria e sociale - dell'Unione e il suo completamento con la realizzazione di un'unione politica.

Il primo riequilibrio riguarda il sociale rispetto all'economico. L'Unione è oggi essenzialmente sinonimo di mercato e di moneta. Nel Trattato attuale esistono, certo, obiettivi sociali ma, a parte il ritardo della loro concretizzazione - basti pensare che ci sono voluti quarant'anni dopo il Trattato di Roma affinché l'Unione ricevesse, ad Amsterdam, nuove competenze in materia di occupazione e di lavoro - questi obiettivi restano subordinati a quelli di carattere economico. Per superare questa situazione occorre che il nuovo trattato costituzionale riconosca il modello sociale europeo come elemento fondante dell'Unione, in modo che la sua organizzazione economica si ispiri ai principi dell'economia sociale e di mercato.

Il secondo riequilibrio riguarda l'unione economica e monetaria. Questa è, per ora, solo un'unione monetaria. C'è qui una contraddizione evidente tra un'Europa che diviene ogni giorno di più un'entità economica unica e la debolezza, per non dire l'assenza, di un governo coerente di questa realtà. Ciò impedisce di trarre profitto del valore aggiunto rappresentato dall'integrazione realizzata e di mettere il mercato e la moneta pienamente al servizio della strategia di Lisbona di modernizzazione dell'economia europea, ma anche di piena occupazione e più forte coesione sociale. E' quindi più che mai urgente creare gli strumenti e le procedure di un coordinamento delle politiche economiche, di bilancio e di investimento, nonché di armonizzazione fiscale a livello europeo. In questo quadro occorrerà anche meglio definire il contributo della Banca centrale al perseguimento degli obiettivi generali di sviluppo e di occupazione dell'Unione.

Dimensione politica vuol dire rafforzamento della cittadinanza europea ma anche ruolo dell'Europa nel mondo. Il primo passo da compiere, quanto alla cittadinanza, è l'integrazione, con una pienezza di effetti giuridici, della Carta di Nizza nel nuovo trattato costituzionale. In ogni caso, l'Unione deve favorire la più ampia partecipazione dei cittadini e della società civile, e questa riunione, oggi, è di buon auspicio in questa direzione.

Con riferimento all'Europa nel mondo, il movimento sindacale è a favore di una più forte e indipendente soggettività politica dell'Unione e delle relazioni internazionali, nella convinzione che essa possa dare un contributo determinante al governo democratico dei processi di globalizzazione, alla condizione, naturalmente, che l'Europa sappia parlare con una sola voce, che salvaguardi il suo modello sociale, che integra in modo originale le ragioni del mercato con quelle della giustizia sociale e della solidarietà, proprio quello che manca negli attuali processi di globalizzazione. Anche per questa via ritorna l'importanza, quindi, di affermare la centralità del modello sociale europeo.

Un aspetto che ci sta particolarmente a cuore riguarda, poi, il ruolo delle parti sociali. Questo è già riconosciuto nel Trattato attraverso il dialogo sociale, compresa una funzione di correzione in materia di condizioni di lavoro. Una dichiarazione comune, presentata a Laeken dalle parti sociali, fa stato della volontà di approfondire il dialogo sociale, ma anche di chiedere la formalizzazione di sedi e di procedure di concertazione sociale. Nel momento in cui l'Europa sta passando ad una fase di profonde trasformazioni economiche, che suscitano comprensibilmente inquietudine e disorientamento, dialogo e concertazione sociale sono gli strumenti indispensabili per

guidare il cambiamento e realizzare con il consenso, e solo con il consenso, le riforme socialmente accettabili. Fin d'ora vorrei, tuttavia, sottolineare che il movimento sindacale intende presentare delle proposte relative alla necessità di sviluppare un sistema europeo di relazioni industriali che sia complementare a quelli nazionali. Se questo obiettivo è riconosciuto di interesse generale, occorre allora che i diritti sindacali di associazione, di contrattazione e anche di sciopero, siano riconosciuti anche nella loro dimensione transnazionale. Se lo spazio economico è europeo, i diritti dei lavoratori non possono restare solo nazionali.

Presidente, in questa occasione ho riassunto le nostre attese; in altre presenteremo proposte più precise e dettagliate. Mi permetto solo di sottolineare un punto: il consenso sociale, agli occhi del mondo del lavoro, al progetto europeo e la legittimità democratica rispetto ai cittadini dipenderanno dal tipo di risposte che l'Europa potrà dare a queste attese.

1-019

EN

Cravinho (NGO-SOC). – Mr President, the European Centre for Enterprises with Public Participation and of Enterprises of General Economic Interest, known as CEEP, is one of the three cross-sectoral social partners. I will speak on social partners but first I would like to mention some points specific to CEEP, namely services of general interest.

General interest is one of the common values of the European Union, illustrating the European economic and social model and even distinguishing it from other models of reference. It must form a pillar of the future European project, especially with enlargement in prospect. We support a modern vision of general interest which contributes to a convergence between the development of the European Union's global economic performance and the social and territorial balance of European society.

In the judicial context of the single market, services of general interest have been perceived as not respecting and even being incompatible with the principles of the open market and free competition anchored in the Treaty. We disagree. The reality is more subtle and we believe they are one of the European Union's strongest advantages. Services of general interest are, and must remain, an essential driving force for the economic performance and the competitiveness of Europe in the context of globalisation. They can and should benefit from the advantages of the market economy, on condition that their objectives and missions are preserved. CEEP asks the Convention to ensure that the draft for a new constitutional treaty positively recognises services of general interest, giving them a status which means they are considered not as derogations to the basic law, but rather as a pillar of European society, responding to the ever-increasing expectations of Community citizens and consumers at all territorial levels.

In concrete terms, we expect certain principles to be explicitly provided for in the future Treaty. Firstly, services of general interest should form part of the common values of the European Union, and that accomplishment should be one of its objectives. They are a constitutive part of the economic and social model for European Union. The Community and Member States, each within their respective competences, should firstly take into account the implementation of services of general interest in order to accomplish the missions mentioned in Article 2. We also believe that the future Treaty should recognise and ensure that the funding of supplementary costs due to public service requirements should be considered compatible with competition rules.

Secondly, we suggest that these principles should be either enshrined in an extension of Article 16 or outlined in a specific chapter on services of general interest.

Thirdly, implementation by sector - in those sectors ruled by Community internal market directives - should come under specific directives or compulsory provisions in directives on the opening-up of public services to the market.

I now come to the subject of social dialogue. European social dialogue seems well established and yet some challenges still lie ahead. The European labour market consists of not one, but 15 different labour markets. The European social dialogue is not a stand-alone process; in its various elements and results it is a major contribution to a competitive Europe and, at the same time, to inclusion, gender mainstreaming and to developing the learning society.

There will always be a need for European social dialogue as a means to strengthen employment, economic reforms and social cohesion. In attaining those objectives, CEEP is of the opinion that European social dialogue should be strengthened by developing both cross-industry and sectoral dialogue. CEEP is in favour of the open method of coordination and the possibility it gives for each Member State to adjust regulations to fit specific systems. However, the social partners' participation in the consultation process must be enshrined in the Treaty. CEEP is of the opinion that social dialogue cannot function well at European level if it is not applied satisfactorily at national level. Therefore, CEEP places even greater emphasis on the participation of the social partners at national level, and especially at local and regional level. CEEP thus urges the Convention to support European social dialogue.

1-020

FR

Le Président. – Nous arrivons ainsi à la fin des intervenants pour le secteur social. Un certain nombre de Conventionnels ont demandé la parole. Vu le nombre de demandes, le temps de parole est limité à deux minutes. The floor is to Mr Peter Hain.

1-021

EN

Hain (Ch.E/G.-GB). – Mr President, this Convention will not make any impact on the daily lives of most people unless we negotiate a constitutional check that goes beyond modifying the "pillar" structure or revising comitology procedures. That is why the issues raised by the social partners and the social sector group are so vital.

Our citizens want a Europe with a strong social dimension, a Europe which is the most dynamic knowledge-based society in the world, but above all they want jobs. Europe also needs a mix of regulation and flexibility. The European Union is so much more than just a market. As Emilio Gabaglio said, it has shared values of social justice and of human rights. It cannot be a credible force for good in the world if its citizens are badly treated at work, or civil rights and equal opportunities are denied.

This does *not* mean uniformity or harmonisation of standards. How would social justice be served if European Union legislation, for example, resulted in high unemployment in areas with low productivity? Instead, we should aim for deeper cooperation on the employment and social challenges we face. We need to reform the social dialogue to produce a system based on genuine partnership.

At the Luxembourg and Lisbon Summits, the European Union developed the open method of coordination. As Klaus Hänsch and others have said, the new Treaty should enshrine this approach as one of the main instruments of European Union action. Yes, that methodology must be refined. But this method of achieving our social objectives is flexible, far quicker than legislation and it works.

Let us use the Lisbon process to tackle some of the most important political issues in Europe today, redoubling our efforts to raise participation - especially for older workers - to reform welfare systems to make work pay, promote employability through training and education, reform pensions to ensure a secure future and lift families out of poverty. This Convention must ensure that our Europe is a Europe for the people and not just a Europe for the European elite.

1-022

NL

Van Lancker (PE). - Voorzitter, ik ben de vertegenwoordigers van de NGO's en de sociale partners vandaag bijzonder dankbaar omdat ze een aantal thema's aan de orde hebben gesteld die totnogtoe niet zo hoog op de agenda van de Conventie stonden. We hebben het gehad over bevoegdheden, over wie doet wat, over de rol van de nationale parlementen, over subsidiariteit en proportionaliteit, over de derde pijler en de pijlerstructuur. Onze voorzitter Valéry Giscard d'Estaing heeft de Raad van Sevilla gemeld dat er maar op drie fronten vraag is naar meer politieke Europese integratie. En voor vandaag staat een betere coördinatie op het economische en financiële vlak als enige thema op de agenda.

Mijnheer de voorzitter, ik denk dat de NGO's en de sociale partners vandaag aan ons aller agenda een heel belangrijk punt hebben toegevoegd, namelijk de sociale integratie. Ik weet wel dat sommige collega's nu zullen zeggen dat er in het Verdrag al sociale doelstellingen van de Unie zijn opgenomen. Die sociale doelstellingen hebben we al en die bevoegdheden kunnen we uitoefenen. Er is hier vandaag door velen verwezen naar de Lissabon-doelstellingen. Maar wie het Verdrag aandachtig leest, weet dat het in feite de kar voor de paarden spant, dat de sociale doelstellingen een soort correctie vormen op het functioneren van de interne markt, terwijl volgens ons toch die interne markt in feite in dienst zou moeten staan van de sociale doelstellingen. Ik zou dan ook graag weten waar we thema's zoals het evenwicht tussen de doelstellingen en de basisartikelen van het constitutioneel Verdrag kunnen aankaarten.

Een tweede boodschap die ik goed begrepen heb, is dat we een sociaal Europa nooit zullen realiseren zonder de sociale dialoog te versterken en zonder de civiele dialoog. Ik denk dat we ook wat dat betreft onze conclusies op het vlak van de constitutionele teksten moeten trekken.

1-023

FR

Barrau (Parl.-FR). –La présence des ONG du secteur social au sein de la convention et des représentants de tous les organismes qui se préoccupent de cette dimension sociale constitue un pas important. Mais est-ce suffisant? Le secrétaire général de la Confédération européenne des syndicats l'a dit tout à l'heure. A Barcelone par exemple, des milliers de personnes étaient dans la rue, pour demander plus d'Europe, mais une autre Europe. Allons-nous enfin écouter ce message ? Devrons-nous encore déplorer des abstentions aux prochaines élections du Parlement européen pour dire qu'il faudrait sans doute faire une autre Europe ? Je crois que nous pouvons nous mettre d'accord sur l'introduction de la Charte dans le Traité Constitutionnel. Cela me semble clair. Nous pouvons également faire des avancées dans le domaine de l'égalité homme-femme. Enfin, nous pouvons bâtir un véritable Traité social, touchant le problème des services publics, des retraites. Il faut, comme le disait Madame Wilkinson tout à l'heure, et j'ai beaucoup aimé son expression, "faire en sorte" que l'Europe ne soit pas un élément d'insécurité pour ceux qui vivent autour de nous, mais au contraire, mais plutôt un élément d'espoir. Si l'Europe est un élément d'insécurité sociale ou économique, elle sera perçue comme une sorte de nez-en-avant de la mondialisation et ce sera, à cet égard, une insuffisance par rapport à notre modèle européen. Voilà l'objectif et voilà pourquoi le secteur social est très important.

1-024

PT

Lopes (Ch.E/G.-PT). - Senhor Presidente, além dos aspectos correntes sobre o tema da sociedade civil, convém lembrar que a Europa deveria constituir um verdadeiro espaço de referência dos seus cidadãos, o que não tem acontecido. Por outro lado, a construção europeia não assenta numa base ideológica sólida, o que a distancia dos cidadãos. É óbvio que o tema de hoje, a articulação entre a economia e a sociedade, constitui um ponto de confluência das múltiplas tensões de modernização a que todos os europeus estão sujeitos e que, de resto, já deram origem a diversos ecos em várias das intervenções anteriores.

Gostaria de propor quatro aspectos:

- primeiro: a Europa tem de assumir uma visão inovadora de transformação das economias e das sociedades com audácia e criatividade, preservando no chamado "modelo social europeu" o que ele tem positivo e apostando na criação de um novo impulso colectivo que seja facilmente compreendido e aceite pelos cidadãos;
- segundo: a Europa deverá identificar causas que valham a pena na construção europeia e que vão para além das regulamentações pesadas e burocráticas, para além de subsídios para financiar ineficiências, etc.;
- terceiro: deverá igualmente reconhecer a diferença entre o mero "preservar", numa atitude política sem visão e basicamente estática, e o criar ou inventar conceito dinâmico que possa permitir-nos avançar realmente numa direcção escolhida por todos.
- quarto: assim, a principal tarefa que agora incumbe aos responsáveis europeus é mostrar que a construção da Europa terá de assentar não na atitude de razoabilidade defensiva que é a União Europeia de hoje, mas, sim, no dinamismo inovador que deverá caracterizá-la no futuro e deverá permitir-lhe responder à pressão da competição global.

1-025

DA

Thorning-Schmidt (PE). - Hr. formand, det, de sociale partnere siger til os i dag, er, at Europa ikke må være et usikkerhedsmoment for borgerne, og der er efter min opfattelse en fællesnævner for det, der bliver sagt, nemlig at den sociale dialog skal styrkes i traktaterne. Det synes jeg, at vi nøje skal tage til efterretning. Der bliver også sagt, at de offentlige tjenester er utroligt vigtige, og at vi ikke må lade dem stå helt frit. Det synes jeg også, at vi skal tage til efterretning. Og alt det her vil naturligvis give anledning til eftertanke.

Men jeg er naturligvis også lidt bekymret over det, der ikke bliver sagt i dag. Et af de områder, jeg ikke har hørt noget om, er børns rettigheder, og det kunne jeg godt tænke mig, at de sociale partnere uddyber for os, hvis vi får mulighed for det. Og så er jeg også lidt bekymret generelt, hr. formand, for dem, som ikke er her i dag. De sociale partnere, vi ser her i dag, er faktisk - undskyld jeg siger det - nogen vi godt kender. Jeg er lidt bekymret for alle de ngo'er, alle dem i det civile samfund, som ikke er til stede i dag. For vi ved faktisk, at mellem 30 og 40% af borgerne ude i samfundet er bekymrede over EU's udvikling, og jeg håber, at det civile samfund og alle ngo'erne vil tage den bekymring alvorligt og give os nogle ideer til - og jeg mener det meget alvorligt - give os nogle ideer til, hvordan vi kan komme i en rigtig dialog med borgerne, så vi måske kan få de 30-40%, som er bekymrede over hele projektet, beroliget, så det ikke længere behøver at bekymre os så voldsomt.

1-026

DE

Farnleitner (Ch.E/G.-AT). - Herr Präsident! Zunächst möchte ich meinen Eindruck wiedergeben, dass wir sehr dankbar sein müssen, dass wir aus diesem Dialog mit der Zivilgesellschaft so viele Anregungen - zum Teil kritische, zum Teil sehr unterstützende - für das gefunden haben, was im Konvent schon besprochen wurde. Ich möchte aber zwei Dinge besonders hervorheben. Zum einen: Wir sollten die Mitarbeit der *civil society* in der EU institutionalisieren. Ich habe schon in einem früheren Beitrag gesagt: Ich würde es sehr begrüßen, wenn wir etwa die Organisationen der *civil society* in eine der Gruppen des WSA integrieren könnten, so dass dieser Dialog permanent stattfindet und nicht nur aus Anlass von einigen Kongressen und Konventen.

Der zweite Punkt: Ich bin sehr dafür, das Sozialmodell Europa stärker abzusichern, aber ich bin sehr dagegen, dass diese Bemühungen offenbar dazu dienen, bestimmten Ländern die Flucht aus der nationalen Verantwortung zu erleichtern. Ich glaube, dass das europäische Sozialmodell - basierend auf Generationenvertrag und Solidarität - heute zeigt, dass die Migration innerhalb Europas, also die der Europäer, zurückgeht, weil die sozialen Systeme der einzelnen Länder besser werden. Daher schließe ich mich ausdrücklich Peter Hain an und meine, dass wir im sozialen Bereich nicht Kompetenzen verlagern, sondern eher mit besseren Instrumenten das *bench-marking*, *best practices* und gegenseitige Stimulierung herbeiführen sollten.

Ich halte es auch für zweckmäßig, den sozialen Dialog in den Verträgen neu zu verankern. Wir haben zu viele alte Spieler, und viele spielen nicht mit. Oligopolisierung der Interessenvertretung sollte nicht stattfinden. Ich plädiere für mehr Organisationen der Klein- und Mittelbetriebe, für mehr Organisationen aus dem Dienstleistungsbereich. Wir alle wissen: Wenn es in der Liberalisierung an die letzten *hard cores* von traditionell verfassten Institutionen geht, dann landen wir beim *civil sector*, beim *service public*. Ich habe in einer anderen Funktion einmal gesagt, sehr oft ist es auch *self service public*. Daher sollten wir durchaus sagen, öffentliche Dienstleistungen ja, aber unter gleichen Leistungsvorgaben, wie sie viele andere in der Wirtschaft haben.

1-027

FR

Berès (PE). – Chers collègues, je me réjouis du débat que nous avons aujourd'hui sur ce thème, parce que je crois que c'est vraisemblablement l'un de ceux où le besoin de dialogue avec la société civile se fait le plus ressentir. C'est elle qui peut nourrir notre agenda, même si à la fin, lorsque nous évaluerons les résultats de nos travaux, nous ne devons pas les regarder à l'aune de l'agenda de chaque organisation mais bien en ayant une capacité d'approche globale. Dans cet esprit-là, je veux retenir trois idées fortes du dialogue que nous venons d'avoir. Premièrement, s'agissant des principes et des valeurs, un certain consensus semble se dégager pour demander de la Charte. Je m'en réjouis. Cette Charte ne devrait pas être une table de la loi immuable. Mais la question de sa révision ne doit pas être à l'ordre du jour, ce sont des mécanismes de révision futurs qui devraient être envisagés. Deuxièmement, s'agissant des compétences et des objectifs, j'entends ici ou là qu'on revendique un changement des objectifs de l'Union. Une fois de plus, je m'en réjouis. Au fond, l'une des questions qui nous sera posée est de savoir si après le passage à l'euro, nous avons achevé l'oeuvre du premier pilier ou si nous devons imaginer que le marché intérieur n'est pas juste la libre circulation des personnes mais peut-être aussi un peu d'harmonisation fiscale et beaucoup de normes sociales. En ce qui concerne l'équilibre entre loi de la concurrence et place des services d'intérêt général, je constate que beaucoup en ont parlé. Nous devons faire rentrer dans le droit européen cette notion de bien collectif européen qui nous a déjà tant manqué et qui risque de nous manquer encore davantage demain. Troisièmement, s'agissant de la méthode, il est nécessaire de faire entrer la méthode ouverte de coordination dans nos Traités et d'associer les partenaires sociaux à l'élaboration des politiques économiques et sociales, qui sinon ne sont pas comprises et ne peuvent pas être reprises par nos Etats Membres.

1-028

FR

Barnier (CE). – Nous sommes très nombreux ici à mesurer l'importance de ces deux journées de dialogue et d'écoute avec les représentants de la société civile. Nous savons que ce sont eux, et au-delà d'eux et avec eux, des millions d'autres citoyens, souvent d'ailleurs bénévoles, qui témoignent sur le terrain, dans chacun de nos Etats, que l'Union, comme l'a dit tout à l'heure une représentante, ne se résume pas, ou ne se réduit pas, à un grand supermarché organisé et que nous sommes en train de construire un modèle européen de société que nous voulons faire vivre. Je voudrais simplement marquer mon intérêt, mon soutien, ma disponibilité sur quelques points qui ont été évoqués par les uns et par les autres. Le premier point est la question des services d'intérêt général. Au-delà de l'article seize du Traité, qui existe et qu'il faut faire vivre, nous travaillons, comme le Conseil de Séville l'a dit, sur un projet de directive-cadre. Le deuxième point est la gouvernance et la meilleure consultation sur lequel nous attendons également les réactions de la société civile. Et le troisième point, que personne n'a cité, est le souci de prolonger ou d'amplifier une politique européenne de cohésion économique, sociale et territoriale. Je voudrais également signaler deux autres points qui suscitent notre intérêt : tout d'abord la Charte et l'inclusion des droits dans le Traité, point sur lequel Monsieur Vitorino reviendra demain et ensuite, mon intérêt pour une réflexion sur la méthode du dialogue social qui, selon moi, pourrait trouver utilement une référence dans le prochain Traité Constitutionnel auquel nous travaillons.

1-029

EN

Bruton (Parl.-IE). - Mr President, Diana Sutton, Mary McPhail and others have called for the incorporation of the rights into the Charter and the Treaty, for their direct effect and for new Charter rights such as housing and reproductive rights.

I have two questions for colleagues. Firstly, against whom would these new rights be enforceable by the courts? In other words, who would pay any costs? Would national laws be overridden? Secondly, would these positive rights, for example to housing, be uniform in all Member States, regardless of the economic development of that particular Member State?

1-030

EN

Heathcoat-Amory (Parl.-GB). - Mr President, the emphasis on bringing Europe closer to its citizens has been very refreshing in the speeches we have heard and is absolutely right. The EU has democratic legitimacy in a technical sense, but in the eyes of millions of citizens it is not democratically accountable and accessible in a way that they understand.

My question for the contributors is: to what extent are they representative? I would like future contributors to tell us more about how many members they have, how they organise themselves and how they are structured. Also, a number of them receive funding directly from the European Union or indirectly from other budget sources. This is obviously relevant. If they are commenting on the EU institutions, it is relevant that they are receiving money from the budget and that should be declared.

1-031

FR

Le Président. – Je voudrais simplement faire remarquer qu'en ce qui concerne la présentation des ONG, je vous invite à vous référer au forum. Je pense également que si les conventionnels désirent savoir avec qui ils dialoguent, ils doivent consentir un effort par

rapport à l'information qui est mise à leur disposition.

1-032

FR

Fayot (Parl.-LU). – J'ai souvent entendu, cet après-midi, parler de la Charte. Et nous savions bien quand nous avons fait la Charte combien il était difficile de faire passer le chapitre sur la solidarité. La liberté d'entreprendre dans la Charte est absolue, mais les droits sociaux sont étroitement encadrés. Et j'aurais une furieuse envie de poser une question, par exemple à Monsieur Gabaglio, afin de connaître son avis sur la question de la solidarité et sur la façon dont il serait possible de quand même élargir peu à peu les droits sociaux. Je sais qu'il est impossible de réouvrir la Charte mais nous allons en discuter avec Monsieur Vitorino car il faut tout de même qu'il y ait une dynamique sociale dans cette Charte. Ce n'est pas une Bible au contenu immuable.

1-033

IT

Spini (Parl.-IT). – Signor Presidente, ci devono essere dei valori e oggi li abbiamo sentiti negli accenti e nelle parole di chi ha contribuito al nostro dibattito, di chi è stato oggi chiamato a intervenire. La domanda che io vorrei porre, in particolare ai *partner* sociali, riguarda un'affermazione di Emilio Gabaglio il quale ha detto, a mio parere giustamente, che occorre avere una possibilità di dialogo e di concertazione fra le parti sociali anche a livello europeo, e ha aggiunto che questo livello dovrebbe essere complementare al dialogo e alla concertazione che si svolge a livello nazionale. Vorrei capire meglio il parere, sia suo che degli imprenditori, su questo punto, in particolare perché credo che in qualche modo un dialogo europeo, se si stabilisce e diventa effettivamente valido, probabilmente ha anche un carattere di quadro per il dialogo nazionale.

1-034

FR

Le Président. – Comme je l'ai dit au début, un certain nombre de membres aussi souhaitaient dire un mot sur le débat national et à cet effet, je donne la parole à Monsieur Figel, représentant du gouvernement slovaque.

1-035

EN

Figel (Gouv.-SK). – Mr President, Slovakia's response to the call of the European Council in Nice for a wider and deeper debate on the future of the European Union was the establishment of the National Convention on the European Future of Slovakia. It has been meeting regularly since it was convened for the first time in May 2001.

The National Convention aims to provide a suitable forum for Slovak citizens interested in discussing the challenging questions of Slovakia's future in the EU. The objective of our National Convention is to foster a nationwide discussion on the questions defined by the declarations on the future of the EU from Nice and from Laeken, since the National Convention should reflect the entire spectrum of our society. There has been special emphasis on the composition of the National Convention. It is made up of representatives of the main political parties, academic circles, churches, various interest groups, trade unions, municipalities and regions and representatives of several non-governmental organisations.

Meetings are open to the press, and proceedings are regularly published on an Internet site. They represent, in particular, an opportunity for a number of segments of Slovakia's civil society to participate in the debate on the future of Europe.

Our non-governmental organisations have been playing an integral role in fostering discussion of our country's future in an enlarged European Union. Many active organisations have joined the Slovak Forum of Non-Governmental Organisations that was established in September 2001, as a common platform of Slovak NGOs working in the area of European integration.

The forum helps to map and coordinate the activities of various NGOs and provides the basis for further cooperation among NGOs and also between NGOs and official state institutions. The main activities of non-governmental organisations have focused on preparing the country for public concerns and the public for EU accession.

Some NGOs have worked effectively as policy advocacy groups calling for further reforms of our country's way into the European Union. Today, several NGOs are playing an important role in providing space and ideas in the debate on the future of Europe.

1-036

FR

PRESIDENCE DE Mr DEHAENE

Vice-président

1-037

DA
Miljø
 DE
Umwelt
 EL
Περιβάλλον
 EN
Environment
 ES
Medio ambiente
 FR
Environnement
 IT
Ambiente
 NL
Milieu
 PT
Meio ambiente
 FI
Ympäristö
 SV
Miljöfrågor

1-038

FR

The President. - We now come to the second contact group on the environment. I give the floor to George Katiforis, chairman of the group.

1-039

EL

Κατηφόρης (Ch.E./G.-GR). – Κύριε Πρόεδρε, η Ομάδα Επαφής για το Περιβάλλοντος συνήλθε στις 17 Ιουνίου με τη συμμετοχή 14 Μη Κυβερνητικών Οργανώσεων, από τις οποίες το Ευρωπαϊκό Γραφείο Περιβάλλοντος, που είναι δευτεροβάθμια οργάνωση, αντιπροσώπευε 130 περιβαλλοντολογικούς οργανισμούς στην Ευρωπαϊκή Ένωση και στις υποψήφιες χώρες.

Κατά την συνεδρίαση έγινε μια πρώτη ανταλλαγή ιδεών και καθορίστηκαν από την πλευρά των οργάνωσης οι ομιλητές που θα παρουσιάσουν το θέμα στη Συνέλευση. Το περιβάλλον, όπως είναι γνωστό είναι το πρώτο θέμα που βγήκε μέσα από την Κοινωνία των Πολιτών, χωρίς να έχουν προηγηθεί πολιτικές πρωτοβουλίες, για να καταλάβει μια από τις κεντρικές θέσεις στην πολιτική ζωή. Παράλληλα, η χρήση του περιβάλλοντος έγινε επίσης ζωτικό θέμα. Αποκτήσαμε, σε πολύ μεγαλύτερο βαθμό από άλλοτε, συνείδηση ότι όταν χρησιμοποιούμε το περιβάλλον χρησιμοποιούμε πολλές φορές αγαθά που δεν είναι σε απεριόριστη προσφορά, σε απεριόριστα αποθέματα.

Η βιομηχανία απέκτησε συνείδηση ότι πρέπει και να ελέγχει τη χρήση που κάνει, αλλά και να υπερασπίζεται την ορθή χρήση. Τους ίδιους προσανατολισμούς απέκτησαν και διάφοροι άλλοι χρήστες του περιβάλλοντος. Έτσι, μια κίνηση των πολιτών δημιούργησε μια σειρά από πολιτικά κόμματα και από πολιτικές κινήσεις, δημιούργησε έναν ολόκληρο νέο κλάδο νομοθεσίας, δημιούργησε επίσης έναν νέο κλάδο της οικονομικής επιστήμης. Παρόλον όμως ότι δημιουργήθηκαν πολιτικές και επιστημονικές κινήσεις κλασικού τύπου, η κοινωνία των πολιτών εξακολούθησε να δρα αυτόνομα και να εμπνέει νέες πολιτικές κινήσεις και να δίνει νέες ιδέες. Ίσως αυτό είναι ένα από τα πιο ενδιαφέροντα φαινόμενα της δραστηριοποίησης της κοινωνίας των πολιτών, που συνεχίζεται παρόλον ότι ένα μέρος της πέρασε στην τυποποιημένη, ας το πούμε έτσι, πολιτική ζωή.

Δεν είναι δικό μου έργο να συνοψίσω την πολύ ενδιαφέρουσα συζήτηση που έγινε στην συνάντηση της Ομάδας Επαφής. Οι εκπρόσωποι των ΜΚΟ που έλαβαν μέρος στην συνάντηση της Ομάδας Επαφής τόνισαν και αυτοί μερικά κύρια σημεία, τα οποία αναφέρονται στην Χάρτα των θεμελιωδών δικαιωμάτων και ζήτησαν να περιληφθούν περιβαλλοντικά δικαιώματα στην Χάρτα, όπως επίσης ζήτησαν να περιληφθεί στην Συνθήκη και ένα πολύ ενδιαφέρον σημείο, η έννοια της ευημερίας των ζώων.

Στο θέμα των αποστολών της Ένωσης, επικέντρωσαν την προσοχή τους στο θέμα της αγροτικής πολιτικής. Ζήτησαν η αγροτική πολιτική να αλλάξει χαρακτήρα, να αποκτήσει ενδιαφέρον για την αειφορία, για την ποιότητα των τροφίμων, για την υγεία και για την προστασία του περιβάλλοντος, για την ευαίσθητη χρήση της υπαίθρου και για την βιοποικιλότητα. Επίσης, ζήτησαν κάτι το οποίο θα φανεί πιο αμφισβητήσιμο, την κατάργηση της Συνθήκης της Ευρατόμ. Στα θεσμικά θέματα επέμειναν ότι όπου υπάρχει η αρχή της ομοφωνίας στα θέματα του περιβάλλοντος, πρέπει να αντικατασταθεί από την αρχή της ενισχυμένης πλειοψηφίας και της συναπόφασης και να παίξει μεγαλύτερο ρόλο το Ευρωπαϊκό Δικαστήριο, να επεκταθεί η αρχή της διαφάνειας και το Συμβούλιο να δίνει δημοσία τις συζητήσεις τους για τα θέματα αυτά.

Μείναμε σύμφωνοι στην Ομάδα Επαφής ότι θα συνεχίσουμε τις συναντήσεις μας και θα προσπαθούμε να τροφοδοτούμε τη Συνέλευση με τις ιδέες που θα προκύπτουν στις συζητήσεις αυτές.

1-040

EN

Hallo (NGO-ENVI). - Mr President, I speak on behalf of eight of the largest European environmental and nature protection organisations, including the European Environmental Bureau - with members in all Member States and many applicant countries - Greenpeace, Friends of the Earth, the World Wildlife Fund, Birdlife and others. This group is sometimes called the Green G8 and we have submitted a common statement, parts of which have been summarised. As the Green G8 we also belong to the Civil Society Contact Group and we support the common statement which was referred to earlier by our colleagues from the Social Platform. I also speak on behalf of the Eurogroup on Animal Welfare.

I speak on behalf of all of these organisations and their millions of members, and also on behalf of the overwhelming majority of Europeans who support environmental protection. In their towns and villages, in their regions and countries and especially at European level, time and again, the Eurobarometer and other surveys have shown that Europe's citizens place a high priority on environmental protection. They place it high on their list of concerns and high on the list of concerns for European policy.

The high priority that European citizens ascribe to environmental protection and sustainable development is recognised in the Treaty of Amsterdam. This Treaty establishes sustainable development as a primary objective for the EU. It requires environmental protection to be part of every EU policy area, balancing environmental protection and internal market considerations.

In short, environmental protection and sustainable development are already firmly anchored in the Treaty. That is my first point. Do not change these key texts. Leave these provisions unchanged. This should be welcome advice: at last you are being asked not to do something. It is also essential, however, to make some general changes concerning transparency and the democratic working of the EU decision-making process. These changes will prove important, not just for the environment but also in general. I will group these changes into three areas: rights, institutions and policies.

Regarding rights, are you indeed serious about bringing Europe closer to its citizens? If so, then the citizen needs to be better informed, at an earlier stage, about Commission initiatives for law and policy. The citizen needs to be consulted. We share the point already made that there should be a Treaty article on civil dialogue and provision for broad, open, timely public participation.

Secondly, do you seriously believe that secret decision-making on legislation by the Council of Ministers is still acceptable? No, it is time to end the secrecy in the Council.

Thirdly, is it right that citizens have no right to challenge the institutions in court? This question is being considered by the Convention's working group on the Charter and the European Convention on Human Rights. Our question is, why should there be less protection for the citizen at EU level than he or she enjoys at national level? The door to the European Court of Justice is closed, it is time to open that door and give access to the Court of Justice, including on environmental cases, to citizens and their organisations.

As far as the Charter itself is concerned, it is important overall, but the environmental article is flawed. It is not phrased in terms of a right. It could possibly undermine the key Treaty articles that I mentioned before. The environmental article needs to be phrased in

terms of a right before the Charter is incorporated into a binding document as part of the Treaty.

On institutions, it is time to end the paralysis in decision-making which results from the requirement of unanimity. In the environmental area, all decision-making should be by qualified majority voting and in co-decision with the European Parliament, including decision-making on fiscal or economic measures for environmental protection.

Secondly, there needs to be clarity for the citizen about who does what. We support strengthening transparency and the working of the existing institutions - principally the Council, the Commission and Parliament - rather than extending the powers of advisory bodies. European decision-making is already complicated enough for the citizens and their organisations to follow. It is going to burden us more than we can bear, I fear, if we add more layers, more responsibilities and more institutional roles, and it is an illusion to believe that this would bring Europe closer to the citizens.

On policies, Euratom's objective of promoting nuclear energy is outdated. It should be replaced by an objective to protect health and the environment from the hazards of nuclear energy. Perhaps this could be part of a more general article on sustainable energy policy.

Agriculture policy objectives are equally outdated and desperately need to be changed. My colleague from the AgriCultural Convention will say more on this point.

Thirdly, we support a treaty article on animal welfare as proposed by our colleagues from the Eurogroup on Animal Welfare. This article should state that one of the Community's activities will be to take measures to ensure respect for animal welfare.

In conclusion, a word about subsidiarity: it is now a general principle but it started life in the Treaty as part of the environment article. Subsidiarity is an elastic term and the Convention can spend a long time debating it. I recommend you do not. As I have already made clear, there are other, clearer demands for transparency, democracy and institutional reform. Europe's citizens expect clear answers to these straightforward demands. Do not fix what is not broken.

Finally, my colleagues in the Member States are making these same points in the national debates in which I hope you will participate. I welcome Mr Dehaene's point that this is not by any means the end of the process. I look forward to the dialogue and to your questions.

1-041

EN

Spooner (NGO-ENVI). – Mr President, I speak on behalf of the European AgriCultural Convention which brings together a wide range of representatives from civil society including consumers, environmentalists, heritage conservationists, farmers, development NGOs and some government officials and politicians from all corners of Europe, east, west, north and south.

We share serious concerns about the negative side effects of centrally-controlled, production-focused agricultural policy. We came together to form a vision for the future of agriculture in an enlarged Europe. I urge you to read our statement which is the result of an innovative, dynamic and effective process of consultation. I wanted to thank the President for supporting this initiative by his presence at our AgriCultural Convention gathering. We seek to answer his questions and continue to work on detailed recommendations both to the Convention and to the mid-term review of the Common Agricultural Policy. All are welcome to contribute to our open dialogue and process.

We hope to be able to act as an independent contact group specifically on the issue of the future of agriculture and rural development. We are happy to put forward a few key points through this environment contact group, as the environmental dimension is central to our vision.

I will focus on two key constitutional areas, firstly decision-making and, secondly, the establishment of a new Common Agricultural and Rural Policy. I stress the *rural*, a CARP. Regarding decision-making, we call on the Convention to ensure accountability in decision-making related to agriculture. This is not the case at present. The Common Agricultural Policy has reached levels of complexity that even the experts can no longer master. With compulsory spending rules, sectoral policies run by sectoral management committees and decision-making limited to very few players, there is little democratic accountability.

We make four key recommendations. Firstly, that the broad lines of the Common Agricultural and Rural Policy be decided and funded at Community level. Secondly, that the CARP be subject to co-decision between the Council and the European Parliament, both for policy and budget. Thirdly, that policy coordination be encouraged between different Commission Directorates-General: environment, regional, social, industry, consumer development, culture and external relations interests also need to be taken into account in agricultural policy-making.

Perhaps most importantly, we urge you to explore the application of open governance principles to Common Agricultural and Rural Policy management, especially in terms of improving the participation of stakeholders. In the agricultural area there have been some very good experiences with participatory democracy. Notably, the Leader-type programmes which promote integrated territorial programmes, public-private partnerships, competence exchange and networking between regional groups. Both the quality of policy

and the effectiveness of implementation are improved by involving the relevant actors and stakeholders. These approaches should be central to the future Common Agricultural and Rural Policy.

Secondly, as regards the establishment of the Common Agricultural and Rural Policy, we call on the Convention to set out the foundations for a new CARP in the Treaty. We propose inclusion of some new rights: the right to healthy food and to transparent information about its production and safety; the right to a healthy environment and clean water; the right to produce and consume GMO-free food. As we see agriculture and forestry both as an archive of the past and laboratory for the future, this is not a call for a ban but a call for responsibility and freedom of choice.

We request changes to the articles of the Nice Treaty, in Title 2, especially Article 33, to set out the objectives of a CARP based on the core EU principles of sustainable development. The current Common Agricultural Policy does not meet sustainable development criteria. We believe that the CARP should ensure: the viability of agricultural production in Europe, based on responsible yields; provide fair income to farmers and good prospects for young farmers; protect environmental resources such as soil, water, and biodiversity; provide quality and variety of healthy food; ensure animal welfare and foster the development of local economies and cultures, not just agriculture.

We call for a CARP designed to give developing countries fair access to western markets and to develop food security within their own countries. We believe it is essential to use the WTO development round to advocate an integrated approach to rural development and sustainable farming practices across the world. The US Farm Bill is a regrettable step backwards; the EU must not let this prevent it from taking the lead in negotiating globally responsible solutions.

We recommend a significant shift of funding from production support towards rural development; the promotion of economic diversity and jobs in the countryside; payment for environmental services such as maintenance of clean water supply; infrastructural improvements; the promotion of artisanal foods, tourism and so on.

Enlargement provides an opportunity which several candidate countries are rightly taking to start this shift towards rural development. Representatives from new Member States were particularly dynamic in our Convention, and we hope to see changed leadership in old Member States as well.

To summarise, we call for a Common Agricultural and Rural Policy based on two key sets of principles: sustainable development and democratic accountability. We envision a CARP clearly identified as a Community policy, based on networks of integrated territorial programmes and developed and managed in the spirit of participatory democracy.

The European AgriCultural Convention being an ongoing process, we encourage your feedback on our document and to open up a positive dialogue.

1-042

EN

De Jonckheere (NGO-ENVI). – Mr President, the European Landowners' Association is glad to contribute to the debate on the future to the European Union, and would like to take this opportunity to thank you for all your work. We hope this hearing is just a beginning and can serve as an example for further collaboration with civil society.

Land stands at the centre of the rural world. Landowners are involved in farming and forestry; they provide and manage land and building for rural housing and for rural businesses. They generate employment for local people; they provide land for sporting tourism, hunting and other leisure pursuits. They are responsible for managing the majority of Europe's landscapes and environments, and they contribute to the consolidation of the social thread uniting the rural communities. They are committed to the future of the countryside. The European Landowners Association is thus well placed to speak for Europe's rural areas.

Furthermore, different organisations have subscribed formally to this contribution, namely the *Confédération européenne des propriétaires forestiers*, the Federation of Associations for Hunting and Conservation of the EU, the *Groupement européenne intervenant dans l'immobilier*, the European Historic Houses Association, the *Ruralité Environnement Développement* organisation and the Nature 2000 forum.

We believe that one of the big challenges for the European Union in the future will be to bridge the growing cultural gap between town and country, which is at its widest in discussions on environmental matters. To caricature the issue: urban populations wish to spend their leisure time in a museum-like preserved countryside, accusing the rural community of not managing it in an environmentally sustainable way. Rural actors likewise accuse the urban community of shaping policies in an unrealistic way -without proper knowledge of the rural needs, without consulting stakeholders and without providing the financial means for environmental services.

This statement reflects the problem quite well and indicates the uniting rule that Europe has to play. Europe should foster cohesion, social and economic but also territorial cohesion. We would like to see a Europe where the countryside is consolidated through coherent and integration rural policies and where the rural stakeholders are consulted from the earliest stage of the decision-making

process. Such policies should be able to avert the current misunderstandings between rural and urban cultures which hamper the achievement of our common objectives of social, economic and environmental integration.

Land ownership has proved to be very effective in consolidating rural communities. It gives people in the countryside a long-term perspective and a sense of responsibility towards future generations. We want the Europe of the future to foster these rural communities, to attract people to the countryside, to halve emigration to the big cities, to support the creation of rural employment and to promote a balanced, vibrant and prosperous rural economy. We want our countryside to remain a nice environment to live and work in and we believe landowners and land users are Europe's biggest allies in creating such a future.

The right of property is a fundamental right and has been recognised as such in numerous international declarations and conventions of which the most important are the Declaration of Rights of 1789, the European Convention of Human Rights and, more recently, the European Charter of Fundamental Rights.

It is essential for the further development of a democratic Europe that the Charter is duly integrated as such in the constitutional Treaties. In order to make these rights effective and enforceable, broader access for all individuals to the constitutional court should be assured. A fully democratic Europe also requires the integral involvement of the European Parliament on the same level as the Council, for all European decisions through the extension of the co-decision procedure. It is also essential for the coherence of human rights protection in the European Union to adhere in the long run to the European Convention on Human Rights.

We all have high environmental expectations for the future but we believe that a key factor for the achievement of these objectives will be Europe's capacity to stimulate environmental policies through voluntary agreements and not through compulsory legislation.

The key concepts here are proportionality and early stakeholder involvement. A proportionality check at any level of implementation, be it European or national, is essential to preserve the delicate balance of the countryside. All too often, European legislation in certain countries has led to a disproportionate burden being placed on the shoulders of landowners and land users, a burden dramatically detrimental for both the conservation of the environment and for the fragile economic balance of rural businesses.

We believe that an efficient European decision-making process should incorporate, at the earliest stage, an integrated social and economic impact assessment for any environmental programme - just as an early environmental impact assessment is required for any important economic project.

Early stakeholder involvement is crucial to the success of any environmental policy. Procedures should be established to determine which actors are directly affected or concerned by specific policies and how they will be consulted throughout the decision-making and implementation process.

We are therefore eager to participate actively in any discussion in the general interest where environmental policy might lead to limitations of the right of property.

As regards the clarification, delineation or delimitation of competences, we are convinced that it should be ruled by the principle of added value. The European Union derives its powers from the Member States and should intervene only where intervention has a proven added value.

There are many subjects currently dealt with in such a way that there is total confusion as to whether it is a national or a Community competence. An example could be the upcoming Commission communication on the planning of land use. Not only is property, by virtue of Article 295 of the Treaty, as it stands now, a national competence, but special planning, furthermore, is by definition a matter that can best be dealt with at the lowest level. Land-use planning aims at organising the territory in the light of the needs of the population that vary considerably as a result of different climatic, geographical, social and economic conditions of each region or state.

We believe that this kind of confusion as to who ought to do what and who does what is damaging for citizens' understanding of the European machinery. It is also harmful to the European Union itself because it allows the Member States to take advantage of this confusion to blame Europe for certain decisions they are themselves responsible for. In order to assure the full respect of this principle, the Convention should consider the creation of a specific monitoring body composed of European and national parliamentarians to evaluate the added value of each European decision -and hence the principle of subsidiarity.

In conclusion, we believe that land ownership performs a crucial role in the sustainable management of rural areas. Small and medium-sized enterprises and, in particular, family businesses are the most stable employers in the countryside. We would therefore ask the Convention to incorporate the preservation of a balanced, viable and sustainable countryside in harmony with its people and their activities, with nature and with the cities, into the missions of the European Union.

In the words of the European Countryside Movement, we are convinced that a genuine rural development policy is fundamental for the success of enlargement and to ensure the balanced structural development of all rural areas in an enlarged Europe. We all want the benefits of an improved environment but only some are able to produce it. We are therefore convinced that balance and harmony in the countryside can only be achieved if there is a fair payment for the production of environmental and cultural landscape services.

FR

Le Président. – Ceci conclut les interventions du groupe « environnement ». J'ai une demande de parole et une carte bleue. La parole est à Monsieur Michael Frendo pour deux minutes.

1-044

EN

Frendo (Parl.-MT). - Mr President, if the principle of subsidiarity were applied to the sphere of the environment, it would inevitably be taken higher up rather than pushed lower down, because, since national frontiers are meaningless, the best place to take decisions regarding the environment is at European level.

Perhaps equally important is that Europe should be strong enough to influence not only European action but also action on a global level. There have indeed been many instances on a global level where it is clear that it is not enough being strong at European level. It is also important to be strong internationally because what happens in one country or a number of countries affects all the other countries in the world.

It is important, therefore, that we strengthen the European Union's action in this field, despite its success since the signing of the Single European Act and various other treaties.

My second point is that it is important to give serious consideration to the point raised by the groups from civil society that we should also have a distinctive right to a healthy environment. This distinctive right could be part of the Charter of Fundamental Rights, depending upon the application of this Charter. It is important that we emphasise that the environment is important by giving it a clear place in terms of rights in the Charter itself.

1-045

IT

Basile (Parl.-IT). - Signor Presidente, mi rifaccio all'interessante contributo della signora Spooner e al successivo contributo della signora De Jonckheere. Credo che l'idea di realizzare una PARC sia molto interessante. Va, questo, nella direzione della multifunzionalità dell'agricoltura, dell'esigenza di creare attività comuni a più settori e anche della sostenibilità economica, non solo, appunto, ambientale. Occorre una rivoluzione come c'è stata agli inizi degli anni '90 grazie all'allora Commissario, oggi collega della Convenzione, Ray McSharry, il quale creò una politica agroambientale e forestale. C'è il problema, però, di come inserire tutte queste idee nel Trattato costitutivo; c'è inoltre il problema di fare i conti con il bilancio - vedi la posizione presa in questi giorni dalle autorità tedesche - e poi l'esigenza di organizzare un contributo per far sì che queste esigenze e quest'approccio vengano inseriti nel Trattato costitutivo. Vi è anche il problema di fare i conti con i paesi in via di adesione, che presentano forti problemi per quanto riguarda la materia ambientale e, infine, l'esigenza che quest'approccio sia sposato dalle organizzazioni internazionali.

1-046

DE

Voggenhuber (PE). - Herr Präsident! Ich möchte mich bei den Vertretern der Zivilgesellschaft bedanken und ihnen sagen, wie wohl es tut, sie heute hier zu hören. Es gibt nämlich einen großen Unterschied, ob die Zivilgesellschaft von den Politikern beschworen wird oder ob sie selbst zu Wort kommt. Auch im Konvent wurde sie immer wieder als Stimmung gegen Europa beschworen, als Stimmung für die Renationalisierung, als Stimmung für die Rückverlagerung von Kompetenzen. Das, was sie heute gesagt und getan haben, hilft, den Blick auf die wirklichen Zukunftsfragen Europas zu lenken: die europäische Demokratie, die Grundrechte der Menschen auf europäischer Ebene, die europäische Sozialunion als eine angemessene Antwort auf die Globalisierung, die soziale und ökologische Nachhaltigkeit. Das sind tatsächlich die Probleme. Viele Konventsmitglieder haben sich in den vergangenen Wochen bemüht, genau diese Themen in den Konvent einzubringen, mit mäßigem Erfolg. Sehr oft wurde die Zivilgesellschaft als Zeuge dafür aufgerufen, dass die Zeit noch nicht reif ist, dass die Menschen noch nicht reif sind, dass Europa noch nicht reif ist, und ich danke Ihnen sehr dafür, heute diesen Spuk zerstört zu haben und selbst aufzutreten zu sein, um ein anderes Zeugnis abzugeben. Ein Vorredner hat vor der Flucht aus der nationalen Verantwortung gewarnt. Das, was in Wahrheit geschieht, ist die Flucht Europas aus der Verantwortung, und ich danke Ihnen dafür, dass Sie das klar gemacht haben.

1-047

FR

Le Président. – Avant la pause-café, je propose que nous écoutions maintenant les représentants du Comité économique et social.

1-048

DE

Frerichs (NGO-ENVI), Représentant des Wirtschafts- und Sozialausschusses. - Herr Präsident, meine sehr verehrten Damen und Herren! Wir sind uns alle einig: Auftrag des Konvents ist es, die Verfassung der Europäischen Union zu entwerfen, und zwar nach demokratischen Prinzipien, um die Union und ihre Institutionen in die Lage zu versetzen, ihre Aufgaben transparent für das Verständnis der Bürger und effizient im Dienste der Bürger wahrzunehmen. Ich wünsche mir, dass es durch die Arbeit des Konvents möglich wird, diese Union, die als Union der Staaten entstanden ist, mehr und mehr zu einer Union der Bürger zu machen. Das wird nicht zu Lasten der Mitgliedstaaten und ihrer Regionen gehen; vielmehr wird das den Regionen und Staaten eine neue Legitimation verschaffen, da ihre gemeinsamen Probleme dadurch besser - weil im Einklang mit ihren Bürgern - bewältigt werden können.

In einer solchen demokratischen Union, die notwendigerweise nach föderalen Prinzipien organisiert sein muss, um angesichts der Vielfalt und Verschiedenheit der in der Union versammelten Staaten, Nationen und Kulturen funktionieren zu können, muss die Zivilgesellschaft einen Ort haben, an dem sich ihre Vertreter treffen und ihren gemeinsamen Willen zum Ausdruck bringen können, ihre gemeinsamen Forderungen formulieren und ihre gemeinsamen Vorschläge erarbeiten können. Diesen Ort bietet nach seiner Berufung durch den Vertrag ebenso wie nach Tradition und 44jähriger Praxis der Europäische Wirtschafts- und Sozialausschuss, dem die zukünftige Verfassung die Mittel und die Möglichkeit geben sollte, seine Rolle als institutionalisierte Repräsentanz der organisierten Zivilgesellschaft immer besser zu spielen.

Aufgrund meiner persönlichen Erfahrungen nach zwölf Jahren der Mitgliedschaft im EWSA und am Ende meiner zweijährigen Mandatszeit als Präsident dieser Institution möchte ich heute in Kenntnis der unterschiedlichen Auffassungen, die dazu auch im EWSA selbst bestehen, einige Vorschläge machen. Erstens schlage ich vor, ein transparentes Verfahren für die Auswahl und Ernennung der Mitglieder des Ausschusses einzuführen. Es müssen die Regeln dieses Verfahrens festgelegt werden. Es müssen die Voraussetzungen für eine Bewerbung beschrieben werden. Das Verfahren muss bekannt gemacht werden, die Entscheidungen müssen begründet werden. Quantitative oder qualitative Repräsentativität, zivilgesellschaftliche Präsenz, allgemeine Bedeutung, Engagement und Leistung zugunsten der Allgemeinheit, das sind die wichtigsten Kriterien, die der Auswahl der Organisationen, deren Vertreter in den Ausschuss entsandt werden, zugrunde gelegt werden müssen.

Zweitens schlage ich vor, die Bestimmung über die Zusammensetzung des EWSA folgendermaßen neu zu fassen. Der Ausschuss besteht aus Vertretern der Unternehmer- und Arbeitgeberverbände, aus Vertretern der Gewerkschaften und Arbeitnehmer sowie aus Vertretern anderer Organisationen der Zivilgesellschaft, die wirtschaftliche, soziale, kulturelle oder ideelle Zwecke im allgemeinen Interesse verfolgen. Mit dem Ausschuss der Regionen, der die politische und territoriale Subsidiarität verkörpert, steht der EWSA, der die gesellschaftliche und funktionale Subsidiarität verkörpert, in einem Verhältnis der Komplementarität. Beide Ausschüsse haben ihre Würde, ihre eigenen Aufgaben und eine jeweils besondere, jeweils anders geartete Bedeutung für die Bürger, auf deren Wohl und Interesse ihre Bemühungen ausgerichtet sind. Die Bürger sind auf den politischen Rahmen, in dem sie in den Gemeinden, Städten und Regionen leben, angewiesen. Ebenso brauchen die Bürger aber auch den gesellschaftlichen Rahmen, der von den Organisationen, Verbänden und Gewerkschaften dargestellt wird. Die Parität der Behandlung im institutionellen System der Europäischen Union gibt diesem Umstand einen angemessenen Ausdruck. Die gleichrangige Einbeziehung der zivilgesellschaftlichen wie der gebietskörperschaftlichen Dimension in die Meinungs- und Willensbildung der Union im Interesse einer optimalen *governance* macht Sinn, denn diese beiden Dimensionen ergänzen und befruchten sich gegenseitig.

Ich bin zuversichtlich, dass es gelingen wird, beide Dimensionen in der neuen Verfassungsordnung der Europäischen Union in einer Weise zur Geltung zu bringen, die über den Status quo weit hinausreichen wird und die ihrer Bedeutung für die Gestaltung unseres transnationalen Gemeinwesens besser gerecht wird.

1-049

FR

Briesch (NGO-ENVI). – Monsieur le Président, Mesdames, Messieurs, l'Union Européenne repose sur des idéaux communs à l'ensemble des Etats membres qui associent les valeurs de base que sont la démocratie, les droits de l'homme, l'état de droit, de solidarité de cohésion, dans un esprit de dialogue et de recherche du consensus et d'un équilibre social. Ces différents éléments constituent, ce qu'on appelle à juste titre, le modèle social européen. Il est inscrit dans les traités instituant l'Union Européenne sous la forme d'objectifs généraux, notamment la réalisation d'un taux d'emploi élevé, d'un développement durable par le biais de la promotion du dialogue social, qui revient en priorité aux partenaires sociaux. Le dialogue social européen est un mécanisme qui dispose de pouvoirs législatifs. Il est clairement défini en terme de participants, de pouvoir et de procédure. Son statut est quasi constitutionnel. C'est la raison pour laquelle son rôle et sa responsabilité ne peuvent être transférés à d'autres politiques ou à d'autres acteurs. Toutefois, le Comité économique et social, institution que j'ai l'honneur de représenter ici avec mes collègues, a de par sa composition, un caractère divers et varié, et son activité est un élément essentiel du modèle européen. Il favorise le dialogue entre toutes les composantes de la société, en prenant en compte les préoccupations et les souhaits des citoyens au plus près des réalités, pour les formuler, les faire connaître au travers des avis et, de manière plus pratique, par le travail réalisé sur le terrain à tous les niveaux et dans tous les pays.

Le Comité n'est pas le forum du dialogue social. Toutefois, il devrait pouvoir, à la demande des partenaires sociaux ou d'autres organismes, élaborer des avis exploratoires sur des sujets nouveaux et importants. Le Comité tire sa légitimité du fait que tous ses membres, en vertu de leur expertise, ont été mandatés par des organisations représentatives des Etats membres pour jouer un rôle constructif dans le processus de formation d'opinions qui associe tous les acteurs de la société civile. Cet aspect doit être maintenu et précisé. La pérennité du Comité, le renforcement de son rôle est nécessaire. Il s'impose naturellement comme le lieu du dialogue civil,

c'est à dire comme le représentant de la société civile organisée qui, au delà des associations d'employeurs ou de chefs d'entreprises et des syndicats, englobe également les organisations représentatives d'un grand nombre d'autres activités et intérêts.

Au delà du travail en cours concernant les compétences de l'Union, son rôle ou l'application la plus adéquate de la subsidiarité, il convient au préalable de préciser, affirmer ce que nous voulons faire ensemble, quelle Europe nous voulons et pourquoi faire. Dans ce sens, le Comité souhaite promouvoir l'aspect qualitatif en terme de légitimité démocratique d'amélioration des droits des citoyens via un Traité constitutionnel ou une Constitution qui intègre les différents aspects constituant le modèle social, notamment le plein emploi, les services d'intérêts généraux, l'égalité entre homme et femme ou l'économie sociale de marché. Ainsi, on obtiendrait une Union rassemblée, apte à prendre des décisions et à affirmer des propositions et des positions par l'extension du vote à la majorité qualifiée. On arriverait également à une gouvernance économique et sociale, accompagnée d'une simplification des instruments de la gouvernance économique. Enfin, cela aurait des effets sur le rôle et la place de l'Union dans le monde, en terme de paix, de liberté, de démocratie et de droits de l'homme. Cela favoriserait l'émergence d'un nouvel ordre économique ayant pour objectif l'éradication de la misère et de la pauvreté.

Dans cet esprit, l'Union doit jouer un rôle majeur dans la mise en oeuvre d'un nouvel équilibre mondial fondé sur la solidarité, la justice, la démocratie, les libertés sociales et civiques. De ce fait, nous attendons de la Convention une nouvelle définition des fondements constitutionnels de l'Union, dans un esprit fédéral et démocratique. Et, sur la base de ce qui a déjà été réalisé, nous plaçons pour un renforcement du modèle européen. L'histoire de nos pays montre que l'établissement des modèles sociaux n'est dû qu'en partie au pouvoir et à la législation et que la contribution des partenaires sociaux et les relations entre les organisations de la société civile ont été déterminantes. Leur créativité, leur capacité d'orientation de la société doivent trouver une place équivalente au niveau européen. De ce fait, il est essentiel que la Charte des droits fondamentaux soit incluse dans le traité ou dans la nouvelle Constitution. La cohésion sociale est un facteur essentiel de la formation d'une identité européenne, surtout dans la perspective des efforts requis pour intégrer les pays qui vont nous rejoindre. Tout en se reconnaissant dans les valeurs fondamentales défendues par la Charte, les pays européens ont des traditions, des cultures et des histoires différentes. Cette diversité est une richesse pour l'Europe qu'il convient de préserver.

La méthode communautaire doit demeurer la base de la future architecture institutionnelle de l'Union, qui se caractérise par un équilibre entre la diversité culturelle et l'unité politique, et permet au modèle social européen de se développer. L'expérience nous a appris que chaque fois qu'on met en oeuvre la méthode communautaire, on obtient des résultats satisfaisants. En effet, l'intérêt de l'Union n'est ni la somme des intérêts des Etats membres, ni leur plus petit dénominateur commun. Il ne peut donc pas être déterminé lors de négociations, au cours desquelles chaque participant dispose d'un droit de veto. En définitive, nous sommes convaincus que seule une structure fédérale et démocratique permet de s'attaquer, avec des chances de succès, aux problèmes d'ordre politique et pratique urgents, tout en donnant un sens à la citoyenneté de l'Union en consentant un effort constant dans la recherche de l'unité dans la diversité.

1-050

DE

Sigmund (NGO-ENVI). - Herr Präsident! Der Europäische Wirtschafts- und Sozialausschuss, den ich als Beobachterin im Konvent vertreten darf, will, wie das auch meine Vorredner schon gesagt haben, aktiv und effektiv zum politischen Meinungsbildungsprozess beitragen. Seine Funktion steht dabei weder in Konkurrenz zu den Anhörungen des Europäischen Parlaments, noch ersetzt der Ausschuss die direkten Konsultationen der Kommission mit den Organisationen der Zivilgesellschaft. In diesem Selbstverständnis sind wir zwar institutionelle Plattform der organisierten Zivilgesellschaft, aber nicht deren Filter.

Wir wissen, dass auch für den Europäischen Wirtschafts- und Sozialausschuss Reformbedarf besteht. Einiges ist schon getan, Vieles ist noch zu tun. So sind beispielsweise wichtige europäische Nichtregierungsorganisationen nicht direkt im Ausschuss vertreten. Neben der heute von unserem Präsidenten, Herr Frerichs, gemachten Anregung, die Nominierungspraxis der Mitglieder neu zu überdenken, werden wir aber auch Wege finden und suchen, die Zusammenarbeit schon jetzt noch besser zu organisieren und zu strukturieren, um möglichst viele Kräfte der Zivilgesellschaft in unsere Arbeit einzubinden.

Lassen Sie mich kurz ein Thema berühren, das mir besonders am Herzen liegt, das der Kultur. Kultur ist die gemeinsame Handlungsgrundlage zivilgesellschaftlichen Handelns, vorausgesetzt, dass man Kultur in ihrer weitesten Definition als Bekenntnis zu gemeinsamen Werten versteht. Zur Kultur gehören neben der Erhaltung von bestehenden Gütern eben auch Erziehung, Bildung, Wissenschaft und Forschung, aber auch jeder öffentliche Diskurs, der auf gemeinsamen Wertvorstellungen basiert. Kultur als Prozess lässt gleichzeitig Vielfalt und Identifikation zu. Ich schlage deshalb vor, dass sich der Konvent in einer der Arbeitsgruppen auch mit der Definition des Kulturbegriffs beschäftigt und den Artikel 151 des Vertrages entsprechend weiterentwickelt.

Wir sind weiters der Ansicht, dass der Grundsatz der Solidarität nicht nur zur Demokratie gehört, sondern auch der Schlüssel zivilgesellschaftlichen Handelns ist. Daher schlage ich vor, neben dem Prinzip der Subsidiarität und dem Prinzip der Verhältnismäßigkeit auch Solidarität als leitendes Prinzip explizit in den Vertragstext aufzunehmen.

Wie bereits klargestellt wurde, hat der Europäische Wirtschafts- und Sozialausschuss mit dem sozialen Dialog nichts zu tun. Er ist der Ort des zivilen Dialogs. Wir sind entschlossen, diesen zivilen Dialog auf europäischer Ebene zu fördern und zu seiner Strukturierung beizutragen. Dazu ist es aber unerlässlich, dass alle, die vom zivilen Dialog sprechen, das selbe meinen. Wir definieren den zivilen Dialog als öffentlichen, interaktiven Diskurs, in den auch normative Inhalte einfließen können. Wir brauchen diesen zivilen Dialog

nicht nur zur Schaffung einer europäischen Öffentlichkeit, als Grundlage einer europäischen Identität, sondern auch als transparentes, direktes und dauerhaftes Instrument der Beteiligung der Zivilgesellschaft.

Um diesen zivilen Dialog zu strukturieren, müssen bestimmte Vorfragen geklärt sein. Erstens: Am zivilen Dialog können nur Organisationen teilnehmen, die sowohl quantitativ als auch qualitativ repräsentativ sind, d.h., die neben einer möglichst umfassenden Vertretung der Betroffenen auch im Stande sind, aufgrund ihrer Organisation und Expertise substantiell zu diesem Dialog beizutragen.

Zweitens: Wir müssen unterscheiden zwischen Konsultation und Partizipation. Partizipation als Oberbegriff ist nicht nur Recht auf Anhörung, sondern darüber hinaus aktive Beteiligung am Meinungsbildungsprozess, der dem Legislativprozess vorausgeht.

Drittens: Wir müssen die verschiedenen Aspekte der Subsidiarität berücksichtigen. Subsidiarität umfasst eben nicht nur den vertikalen, territorialen, sondern auch den horizontalen, funktionalen Aspekt. Ich schlage vor, dass sich der Konvent mit dem Verfahren und den Inhalten des zivilen Dialogs auseinandersetzt und die Teilnahmebedingungen diskutiert. Ort der Entwicklung des zivilen Dialogs kann der Europäische Wirtschafts- und Sozialausschuss mit seinen vorhandenen Strukturen und Erfahrungen sein. Ich rege daher an, dass der Konvent eine Arbeitsgruppe "Ziviler Dialog" bildet. Ich bin sicher, dass die im Europäischen Wirtschafts- und Sozialausschuss eingerichtete Dialogrunde mit den Vertretern der Zivilgesellschaft, an der auch regelmäßig Präsident Dehaene teilnimmt, bereit und im Stande ist, einer solchen Arbeitsgruppe konstruktive Beiträge zu liefern.

1-051

NL

Maij-Weggen (PE). - Voorzitter, dank u wel dat u me nog de gelegenheid geeft om iets te zeggen. Ik wilde nog reageren op wat de vertegenwoordiger van het European Environmental Bureau heeft gezegd, namelijk dat het ontbreken van een hoofdartikel over dierenbescherming een hele lastige kwestie is. Ik wil dat graag onderstrepen. De Europese Unie maakt al sinds de jaren '80 dierenbeschermingswetgeving. We hebben importstops gekregen op ivoor, op zeehondenvellen, op walvisproducten, we hebben het transport van dieren geregeld, we hebben kalverboxen en legbatterijen afgeschaft en toch is er eigenlijk geen enkel artikel in de Verdragen dat ons toestemming geeft om dat te doen. Die wetgeving wordt altijd aangehaakt aan externe handel, aan landbouw of aan milieuwetgeving. Ik denk dat het juridisch gezien heel belangrijk is dat er een artikel komt dat echt op dierenbescherming gericht is. Daarmee zouden we heel veel burgers een plezier doen en bovendien zouden we daarmee de juridische correctheid van het werk van de Europese Commissie ondersteunen. Dus ik wil dat punt van de vertegenwoordiger van het European Environmental Bureau onderstrepen. Misschien zou het goed zijn als een van ons met zo'n voorstel kwam. Het is een kleinigheid maar het is wel heel nuttig en belangrijk. Veel burgers zullen het met dankbaarheid zien.

1-052

FR

Le Président. – Nous allons interrompre nos travaux. A six heures précises, nous les reprendrons avec l'audition du groupe universitaire, le laboratoire d'idées.

(la réunion, suspendue à 17.38 h, est reprise à 18.10 h)

1-053

DA

Mindeord

DE

Nachruf

EL

Νεκρολογία

EN

Tribute

ES

Elogio póstumo

FR

Éloge funèbre

IT

Necrologia

NL

In memoriam

PT

Homenagem póstuma

FI

Muistopuhe

SV

Parentation

1-054

FR

PRÉSIDENCE DE Mr GISCARD D'ESTAING

Le Président.- Je souhaiterais dire un mot sur le décès de Monsieur Pierre Werner, survenu aujourd'hui au Luxembourg. Monsieur Pierre Werner a été un homme d'état qui a joué un rôle très important dans la construction de l'Europe. Nous l'avons connu dès le départ lorsque le Luxembourg était pays fondateur de l'Union européenne. Il a été successivement et longuement, ministre des Finances, puis président du Conseil du Luxembourg. Lorsqu'on a entamé la première réflexion sur la possibilité d'une union monétaire européenne, ses collègues, ministres des Finances de l'Europe des six de l'époque, l'ont chargé de présenter un rapport sur la possibilité de réaliser une union monétaire. Ce rapport qui reste connu dans l'histoire communautaire sous le nom de rapport Werner, a posé de façon lointaine les bases de la culture de l'Union européenne. Plus particulièrement, il a fortement insisté sur la convergence nécessaire des situations économiques et des politiques économiques, comme condition du succès de l'Union monétaire. Monsieur Werner était un homme très respecté de ses collègues et très aimé pour sa tolérance, sa modération et son grand humanisme. C'est pour cela que je vous demanderai de bien vouloir respecter une minute de silence, en souvenir de ce grand homme européen.

(Les membres de la Convention se lèvent et observent une minute de silence).

1-055

FR

Le Président. – Nous reprenons nos travaux et c'est le Vice-Président Jean-Luc Dehaene qui reprend le fil conducteur de nos délibérations.

1-056

DA

Den akademiske verden

DE

Academia

EL

Ακαδημία

EN

Academia

ES

Academia

FR

Academia

IT

Mondo accademico

NL

Academia

PT

Academia

FI

Tiedemaailma

SV

Den vetenskapliga världen

1-057

FR

PRÉSIDENCE DE Mr DEHAENE

Le Président.- Comme je l'ai dit avant l'interruption, nous en sommes maintenant au troisième groupe de contact qui est celui des Universités et laboratoires d'idées, groupe qui a été présidé par mon collègue Giuliano Amato qui va d'ailleurs introduire le groupe avant que les portes-parole ne reçoivent la parole.

1-058

IT

Amato (Vicepresidente). - Presidente, colleghi, il gruppo che io ho cominciato a coordinare è un gruppo che ha caratteristiche peculiari, in parte diverse da quelle di altri gruppi. E', infatti, composto largamente da istituti universitari, centri di ricerca - quelli che chiamiamo *think tanks* - organizzazioni giovanili che si occupano prevalentemente, o quasi esclusivamente, di Europa, organizzazioni femminili e organismi scientifici. Nel suo insieme, perciò, il gruppo si rivolge alla Convenzione, non presentando le ragioni di un interesse sociale o collettivo specifico - l'ambiente, i diritti degli animali, l'agricoltura - ma facendo *lobby* per l'Europa: il suo interesse specifico prevalente è l'Europa, l'organizzazione dell'Europa, le Istituzioni europee, ciò che l'Europa dovrebbe fare.

E' un gruppo, dunque, particolarmente vicino al lavoro che la Convenzione sta facendo e interessato a contribuire ad ogni aspetto di questo lavoro. E' un vero peccato che non possano parlare tutti; è stato molto difficile scegliere quelli che potessero parlare. Si sa, il mondo dell'Accademia ha realizzato, ben prima che Ulrich Beck se ne accorgesse, la società degli individui, e gli individui, in genere, parlano ciascuno per sé: sono otto quindi quelli che parleranno per questo gruppo. Credo che abbiamo il *record* quanto a numero di partecipanti: è comunque un *record* e ne siamo orgogliosi. Spero che ciascuno sappia attenersi al suo tempo di parola di tre minuti. Comunque abbiamo programmato di vederci ancora: a tutti noi è piaciuto il primo incontro del gruppo di contatto. Contiamo di incontrarci ancora, e contiamo, con questo gruppo, di seguire i lavori della Convenzione attraverso i documenti di cui dispone e anche attraverso i documenti dei gruppi di lavoro della Convenzione stessa, al di là delle singole idee che il gruppo ha già cominciato a fornire, con particolare riguardo, naturalmente, ai temi dell'organizzazione, anche scientifica, che stavano a cuore ad alcuni dei partecipanti.

Voglio qui sottolineare, tra le diverse idee che già sono emerse, quella che ha trovato il consenso più ampio. Proprio per la peculiarità delle caratteristiche dei partecipanti a questo gruppo questi organismi sono ben consapevoli di non rappresentare interamente la società civile. Vorrei che tutti i partecipanti a questo nostro lavoro fossero consapevoli del fatto che la società civile è costituita da milioni e milioni di cittadini europei, che nessuna delle nostre organizzazioni in realtà riesce a rappresentare, e che il lavoro della Convenzione va a quei cittadini, e deve stabilire un contatto con quei cittadini. Come farlo? Questa è una domanda che il nostro gruppo si è posto. Organizzare, sia pure informalmente, un *referendum* tra i cittadini europei? I giovani hanno proposto: "Prepariamo un manifesto, un manifesto chiaro e semplice; facciamo valutare questo manifesto dai nostri cittadini". E' un'idea che la Convenzione dovrà valutare e che magari dovrà cercare di realizzare con i soldi della Commissione o del Parlamento o del Consiglio, dato che noi, Convenzione, abbiamo molte idee ma pochi soldi per realizzarle.

1-059

FR

Louis (NGO-ACAD). – Mon intention n'est pas de m'adresser à votre Convention pour exposer les objectifs et les travaux réalisés par Agora, un réseau créé en 2001, hors de tout esprit de chapelle ou de volonté impérialiste, à l'initiative du mouvement européen international afin de tenter d'assurer une réflexion en commun d'instituts, associations et réseaux de recherche en matière européenne. Je souhaite plutôt profiter de cette brève occasion pour tenter de traduire les sentiments et la volonté d'observateurs attentifs de la scène européenne à un moment capital de l'histoire de l'intégration. Nous ressentons tous l'importance exceptionnelle des défis auxquels l'Union et le monde sont confrontés, je ne vous ferai pas l'affront de penser qu'il est nécessaire de vous les rappeler.

Aujourd'hui, au sein de votre Convention, des choses impensables hier encore sont devenues possibles. Un momentum s'est créé. Soyez assurés que le monde académique qui n'a pas de revendication sectorielle à formuler, ainsi que l'a rappelé le Président Amato, appuie et soutient majoritairement la Convention dans la définition de solutions audacieuses. Agora a été de ceux qui ont plaidé pour un agenda ambitieux et pour une tâche de nature constitutionnelle. Il a été comblé sur ces deux points par la déclaration de Laeken.

Aujourd'hui comme hier, la responsabilité des universitaires est, d'une part, de poursuivre la recherche fondamentale et, d'autre part, de suivre, voire de précéder la réflexion qui est menée au sein des groupes de travail que vous avez créés. Il y a là des agendas certes incomplets mais à propos desquels existe un acquis considérable, et des juristes, des politologues et des économistes qui réfléchissent à la construction européenne. Nous sommes prêts à vous aider et nous souhaitons continuer à être effectivement consultés pour trouver des solutions adaptées à l'Europe unifiée, tout en préservant ce qui a fait le succès de l'intégration, ce que l'on appelle modestement l'acquis communautaire et les traits fondamentaux de son ordre juridique. Une certaine expertise s'est également développée dans le domaine de la restructuration et de la simplification des Traités, notamment à l'Institut universitaire européen de Florence. Celui-ci a décidé de poursuivre cette tâche, en particulier au sein du Centre Robert Schuman. A cet effet, je crois que l'occasion est bonne pour ajouter que le Centre Robert Schuman vient de créer une Chaire Pierre Werner sur l'Union Monétaire.

Les universitaires ont aussi une responsabilité fondamentale à l'égard de la société civile dans son ensemble. Ils doivent, dans des circonstances historiques, sortir de ce qu'on appelle souvent leur tour d'ivoire, pour contribuer à bâtir le consensus indispensable afin que cette volonté ambitieuse et légitime de doter l'Europe unifiée d'une Charte Constitutionnelle ou d'un Traité Constitutionnel efficace et démocratique soit couronnée de succès. Ce défi, qui est le vôtre, est aussi celui de la communauté académique.

1-060

FR

Deloche-Gaudez (NGO-ACAD). – Comme beaucoup d'entre vous ici, nous estimons que cette Convention est une chance pour l'Europe mais en même temps, nous ne pouvons nous empêcher d'être un peu inquiets. Tout d'abord, nous sommes inquiets car la tâche de la Convention est de produire un texte nouveau, de nature constitutionnelle, qui dessine une Union dans laquelle les Européens se reconnaissent. Or, après plusieurs mois de travaux, la Convention n'a pas encore produit de texte. Bien sûr, la complexité du chantier engagé peut l'expliquer mais, en même temps, la difficulté même de la tâche insiste à ne pas trop repousser la phase de rédaction. Une autre source de préoccupation provient de ce que seule une minorité d'Européen connaît l'existence même de la Convention. C'est pourquoi nous aimerions attirer votre attention sur deux points.

Le premier point est l'importance décisive des groupes de travail au sein de la Convention. Compte tenu de la taille de votre assemblée, compte tenu de votre mandat extrêmement exigeant, compte tenu du choix de privilégier la recherche du consensus, la rédaction de projets de document final par les conventionnels eux-mêmes semble essentiellement pouvoir s'opérer via les groupes de travail. En effet, les groupes de travail permettent aux conventionnels, y compris aux représentants des pays candidats, de s'atteler à un travail de rédaction et de le faire en concertation régulière, notamment avec des représentants du monde académique, qui peuvent ainsi mettre leur expertise au service de la Convention, en particulier sur des points juridiques précis.

Le deuxième point concerne les relations entre la Convention et les Européens. On peut penser qu'il est dans l'intérêt même de la Convention de s'attacher le plus grand nombre possible d'Européens, ne serait-ce que pour renforcer la légitimité des résultats obtenus par rapport à la conférence intergouvernementale sensée y faire suite. Pour y arriver, je mentionnerai trois pistes possibles. Premièrement, comme évoqué au sein de notre groupe de travail, il s'agira d'utiliser des termes précis, clairs, simples, dès lors qu'il s'agit d'Europe, et certains représentants du monde académique sont prêts à participer à cet effort de simplification du vocabulaire. Deuxièmement, il s'agira d'appeler à privilégier l'approbation du texte fondateur résultant de ce processus par referendum dans les Etats Membres, et réfléchir à la question d'un referendum européen. En effet, on peut penser qu'il faut donner du pouvoir au citoyen européen, pour qu'il s'intéresse à la Convention, et dire dès à présent qu'il aura ce pouvoir. Et quel meilleur pouvoir que le vote qui, de surcroît, peut devenir le vecteur d'une identité européenne partagée. Troisièmement, il s'agira de davantage s'appuyer sur l'université qui représente tout de même quatorze millions d'étudiants, de jeunes qui vivront dans l'Europe de demain et qui peuvent être une force de mobilisation et de proposition formidables. En témoigne le succès d'un projet pédagogique inédit lancé par les départements Sciences Politiques l'an dernier, qui ont, à partir de nouveaux enseignements des étudiants de Sciences Politiques mais aussi des universités partenaires des départements Sciences Politiques en Europe, rédigé un manifeste pour l'Europe qu'ils ont adressé à la convention.

Monsieur le Président, Mesdames et Messieurs les Conventionnels, je voudrais conclure mon intervention en vous remerciant de nous écouter, en vous souhaitant sincèrement bonne chance et en espérant que nous, représentants du monde académique, experts comme étudiants, pourrons et saurons contribuer à votre aventure.

1-061

EN

Hughes (NGO-ACAD). – Mr President, I represent a Europe-wide network of think tanks called EPIN, the European Policy Institutes Network. We have 34 think tanks in all 28 EU Member States and applicant countries.

We have been meeting in Brussels monthly, having an ongoing dialogue with some members of the Convention and we hope to have an opportunity to have a dialogue with all members of the Convention at our network meetings over the coming years.

I would also like to mention another network, TEPSA, the Trans-European Policy Studies Association, which is also developing analysis to input to the Convention.

As you might imagine in a large group of think tanks, EPIN has no single, unique, uniform view on the future of Europe. I would like, therefore, to present some short comments on two areas drawn from our recent discussions.

First a few key points on democracy and institutions. We need to democratise the Commission. We do not believe there is adequate legitimacy at the moment. The election of the Commission President by the European Parliament or by national parliaments is the route forward.

Secondly, we agree that national parliaments should play a greater role and should be involved in controlling subsidiarity, possibly through a new committee within the Council. We find positive the idea, put forward by Michel Barnier, of national MPs attending the Council in legislative mode, together with their ministers.

On the controversial idea of a new President of the European Council, we have diverging views on this in our network. Some of us find it entirely negative and something that would upset the institutional balance, others stress the positive element of continuity and leadership. We all agree that we do not want to see a *directoire* developing in Europe.

We also look forward to the Convention, and not only the Council, putting forward its views on this.

Secondly, we must strengthen the Common Foreign and Security Policy, the question is how fast we can do this. First of all, even if we are not going to do this in the other pillars we must abolish the rotating presidency in the CFSP. We must strengthen the position of the High Representative and the coordination of that office with the Commission. More detailed strategic orientations are needed for the CFSP, and we must look at its budgetary provisions, which are currently extremely low, if we are serious about it. We must increase coordination across the different dimensions of EU international policy, some of us would go further and merge the three pillars.

In conclusion I would welcome the work and structure of the Convention and the opportunity to address you here today. We are ready to contribute our expertise to your work and to your working groups. In that regard I would make one call to the Convention: you are meeting here today in the open, in public, in consultation with us: we hope you will do the same with your working groups.

1-062

EN

Crossick (NGO-ACAD). – Mr President, in three minutes I cannot do justice to the extensive work which the European Policy Centre is carrying out on the Convention, but you would not want me to, it is all on our website and on display outside.

I wish to focus on one issue, the appointment of the President of the Commission: a point which was made by the preceding speaker and which I would like to develop further. We believe it essential that the Commission President has a democratic mandate. At the same time, we believe it essential that there should be a development of true European politics, as the Union progresses from a diplomatic towards a democratic polity. This belief is independent of reform of the presidency of the European Council or of the Council.

As the Seville discussions showed, the more you look at these presidencies, the more problems arise. We do not see the leadership of the Commission and the leadership of the European Council as an "either/or" battle. We need both strong European Council leadership and strong Commission leadership and therefore feel that both should be strengthened in the forthcoming ITC.

If we are to achieve political legitimacy for the European Union; if we are to persuade our citizens to buy into the process; the European Union must be politicised. We must have truly European political parties built on real policy alternatives. Voters must be given the choice between different visions of Europe and between different leaders and teams. This holds true whatever the issues being addressed. Our recommendation, therefore, is that European political groups nominate their candidates for the Commission presidency before the European Parliament elections, that Parliament elects the President from among those nominated and that the European Council confirms the appointment by qualified majority voting.

We understand the possible concern about the Commission being politicised. In our opinion, there is no other way to deliver both democracy and legitimacy. Although this procedure legally requires a treaty amendment, the system could in practice be introduced for the 2004 elections were the European Council and Parliament to agree.

I wish you every success in the critically important task that lies ahead of you.

1-063

FR

Joannin (NGO-ACAD). – Nous sommes ici finalement pour continuer cette formidable aventure qu'a lancée le président Robert Schuman le neuf mai mi neuf cent cinquante. Imaginer l'Europe du vingt et unième siècle, c'est bien sûr réussir l'élargissement mais c'est aussi répondre aux interrogations que formulent les Européens face aux nouveaux défis qui nous sont posés. C'est, enfin, donner un visage et des institutions à notre Europe. C'est la raison pour laquelle je souhaiterais que vous soyez le plus ambitieux possible. Offrez une vraie Constitution à l'Europe, un vrai texte fondateur qui à la fois rappelle les grands principes de civilisation que nous partageons, et permet de régler le fonctionnement harmonieux de l'Union. Il ne faut pas seulement un Traité de plus, qui ne susciterait que la molle adhésion des Européens mais une vraie Constitution qui déterminerait les compétences que l'Union doit absolument assumer et celles qui doivent être exercés au plus près des citoyens pas forcément par l'Etat, mais éventuellement par des collectivités encore plus proches d'eux.

En matière économique, on pourrait imaginer une Union qui se doterait de prérogatives essentielles à la préparation de l'avenir dans le domaine de l'utilisation des nouvelles technologies, de la recherche ou de la biotechnologie. En effet, il s'agit là de choses que les citoyens comprennent et désirent. Ils voient bien que l'Europe a du retard. Tout ce qui concerne le long terme doit être partagé au niveau de l'Union et confié à ses soins. Et pour cela, l'Europe doit disposer d'un budget beaucoup plus important. C'est alors seulement que pourront être traités les grandes questions sociales.

En matière culturelle, il faut favoriser l'Europe des réseaux, faire que les Européens se comprennent mieux et se connaissent mieux entre eux, et surtout avoir la capacité de lancer, dans la durée, une vraie politique culturelle d'aide et de soutien à la création. En effet, l'Europe est avant tout un continent de cultures.

Enfin, dans le domaine politique, quel est le projet de l'Europe? Quels sont les objectifs que nous poursuivons et qui nous imposent de nous unir? Comme au premier jour, la paix et la sécurité sont gages de la prospérité. Il faut assurer en outre la sécurité extérieure et intérieure de l'Union. Selon moi, les gens sont prêts désormais à l'accepter mais il convient d'aller plus loin que ce qu'on a fait jusqu'à présent. En effet, nous n'avons pas peur de dire que nous souhaitons une Europe fédérale, dont le principe est de permettre à la diversité de s'unir pour obtenir l'efficacité. Nous souhaitons un Parlement plus proche de ses électeurs, une deuxième chambre qui représente les Etats, quelle qu'en soit la composition, et un vrai gouvernement, responsable et accessible.

Mesdames et Messieurs les Conventionnels, vous avez reçu un très large mandat. Ne décevez pas les Européens. Il faut être très ambitieux. Les véritables novations constitutionnelles ont toujours été le fruit du travail inspiré et volontaire d'hommes et de femmes qui se sont placés au-dessus des simples contingences politiques du moment. Les Américains de Philadelphie n'ont pas hésité à le faire, et personne ne le leur a reproché. Les citoyens européens sont beaucoup plus favorables à la construction européenne qu'on ne l'avoue généralement. Ils veulent plus d'Europe, et sont plus Européens que leurs dirigeants. Ils savent que l'échelon communautaire est bien plus approprié que celui des Etats pour mener à bien certaines tâches. Alors dans votre ambition et vos audaces, Messieurs les Conventionnels ou Mesdames les Conventionnelles, vous ne devez penser qu'au jugement de l'histoire. Nous sommes avec vous et à vos côtés dans cette noble mission.

1-064

EN

Rodota (NGO-ACAD). – Mr President, as Director-General of the European Space Agency, I am representing EIROForum (European Intergovernmental Research Organisations Forum), the association of European intergovernmental research organisations set up in line with the "European Research Area" initiative launched by the Commissioner responsible for research, Philippe Busquin. It comprises seven institutions, each of which has its own research centre, or places first class facilities at the disposal of European scientists.

These institutions are: ESA (European Space Agency), CERN (European Organisation for Nuclear Research), ESO (European Southern Observatory), EMBL (European Molecular Biology Laboratory), EFDA (European Fusion Development Agreement), ESRF (European Synchrotron Radiation Facility) and finally ILL (Institute Laue-Langevin).

Each of the EIROForum member organisations, by European and global standards, is indisputably a centre of excellence in its own field.

EIROForum seeks to mobilise the collective experience of its member organisations in fundamental research and management of large international projects for the benefit of European research, doing so in cooperation with industry. In addressing the Convention, EIROForum confirms its complete support of the Presidency Conclusions of the Barcelona European Council, which set an objective to raise expenditure on research to 3% of the GDP of all Member States by 2010.

EIROForum trusts that the EU will confirm its commitment to European scientific research in particular, by broadening the scope of the relevant title, especially with regard to the objectives defined in Article 163.

EIROForum proposes to establish permanent relations between the Community and each of the EIROForum member organisations so that the Community will be able to take part in preparation of its members' activities which have a bearing on Community policies.

EIROForum requests, on behalf of its member organisations, a right of direct access to the institutions of the European Union so that they may support the adoption of legislative or regulatory measures, consistent with the policies of the EU, which would be useful or necessary to implement initiatives that such organisations may wish to pursue.

1-065

ES

Freixes (NGO-ACAD). - Señor Presidente, señoras y señores, la Red Ciudadanas de Europa acoge con gran satisfacción e interés la oportunidad de participar en la consulta de la Convención Europea. La Red ha advertido en diferentes ocasiones del déficit democrático que supone la ausencia de equilibrio de género en la composición de la Convención. Desde la Red consideramos que, en este proceso tan importante para el futuro de una Europa ampliada, no se pueden realizar sólo cambios formales en los Tratados para definir mejor las competencias y adaptar las instituciones a las nuevas necesidades, sino que se tienen que sentar las bases para una Europa más fuerte, más democrática, más libre y con una calidad de género adecuada.

Para ello, proponemos que el *mainstreaming* de género o transversalidad de la igualdad, reconocido ya en los artículos 2 y 3 del Tratado de la Comunidad Europea, dentro del respeto al acervo comunitario, esté presente en todas las políticas de la Unión, como fin y como medio. La Red exhorta a la Convención a que adopte un enfoque de *mainstreaming* de género en sus propios trabajos y a que introduzca la evaluación del impacto de género en sus decisiones.

En aplicación del acervo comunitario sobre igualdad de oportunidades, las nuevas instituciones de la Unión han de incorporar el principio de la representación equilibrada en los procesos de toma de decisiones. Para ello, el Parlamento Europeo debe ser elegido mediante un sistema electoral que incorpore la representación equilibrada como uno de los principios fundamentales a respetar en su configuración.

La Comisión Europea debería cambiar la ubicación de los órganos responsables de la política de igualdad creando una Dirección General de Igualdad integrada directamente en la Presidencia de la Comisión y transversal al resto de direcciones generales. Y la institución del Defensor del Pueblo debería ser reforzada con mejores instrumentos de protección de los derechos, nombrándose un defensor o defensora adjunto especializado en género.

Las políticas de la Unión también deben incorporar la necesaria calidad de género en sus contenidos. Para ello es necesario que se introduzca en el Tratado constitucional un título específico sobre la igualdad de oportunidades y, además, sería también necesario crear, con base constitucional, un observatorio de género como órgano independiente para hacer el seguimiento de las políticas de igualdad en el ámbito de la Unión Europea.

Por otra parte, consideramos que la Carta de los Derechos Fundamentales debe ser incluida en los textos constitucionales de la Unión, con respeto total del acervo comunitario y de la jurisprudencia del Tribunal de Justicia en materia de igualdad de oportunidades.

Por último, como fundadoras e integrantes de la Red Euromed de Mujeres, consideramos que la Unión debe condicionar sus relaciones con terceros países al respeto de los derechos fundamentales, incluyendo los derechos de las mujeres como parte indivisible de los derechos humanos universales. Europa ha de constituir un referente de calidad política en el orden internacional. El proceso de constitucionalización está siendo seguido con gran atención tanto en los países candidatos a la ampliación como en otros continentes, que esperan encontrar en el ejemplo europeo los modelos de legitimidad, igualdad, libertad, justicia social y calidad de género. Instamos a la Convención a que no defraude las expectativas abiertas por este proceso.

1-066

EN

Lorant (NGO-ACAD). – Mr President, the candidate countries and their one hundred million citizens look at membership of the EU with hopes and with fears. With hopes that they will be part of a strong, democratic and developing community that helps the development of their nations. With fears that their economies will have to face the competition of much stronger forces and their sovereignty and national identity might be eroded.

To find a political and economic solution that is advantageous for the west and helps the development of the east is a great challenge for the Convention. To unite the technological knowledge of the west with the natural and human resources of the east provides us with good possibilities for cooperation.

The common values we share might be the solid basis for this cooperation. According to a poll carried out by Hungarian civil society organisations and a think tank named ECOSTAT, the Hungarian civil society groups share almost the same values as their western counterparts.

For instance, the great majority of these organisations in the west and the east believe that the new Europe should be built on the principles of democracy and solidarity. Instead of the free market economy, a socially responsible market economy would be in

concordance with European values and should be the basis for a common European identity.

These civil organisations are aware that a common Europe has the capacity to defend the social market economy as its own model of development against the uncontrollable forces of globalisation and can present it to the less developed countries as a successful way of pursuing lasting progress.

It turned out from our poll, and it was somewhat of a surprise, that two-thirds of the respondents were ready to sacrifice 1% to 5% of their income to help the progress of the less developed nations of south-east Europe. I do not believe that the feeling of solidarity is weaker in the west. To create pan-European solidarity, we need common goals, common visions that touch the heart of the people, that are worth fighting for.

Many say, and this also came out of our poll, that Europeans need a single voice. In order to have a single voice, we first need a common awareness. To reach a common awareness, we need a common broadcasting system without the distortions created by profit-seeking interests. We need some kind of "Voice of Europe" which, on the basis of the values we share, gives us information about each other's lives, about our joy and sadness, about our hopes and fears.

Half a century ago, Jean Monnet and Robert Schuman were able to show a road, a programme for peaceful cooperation between nations that were enemies a few years earlier. This was an innovation.

After 50 years of separation, bringing together nations from the two parts of Europe now requires innovation, a new approach that ensures another 50 years of peace and prosperity.

1-067

FR

Le Président. – Ceci termine les interventions pour ce groupe. J'ai cinq inscriptions de membres de la Convention ainsi que deux cartes bleues.

1-068

EN

Attalidis (Gouv.-CY). – Mr President, I would say that in order for this Convention to be successful it has to do many things, and these surely include the two following elements, in which universities and think tanks can have an important contribution.

The first is that the Convention has to bear clearly in mind the wishes of European citizens. Many in the Convention have spoken of this need, to bear in mind what European citizens think about the European Union, what they are satisfied and dissatisfied about and what their concerns for the future are. Academic institutions and think tanks have contributed to our knowledge about this, and it would be very useful if we had their scientific input on a continuing basis about these issues. Some in the Convention have mentioned a referendum, but there are also other less dramatic but scientific methods which could be used.

Another prerequisite for the success of the Convention is the generation of ideas which contribute to better functioning of the institutions, greater effectiveness, greater democracy and legitimacy of the European Union.

Again, university institutions and think tanks have a great deal to contribute. We have heard many useful suggestions from the eight representatives here this evening. It would be useful if we could find a way for the continuing association of universities and think tanks with the Convention. Their continuing contribution could be very useful.

1-069

EN

Duff (PE). – Mr President, it is a curious feature of European integration that many of those who practise it really wish to be scholars, and many of those who study it actually wish to practise it. The result of that cross-dressing makes the academic study of European integration extremely sharp and rich. If there is a central intellectual problem that we face, and I would appeal for assistance from my scholar friends here, that problem is to define precisely where the executive authority lies inside the Union and to clarify precisely its dual nature. One subject which should be more of a focus for enquiry than it is at present is the strange creature of the European Council, which has become slightly stranger since the Seville Summit.

I would ask that what we say and propose be subjected to strong criticism. Our contributions require strong critique so that we are forced to think and speak more clearly.

Finally, please stimulate the debate within universities and call on us to assist you in fomenting a clear, critical appraisal of all the issues in front of us.

1-070

EN

Hübner (Gouv.-PL). – Mr President, my brief comments might be slightly biased by the fact that I do not only represent the government of Poland but also come from the academic community. That, however, is not the only reason I highly value the role of the academic community in shaping European integration and the future of Europe.

We had started to work hand in hand with the academic community on the future of Europe long before the Convention was launched. Our transition, our association process, our accession process, and now our Convention process are living examples of close cooperation, shared responsibility and the shared role between the political and academic communities. What academia brings are, firstly, fresh and visionary ideas, which are currently lacking. It also puts an end to political correctness - of which there is too much at the moment. Academia also gives us the chance to think the unthinkable and then to make it happen.

My main message today, however, would be that the academic community is not only an expert, it is not only a think tank. It is also an essential educator and its role, therefore, is also to present the European project to young European citizens in such a way that they do not see it as cast in stone by us, but rather as a living project. It is also important that they see the reformed European Union as a project which they will take over from us, not just to implement but also to continue.

1-071

IT

Muscardini (PE). - Signor Presidente, il mondo accademico dalla sua nascita ha rappresentato la cultura nel suo aspetto più ampio, e oggi la cultura europea non è la somma pedissequa delle culture e delle tradizioni nazionali ma l'insieme di queste culture che contribuiscono a mettere a confronto esperienze e speranze e costituiscono quel valore aggiunto che è e sarà la cultura europea di questo terzo millennio. Per questo motivo riteniamo fondamentale che il rapporto tra Istituzioni europee ed ambienti accademici diventi sempre più forte e coordinato. Il mondo della ricerca lamenta che a questo settore l'Europa non abbia dato sufficiente attenzione politica ed economica e anche questo è un problema che la Convenzione deve affrontare. La Convenzione che definirà, per quanto le compete, i nuovi compiti per le Istituzioni europee e la nuova Europa che designerà il futuro di milioni di cittadini che chiedono più informazione, più consultazione e confronto, maggiore partecipazione, dovrà affrontare e risolvere il problema di dare una maggiore attenzione alla ricerca scientifica, la quale, a sua volta, dovrà rispondere a esigenze etiche: la scienza non può stravolgere le leggi di natura al punto da creare forme di vita diverse da quelle esistenti.

La nuova Europa dovrà avere un rapporto istituzionale con il mondo accademico affinché la ricerca e la conoscenza, che nelle loro forme più variegata sono indiscutibile mezzo di unione e comprensione reciproca, abbiano la stessa attenzione che dedichiamo all'economia e alla finanza. La cultura della politica e la politica della cultura, dunque, per ridare fiducia ai giovani: il loro distacco dalla politica, infatti, è il segno più evidente del distacco della politica dalla società. Con un rapporto più stretto tra Europa e università, tra Istituzioni europee e centri di elaborazione del pensiero, di analisi della realtà, di studio del futuro, potremo ridare segnali chiari e progetti attuabili ai cittadini, sia dell'Unione sia dei paesi ai quali ci rivolgiamo, per contribuire a migliorare le condizioni di vita e le condizioni sociali.

1-072

EN

Serracino-Ingloft (Gouv.-MT). – Mr President, academics are often accused of narcissism, but I do not think that today's speakers have displayed too pronounced a tendency towards self-contemplation. Yet their specific role in the governance of Europe surely deserves a lot more attention than it has received. We are now recognising that there is a very special role to be fulfilled by wise men in the variable workings of democracy. Indeed, a role similar to that of the elders in kinship-based societies is now appearing to be taken up by think tanks. Many democracies, such as the United Kingdom, have institutions like the House of Lords which are now almost exclusively restricted to fulfilling this function. Many other democracies have sought to give places in their senates and other upper chambers to experts, in virtue of their expertise.

In the Working Group on Subsidiarity, to which I belong, we call upon experts to advise us. In the Convention as a whole we have not yet given sufficient attention to the best way of integrating experts into the European political network.

Our best academics and think tanks have chosen not to highlight self-description in their contribution, rather, they have exemplified what they can do by their contributions. It may have been noticed that, on behalf of the Government of Malta, I have been modestly promoting here the model of Network Europe.

1-073

FR

Duhamel (PE). – Merci Monsieur le Président, et surtout merci à mes amis universitaires d'avoir ramené un peu de passion dans nos débats. Très franchement, la jeunesse de Jean-Victor Louis fait plaisir à entendre, sans compter Florence Deloche, Stanley Crossick, Pascal Joannin etc. Je crois que deux mille trois peut être l'année de toutes les espérances, avec la réunification de l'Europe et avec, je l'espère, le Traité constitutionnel que nous proposerons. Mais deux mille quatre risque d'être l'année de tous les dangers parce que,

forcément, l'un ou l'autre de ces thèmes seront soumis dans beaucoup de pays à référendum, et cela sera une nouvelle occasion pour les populistes de se soulever une fois de plus contre l'Europe. Afin d'éviter cela, nous avons besoin de nos amis universitaires. Les universitaires sont les professeurs, les professeurs sont les étudiants, les étudiants sont les jeunes. Ce sont ceux qui veulent l'Europe et ce sont ceux pour lesquels nous faisons l'Europe. Par conséquent, je propose que ce groupe de contact continue à travailler, se mette en relation avec l'Institut universitaire européen de Florence afin de lui demander de nous préparer des documents techniques utiles notamment sur la simplification, le Président de notre Convention insiste là-dessus à juste titre. Nous lui demanderons également des propositions terminologiques et des propositions d'éléments de Traité non plus à droit constant mais en fonction de l'évolution de travaux de la convention. Ce serait une manière de continuer avec eux les grandes batailles de demain. Merci.

1-074

ES

Carnero González (PE). - Señor Presidente, la igualdad entre el hombre y la mujer es efectivamente, y al mismo tiempo, un principio, un objetivo y una misión de la Unión Europea. Por eso, quiero subrayar la importancia de las palabras pronunciadas por D^a. Teresa Freixes, en nombre de la Red Ciudadanas de Europa, exigiendo dos cosas esencialmente a nuestro trabajo. La primera, que en la propuesta de constitución europea que hagamos se incluya una base jurídica que haga de la política en favor de la plena igualdad entre el hombre y la mujer algo presente y primordial en todas las actuaciones de la Unión. Y la segunda cuestión, que los órganos de la Unión estén constituidos paritariamente: 50% mujeres, 50% hombres.

Si ese mensaje se transmite en nuestra propuesta constitucional, estoy seguro que, desde luego, ese 51% de europeas que esperan algo de nuestros trabajos van a apoyarnos.

1-075

IT

Spini (Parl.-IT). - Signor Presidente, vorrei esprimere anch'io tutto il mio apprezzamento per questo gruppo di contatto, per il lavoro fatto dal Vicepresidente Amato e dagli altri professori che sono intervenuti. Oggi il signor Haider parla della nostra Convenzione, su un giornale, in questi termini: "La Convenzione europea mi sembra una terapia occupazionale per politici disoccupati". Be', se non altro, diamo occupazione anche a un po' di accademici e quindi ci possiamo consolare.

Mi limiterò a tre soli punti: sul *referendum* io sono favorevole, però lo vedrei dopo la Conferenza intergovernativa, perché altrimenti rischierebbe di essere un elemento di disturbo, dato che dobbiamo mandare alla Conferenza intergovernativa un testo forte. Mettere quindi la Conferenza intergovernativa fra la nostra deliberazione e il *referendum*. Quale secondo punto, sono molto favorevole al manifesto diretto potenzialmente ai quattordici milioni di studenti universitari europei, che sono la classe dirigente di domani. Questo sarebbe un punto molto importante. Il resto lo lascio alla prossima domanda.

1-076

EN

Kirkhope (PE). – Mr President, reference was made earlier to academics simplifying matters. My experience of academics over the years has shown that this has not always been their major priority, but I welcome that. I believe that their work is complementary to those of us who are politicians and whose job it is to simplify matters for those we hope will vote for us.

I am looking optimistically at the work of the academics and I hope we will continue to use them to bring about some objectivity from time to time, some innovation and indeed some vision. I have not heard too much of that today, but I am hopeful that if we continue to have them on board in a complementary way, the Convention will be very well served by their contribution. I therefore support the calls for academics to remain with us in some capacity, but maintain that we should use them in the way that academics have always been used: for those roles that I have mentioned.

1-077

FR

Giscard d'Estaing (Président). – Chers collègues, j'ai levé mon carton bleu parce que voulais dire deux choses à Madame Gaudes à la suite de son intervention. Tout d'abord, elle a, en effet, publié une étude très intéressante sur le fonctionnement de la Convention précédente, qui était celle présidée par le Président Roman Herzog, laquelle a abouti à la Charte des Droits Fondamentaux. Je l'ai étudiée avant que nous débutions nos propres travaux afin de voir dans quelle mesure il y avait analogie et dans quelle mesure nous pouvions utiliser la même méthode. La différence, et Monsieur Vitorino le sait, c'est qu'il y avait un seul sujet, et qu'en réalité il y avait déjà des textes écrits et qu'il fallait donc faire la synthèse ou trouver les éléments communs de ces textes écrits. Dans la présente Convention, nous avons beaucoup de sujets. En outre, il va falloir inventer ou créer sur certains points des textes nouveaux. Nous ne pouvions donc pas prendre la même méthode. Pensez, par exemple, qu'à l'heure actuelle, nous n'avons pas encore parlé de politique internationale ni de politique de défense. Imaginez qu'il y a un mois et demi ou deux mois le bureau ait proposé un texte à la Convention. La convention se serait révoltée, et ce à juste titre. Notre méthode est l'itinération, c'est à dire que nous avançons bloc par bloc. Nous étudions des sujets et lorsque nous voyons que nous ne les connaissons pas suffisamment, nous créons des groupes de

travail jusqu'à ce que nous ayons les éléments qui nous permette de construire la pyramide. Mais la pyramide, Madame Gaudet, nous réussirons à la construire. Ensuite, vous avez raison lorsque vous parlez d'absence de notoriété ou de communication. C'est un problème de société médiatique. Nos travaux sont un peu arides, à moins que nous organisions des séances d'affrontement au sein de la Convention. Si c'était utile, certains des Conventionnels s'y prêteraient volontiers d'ailleurs. Toutefois, quand nous formulerons des propositions, il est probable que le débat sera plus communicant que cette phase qui est une phase d'écoute. Mais cette phase d'écoute, et vous, membres de la société académique européenne, en êtes tous témoins, nous la menons avec le plus grand soin, la plus grande attention et le plus grand respect possible.

1-078

EN

Birzniece (Parl.-LV). – Mr President, this is how we in Latvia see the national debate on the future of Europe: "all year round I gather songs waiting for midsummer night; midsummer night is here at last, and it is time to sing all the songs!" This is one of the folk songs sung by Latvians around the world last night and this morning. Today is the most popular Latvian holiday: the summer solstice, midsummer night. The sun has reached its highest point, and we all participate in the annual wedding of the sky father and earth mother.

But how does this legend from south western Latvia relate to Latvia's national debate about the future of Europe? Regardless of the forum for this national debate in Latvia - it might involve casual debates about Latvia and the EU by two people at the local public house or at the dinner table - which is formally organised through the National Convention, the most common topic and issue discussed is the impact of the EU on the Latvian national identity.

The Latvian Government and the NGO European movement in Latvia organised and held their first meeting of the Latvian National Convention on the future EU on 9 May, Europe Day. This meeting in Riga was co-chaired by the prime minister and the president of the European movement in Latvia and was broadcast live on Latvian state radio, with over 200 participants from different social groups and regions of Latvia attending.

While the Convention is focusing on the future EU in five, ten or 20 years from today, most of the Latvian public is concerned about debating the immediate future relations between Latvia and the EU, and especially the potential EU Member States. The first official meeting of the National Convention in Latvia became a discussion about the concerns, benefits and drawbacks of EU membership for Latvia.

Currently the Latvian National Convention is creating six working groups to parallel the existing working groups of the EU Convention. We are looking for the mythical "blooming fern" at midsummer night, and we hope that this will be a valuable asset for the future of the EU.

1-079

DA

Borgere og institutioner

DE

Bürger und Institutionen

EL

Πολίτες και Θεσμικά Όργανα

EN

Citizens and Institutions

ES

Ciudadanos e instituciones

FR

Citoyens et Institutions

IT

Cittadini e istituzioni

NL

Burgers en instellingen

PT

Cidadãos e Instituições

FI

Kansalaiset ja toimielimet

SV

Medborgarna och institutionerna

1-080

FR

Le Président. – Nous en arrivons au dernier groupe pour ce soir. Ce dernier a été constitué en plus de ce que le Président m'avait proposé à l'origine. C'est un groupe qui s'est surtout occupé de la participation des citoyens dans les institutions et que j'ai moi-même présidé. Nous avons eu beaucoup de participants et ils se sont surtout groupés autour de suggestions concernant les institutions d'une part et concernant la citoyenneté et la démocratie participative d'autre part. Vous pourrez prendre connaissance de leurs suggestions dans la note de synthèse qui vous a été remise. Les cinq porte-parole sont répartis entre d'une part, ceux qui mettront plus l'accent sur la problématique des institutions et d'autre part, ceux qui mettront plus l'accent sur la participation du citoyen.

1-081

FR

Herman (NGO-CITI/INST). – Président, Mesdames et Messieurs conventionnels, cet après-midi, vous avez longuement entendu divers représentants de la société civile. Ils ont exposé ce qu'ils attendaient de l'Europe. Ces attentes sont nombreuses et pressantes. Nous partageons la plupart d'entre elles mais la douzaine de mouvements européens, couvrant pratiquement tous les pays, au nom desquels je m'adresse à vous, sont avant tout préoccupés par la capacité des institutions à réaliser ces attentes. En effet, rien ne serait plus néfaste, et pour l'Europe et pour la démocratie, qu'une proclamation répétée d'ambitions élevées, sans réalisation concrète. Si le triangle institutionnel Commission, Parlement, Conseil a pu, dans sa configuration actuelle, réaliser l'Union monétaire, l'Union douanière, le marché intérieur et, finalement, l'Union monétaire, c'est qu'il s'agissait avant tout d'établir des règles communes, c'est-à-dire faire oeuvre législative ou réglementaire. Avec l'Union monétaire et surtout l'Union politique et ses ambitions internationales, nous aurons beaucoup plus besoin d'actions que de législations. C'est pourquoi il nous faut renforcer la fonction exécutive de cet ensemble. En d'autres termes, il faut à l'Europe un gouvernement.

Les citoyens en expriment l'aspiration, beaucoup plus que leurs dirigeants. Ce gouvernement ne pourra jamais être le Conseil, et ce pour quatre raisons très simples. Premièrement, gouverner une des plus grandes puissances commerciales et financières du monde est devenu aujourd'hui une fonction à temps plein qui ne peut plus être exercée à titre subsidiaire quelques heures par mois par des personnes totalement absorbées par la gestion de leur pays. Deuxièmement, les membres du Conseil sont élus ou désignés pour défendre l'intérêt national et non l'intérêt européen. Ainsi, ils n'hésitent jamais à sacrifier celui-ci au profit de celui-là et ils se chargent d'en faire la démonstration tous les jours, et pas plus tard que ce week-end, à Séville. Troisièmement, responsables devant leur Parlement national, ils ne seront jamais sanctionnés pour n'avoir pas bien servis l'intérêt commun. Ils n'ont aucun compte à rendre devant les représentants élus des citoyens européens. En effet, en matière européenne, ils sont démocratiquement irresponsables. Quatrièmement, bien que composé dans chacun de leur pays de personnes très fortes, le Conseil est la plus faible des institutions car divisé sur la plupart des questions. Un attelage composé de chevaux vigoureux mais tirant dans des directions opposées, nous mènera beaucoup moins loin qu'un attelage de rossinantes faméliques tirant dans la même direction. Parce qu'elle est juridiquement indépendante vis-à-vis des gouvernements et politiquement responsable devant le Parlement qui peut la censurer, la Commission a pour vocation de devenir le gouvernement de l'Europe. Mais pour pouvoir rester efficace et continuer à voter pour décider, le collège ne devrait pas compter plus de membres qu'il n'y a de portefeuilles à pourvoir, c'est-à-dire, entre douze et quinze maximum. Un système de rotation donnant à chaque Etat membre un droit égal à proposer un commissaire, devrait permettre de respecter le principe de l'égalité des Etats. La légitimité de cet exécutif, serait encore renforcée par l'élection de son Président par le Parlement européen qui, pour cette occasion, et dans un premier temps, fonctionnerait comme un collège de grands électeurs. Ultérieurement, on pourrait envisager une élection directe.

En ce qui concerne la fonction législative, il convient de généraliser la co-décision Parlement - Conseil. Celui-ci votant toujours à la double majorité, majorité des Etats, à condition qu'il représente la majorité des citoyens. C'est clair, tout le monde peut comprendre ça mais ce n'est pas le système actuel. En ce qui concerne la répartition des compétences, nous nous rangeons derrière le rapport Lamassoure et pour ce qui est de la politique extérieure, derrière les propositions de la Commission. Pour la simplification et surtout la lisibilité du système, il convient de mettre fin à la coexistence des trois piliers avec pour seule dérogation les problèmes de défense militaire où la méthode intergouvernementale et la collaboration renforcée resteront de mise encore un certain temps. Dès sa création, la CEE disposait d'une personnalité juridique au plan international. Il serait incroyable que l'Union, qui était supposée faire accomplir

à l'Europe un pas en avant dans l'intégration, en soit privée, ce qui l'empêche d'agir modu proprio dans tous les domaines du second et du troisième pilier, dès qu'il s'agit de relations avec les tiers. Il convient également de revoir la procédure de modification du Traité constitutionnel. En bonne démocratie, il est impensable, voire insupportable que la volonté des représentants de trois cent ou quatre cent millions d'habitants puisse être tenue en échec par un ou deux pays qui représenteraient moins d'un million d'habitants. A la question de savoir s'il convient de faire ratifier par voix de référendum le résultat des travaux de la Convention, les mouvements que je représente se montrent perplexes. Toutefois, tous sont d'accord pour que l'Europe favorise, par tous les moyens, non seulement la consultation, mais aussi l'implication des citoyens et des représentants de la société civile dans la formulation des normes et des décisions européennes.

1-082

EN

Weston (NGO-CITI/INST). – Mr President, I speak on behalf of the Youth Contact Group on the Convention. This is a platform which brings together all the major European youth transnational political parties plus a number of other young organisations from across the European continent. These organisations represent millions of young people across the continent, all members of the European Youth Forum.

Involving young people in the construction of the future of Europe was one of the specific goals of the Laeken Declaration. Young people are not only important for Europeans' future, but they have an essential role to play in the debates of today. Youth organisations, active at the local, regional and national levels, can play an important role in stimulating debate and in promoting the concept of European citizenship.

Youth organisations are often uniquely able to reach and represent those from the most marginalised and excluded groups. They have also been at the forefront of the enlargement process, being among the first to integrate members from outside European Union Member States. They were among the first organisations to recognise the appeal of the European ideal to young people in these countries.

It is often said that young people are not interested in politics. We do not believe this is true. This year on 9 May, Europe Day, hundreds of young people in hundreds of cities around the continent celebrated the European ideal. This clearly shows that young people are interested in Europe's future.

This common European future cannot be based on secretive horse-trading if it is to attract the loyalty and affection of its young citizens. It cannot be a Europe which substitutes diplomatic talking shops for genuine democratic accountability. It must be a Europe which offers a vision of a united and democratic future, one which offers accessible government to its citizens and has the instruments and legitimacy to meet their expectations.

These goals can only be achieved if the Convention rises to the challenge facing it today and drafts a constitution with our common European rights and values at its heart. This constitution should define the fundamental rights of EU citizens, the distribution of competences between the European and national levels and the role and powers of the European institutions. We believe that only a federal constitution can reconcile the need for effective government with protecting the fundamental principles of democracy, subsidiarity and respect for diversity. The Charter of Fundamental Rights must lie at the centre of this constitution. Effective and democratic governance also requires simplified and accountable decision-making. The exclusion of Parliament from areas of European policy-making and the Council's law-making behind closed doors can have no place in a democratic European Union.

Instead, a reformed Council representing the Member States should act in co-decision with the Parliament in all areas. Lastly, a strong Commission able to defend the European interest and accountable to the European Parliament must become the executive of the European Union.

These reforms will provide the European Union with the basic tools of democracy and will enable it to deal effectively with the challenges of today and the opportunities of tomorrow. If they are to seize these opportunities, young people and youth organisations need support. Youth work has a huge importance in engaging young citizens and in building European awareness.

The future constitution should therefore include an article which gives a strong legal basis to European Union measures in the field of youth work, contributing to bringing Europe closer to its young citizens. The Europe that we are building today should not only be a Europe of the elite, of specialists and think tanks and bureaucrats and distant institutions, Europe must have something to offer its young citizens - not only economic opportunities and a chance for greater prosperity but hope and inspiration, a common vision of a Europe united according to the rule of law which can deliver peace and stability and can protect our shared values.

The beginning of European integration in the 1950's offered the young people of six countries this hope. It has given hope to generations of young people for a better future. It is the responsibility of the Convention to ensure that the European Union, for which it is laying the foundations today, can offer the same assurance to all the young European people of the future. Do not let us down!

(Applause)

1-083

EN

Roffiaen (NGO-CITI/INST). – Mr President, I speak on behalf of the Contact Group Citizens and Institutions, rather than my own organisation. I will not list our group members because the problem of the representativeness of NGOs cannot be limited to the number of their members. We sincerely hope that the dialogue between civil society and the Convention will be a model for relations between civil society and all the European institutions. Above all, it should be a real dialogue, which means that the major proposals presented during these two days should be discussed in the forthcoming plenary sessions of the Convention and/or by the working groups.

As regards the text itself, we expect a real proposal for a constitution and not only a reorganisation or simplification of the existing Treaties.

I will summarise our main proposals in three points. The promotion of a representative, participatory democracy based on parity; the need to found a new European social contract; and the need to submit the future constitution to a European referendum.

The first objective identified by the Laeken Declaration is to bring the institutions closer to citizens, increasing in particular the democratic legitimacy and the transparency of the institutions. This legitimacy can only derive from a representative, participatory democracy based on parity. I will not speak about parity because others are dealing with this topic. As regards representative democracy, I will stress three points: the increase in the European Parliament's powers, the reinforcement of the accountability of the Commission and the development of the majority rule as regards the Council's decisions.

However, a strong democracy today cannot only be representative, it also needs to be participatory. While political participation is decreasing, the active participation of citizens in civil society is increasing. This phenomenon cannot be ignored. The role of civil society, as a voluntary association advocating grass root initiatives and so on, in European policy-making must be redefined according to the principle of horizontal subsidiarity. This principle refers to the relationship between the members of civil society and the European Union, just as the principle of vertical subsidiarity relates to the relationship between the Member States and the European institutions. It means that the initiative of citizens in the general interest must be supported, as well as partnership between civil society and institutions. It also means that citizens must be involved at each step of the policy-making process, like agenda setting, policy planning and decision-making, implementation of policies and the evaluation of the result of these policies.

As regards a social contract, the fulfilment of several objectives of the EU, such as economic and social progress, high levels of employment and social protection and balanced and sustainable development are presently in doubt because of phenomena such as poverty and exclusion. The development of solidarity must be one of the priorities of the EU, especially in the context of enlargement. It is fundamental to avoid extension of the EU from 15 to 25 Member States resulting in a reduction of the European objectives to the lowest common denominator.

One way to avoid this risk is to guarantee access for all citizens to services of general interest, in order to develop economic, social and territorial cohesion. Moreover, the participation of citizens in the management and functioning of these services must be encouraged in application of the principle of horizontal subsidiarity.

Lastly, the future constitution should define the modalities of public authority intervention for the organisation, financing and the evaluation of the services of public interest.

As regards the European referendum, the submission of the future constitution to a referendum would certainly be the best way to increase the legitimacy of the European institutions and to bring them closer to citizens. The project drafted by the constitution should include an article providing that the final text of the constitution is to be submitted to a Europe-wide referendum, including the future Member States. In our opinion, such a prospect would induce the Convention to draft a simple, brief and easily understandable text, which would be a great advantage. Moreover, it would make it essential to increase and improve information to citizens, and that is crucial to prevent this Convention being yet another wasted opportunity.

1-084

EN

Krzeczunowicz (NGO-CITI/INST). – Mr President, the task of this Convention is not only to provide answers to the questions raised in the Laeken Declaration and the expectations of its citizens, although you know better than most just how enormous a task that represents. This Convention should and must move the European Union and the wider Europe represented here away from the reactive, fearful approach to the future which is increasingly apparent in our respective national politics.

To do this, the Convention must first reaffirm the primacy of solidarity in the thinking and actions that lie at the basis of the Union's construction. This principle of solidarity has many facets in each of our countries. It must be evident for those who are underprivileged, poor or under-educated within the European Union. It must shine through efforts to bring about cohesion for the less developed regions, and underpin policies whose role will become even more positive with enlargement, especially if balanced with a greater focus on sustainable development. Beyond the borders of an enlarged Union, it has to develop an approach to the poorer nations that allows the citizens of those countries to achieve the peace and prosperity that the European Union has managed to provide for its own citizens.

In order to succeed, the involvement of citizens in ways complementary to the ballot box must be encouraged and supported. Often, there is incredulity expressed at the role of civil society and non-governmental organisations in the development of Europe. Who else but the citizens of Europe lay at the very beginnings of this Union? Who else but they came to be the prime movers of the revolutionary yet peaceful changes in Europe in 1989?

In Brussels and elsewhere, we often hear of the wall falling as though we were dealing with an error in architecture and poor building standards. The wall was pushed. These same citizens, organised in NGOs, have continued to push since 1989, be it through the development of our local government structures or through involvement in the enlargement debate.

The European Union at present provides for the inclusion of NGOs in its construction in an ill-defined, timorous way. There are positive examples, however, that can guide you in your work. Thus various actors, including NGOs, should be involved in the planning and monitoring of Structural Funds. No other single measure has done more to promote dialogue between civil society and our regional and local authorities in Poland. That simple requirement that decisions on a region's future are not made in Brussels, but via the opportunity provided by the European Union for a more inclusive approach, puts a stop to claims of democratic deficit.

Let us not delude ourselves by thinking that the disillusionment with politics so often decried when talking of the European institutions does not concern our national and local politics.

It is crucial for the Convention to set an example by inscribing a requirement for civil dialogue in the final document being considered here. It will allow for good practice at the European level to influence the development of democracy at the local and regional level. This defensive democracy must be put at the centre of your concerns for the future of Europe.

It may have been ticked off as fulfilled, as part of the Copenhagen requirements, but democracy needs continued support, be it in the applicant countries or in the Member States. Let this Convention begin the task of suffocating the egoism that is increasingly at the root of decision-making or rather the fear to make bold decisions. Let this Convention affirm that uncertainty and the fear of the future are not best tackled by selfish hunkering down within our own borders. The future is best faced through solidarity and not through selfishness. This solidarity is strong when civil dialogue is a firm element of European governance and supports the political process.

(Applause)

1-085

EN

Söderman (NGO-CITI/INST). – Mr President, the Treaty of Maastricht established the European Ombudsman to enhance relations between the citizens and the European Union, mainly by tackling maladministration in the Community institutions and bodies. Over almost seven years as European Ombudsman I had, by the beginning of this month, received a total of 10 000 complaints. It is difficult to explain in five minutes what I have done in seven years. The latest annual report will be published next week and detailed information of our work is available on our website. We will email all the organisations explaining how to access this material.

I would like to thank the institutions and bodies of the European Union for their cooperative attitude to the European Ombudsman's work and their will to correct maladministration when it occurs.

There has been real progress towards making citizenship of the European Union a reality. The right of public access to documents is embodied in a regulation. Fundamental rights are laid down in the Charter and the European code of good administrative behaviour was adopted by the European Parliament in September 2001. This code gives substance to the right to good administration in Article 41 of the Charter.

Some important problems, however, remain. First, my experience as European Ombudsman is that citizens do not know how to protect their Community law rights. This is not surprising because the Treaty says little about the remedies that they can use. Furthermore, national administrations do not always apply Community law correctly either because they do not know how to do so or because they do not feel that it is really a part of their law.

Over the past seven years, we have created a network of ombudsmen and similar bodies such as petition committees, but citizens do not seem to know how they can deal with Community law cases.

Next I would like to draw your attention to the Article 226 procedure, in which the Commission investigates complaints about infringements of Community law by Member States. Despite recent improvements, the procedure is secretive, the complainant is still not recognised as a participant and delays occur because the Commission has too many cases. Furthermore, the Charter is not yet fully effective in the institutions and bodies. Generally, politicians are committed to it, but the administration can be reluctant to follow their lead. The Charter has been proclaimed, but citizens have no idea if it will be applied in practice. Finally, the code of good administrative behaviour is not yet a European administrative law to be applied uniformly by the whole European administration.

I have some proposals for your consideration. First and foremost, the Treaty should contain a chapter of remedies; it should clearly set out the possibilities for judicial and non-judicial redress when Community law rights, including fundamental rights, are not respected. Access to courts is a fundamental remedy in a democracy governed by the rule of law. We should inform citizens about their right to

go to national courts to defend their rights under Community law. The important constitutional role of the European Court of Justice should be duly mentioned. The chapter should also make clear that the citizen has the right to petition the European Parliament about infringements of Community law by Member States. The Commission should have a duty to cooperate with the European Parliament in assuring that the complaint is examined using a fair procedure.

Many complaints about infringement could be effectively dealt with by a non-judicial remedy in the Member State. The chapter should therefore mention that citizens have the right to complain to an ombudsman or a similar body in each Member State. The European Ombudsman is willing to provide assistance and, if necessary, to deal with cases of principle involving fundamental rights, assuming that the chapter will be made binding whenever Community law is being applied.

The European Ombudsman could be responsible for referring cases, where a fundamental right is at stake, to the European Court of Justice. This would be in keeping with the Court's constitutional role.

(Applause)

1-086

FR

Oriol (NGO-CITI/INST). – Je représente ENA, une organisation dont les membres sont présents dans les quinze pays de l'Union, et dont les objectifs principaux sont la lutte contre toutes les formes de racisme, et la promotion de l'égalité des droits et des chances. ENA est membre de la plate-forme sociale, une alliance d'ONG européennes du secteur social qui, dans le cadre du groupe de contact Société Civile, travaille avec des ONG actives dans les domaines des droits humains, du développement et de l'environnement, ainsi qu'avec la confédération européenne des syndicats, pour produire une contribution commune aux travaux de la Commission. Dans un débat sur la citoyenneté et les Institutions, il faut rappeler que des millions de personnes participent activement au développement de l'Union, mais ne bénéficient pas des droits découlants de la citoyenneté tel qu'elle est définie dans le Traité CE. Ces personnes sont exclues du processus décisionnel de l'Union. Ce sont les ressortissants des pays tiers. Alors que le principe de non-discrimination est au fondement-même de la construction européenne, il n'est valable que pour les nationaux d'un Etat membre de l'Union. L'Union se construit, en excluant des millions de personnes, pour beaucoup nées sur son territoire. Avec l'introduction à Amsterdam du titre quatre dans le Traité, les ressortissants de pays tiers deviennent enfin des sujets directs du droit communautaire. Le Sommet de Tampere semblait ouvrir la voie à l'élaboration de mesures tendant à combler l'inégalité entre citoyens de l'Union et ressortissants des pays tiers. A ce jour, il faut constater que, dans ce domaine, l'harmonisation est un échec. A la suite de maintes modifications, la proposition de directives sur le regroupement familial relatif aux ressortissants des pays tiers est complètement vidée de son sens. Nous sommes également sceptiques quant à la proposition de directive sur le statut des résidents de longue durée ressortissant des pays tiers.

Face au climat politique ambiant, face au populisme, au replis identitaires nationaux, face aux discours racistes et xénophobes, l'Union se doit de poser un acte fort et sans équivoque à l'intention de la classe politique et de l'opinion publique. L'Union doit, une fois pour toutes, reconnaître que toutes les personnes qui résident légalement sur son territoire sont égales. L'extension des droits liés à la citoyenneté de l'Union aux ressortissants des pays tiers légalement établis dans l'Union est indispensable pour maintenir et renforcer la cohésion sociale de nos sociétés, pour combler le déficit démocratique de l'Union et crédibiliser le projet européen qui se veut respectueux des droits fondamentaux de la personne, qui sont, par essence, universels et indivisibles. La Charte des Droits Fondamentaux doit également être revue afin d'élargir les droits des ressortissants des pays tiers. Selon la Charte, les ressortissants des pays tiers jouissent de conditions de travail équivalentes à celles des citoyens de l'Union. Ils devraient jouir non seulement des droits des travailleurs, mais également des droits de tous les citoyens, notamment le droit à la libre circulation à l'intérieur du territoire ainsi que les droits politiques. Outre la nécessité d'étendre des droits attachés à la citoyenneté, nous pensons que la Convention doit voir comment associer de manière plus étroite les citoyens à l'Union. Deux formes de démocratie peuvent être identifiées au sein de l'Union. Une démocratie participative et une démocratie électorale. D'une part, la démocratie électorale est cruciale pour légitimer notre système politique et doit être renforcée au sein de l'Union, y compris en renforçant le rôle du Parlement européen, la seule Institution élue directement. D'autre part, la démocratie participative représente la participation directe et collective des individus dans le système démocratique par d'autres voies que le vote. La démocratie participative devrait compléter la démocratie électorale. La participation devrait être accessible à toutes et à tous. Les ONG encouragent les citoyens à participer à la vie politique et sociale de la société et, par conséquent, contribuent fortement au développement de la démocratie. Nous pensons que les ONG devraient jouer un rôle consultatif important dans l'élaboration des politiques de l'Union, ce qui contribuerait à une plus grande implication des citoyens au projet européen. C'est pourquoi nous demandons la reconnaissance du statut consultatif des ONG, garantie d'un dialogue civil structuré et permanent avec toutes les institutions, via l'inclusion dans les Traités d'un article sur la consultation de la société civile.

1-087

FR

Le Président. – Nous en avons terminé avec les orateurs désignés par les groupes. J'ai trois interventions de membres de la convention et j'ai quatre cartes bleues.

1-088

FR

Abitbol (PE). – Le groupe que vous avez présidé, Monsieur Dehaene, n'a pas été, me semble-t-il, à la hauteur de ce que nous avons entendu précédemment. Que la vie serait facile si tous les citoyens européens voulaient bien se mettre à ressembler à ceux que nous avons entendu tout au long de cette journée. Tout serait alors pour le mieux dans le meilleur des mondes. Hélas, notre société civile ad hoc n'est en rien représentative. Nous avons entendu ici l'ensemble des organisations subventionnées par les Institutions européennes et leur réunion fait un peu penser à cette phrase du regretté Coluche qui parlait d'une grande tombola au profit des organisateurs de tombola. Les élections, les référendum et même les sondages, y compris le dernier eurobaromètre, nous renvoient à une autre opinion publique que celle que vous nous avez modelé à votre guise. Je n'en veux pour preuve que l'euro-scepticisme croissant que vous avez publié la semaine dernière ainsi qu'une défiance de plus en plus majoritaire vis-à-vis des Institutions européennes. Deux points cependant. Je me réjouis du souhait d'un référendum pour approuver, ou pour désapprouver le projet de Traité Constitutionnel si celui-ci devait voir le jour. C'est, effectivement, la moindre des choses que de laisser chacun de nos peuples, libre de conserver sa propre loi fondamentale, seule garante d'un chez-soi politique, de cette sorte d'intimité nationale qu'on appelle démocratie, auxquels nos concitoyens restent et resteront attachés ou bien, au bout du compte, de surbordonner celle-ci à une loi supérieure dont l'application sera le fait d'une oligarchie aussi lointaine qu'anonyme. Je m'étonne un petit peu aussi que le groupe de contact ou soi-disant tel, ai fait quasiment l'impasse sur les questions liées à l'élargissement de l'Europe alors que nos opinions publiques, dont il était sensé être le représentant, sont de plus en plus réservées à ce sujet. Un reproche permanent, pardonnez-moi Monsieur le Président, que l'on pourrait faire à notre convention est de raisonner un petit peu comme si l'élargissement ne devait pas avoir lieu. Et il me semble, si vous me permettez une suggestion, que nous pourrions peut-être consacrer si pas toute une session au moins une journée de travail aux conséquences spécifiques liées à l'élargissement de l'Europe.

1-089

FR

Le Président. – Merci beaucoup. Bien entendu, je ne peux pas laisser passer votre remarque de manipulation. Pour autant que je sache, toutes les organisations, qu'elles croient en l'Europe ou qu'elles soient sceptiques, ont été invitées à participer au débat. Le site web et nos réunions étaient ouvertes à tout le monde. Je ne vois pas où est la manipulation. La seule chose qui pourrait arriver est que ceux qui pourraient s'exprimer ne répondent pas à l'invitation.

1-090

EN

De Rossa (Parl.-IE). – Mr President, I will refer briefly to the last speaker's comments on subsidised organisations. I would not be here as a politician unless I was subsidised by the citizens of Europe. My political party could not survive as an effective political organisation without a subsidy from the citizens of Europe. So please let us move to the real debate about the views being expressed here today, rather than this petty discussion about who is paying for whom.

I warmly welcome the chance to have dialogue here today with civil society organisations. We have heard an affirmation of the notion that we have society in Europe, rather than a simple economic view of Europe as an economy. It is important to bear in mind the idea that citizens are more than simply units of consumption and that the weight of their opinion cannot be measured solely by their capacity to purchase or to consume, that we have more dimensions to our lives and to our personalities than simply our capacity to buy and sell.

It is important that notion should be incorporated into the constitutional treaty that we are preparing here. There is currently far too much emphasis in our Treaties on Europe as an economy, Europe as a market, Europe as a single currency. We must pay attention to the kind of values we incorporate into the constitutional treaties that we are preparing. In that respect, I would urge very strongly the idea of amending and improving Article 16, which underpins the notion of universal public services. The rights of citizenship include the right to be able to move about the European Union and the right to be able to receive a letter regardless of how remote your home is in the European Union.

In conclusion, we should also incorporate the notion of civil dialogue and social dialogue in our Treaties, bearing in mind the different and distinct functions that each serve in a European Union which has a constitution and which is federal in nature.

1-091

FR

Moscovici (Ch.E/G.-FR). Tout d'abord, contrairement à M. Abitbol, j'ai trouvé très intéressants les travaux du groupe de contact, qui relaient d'ailleurs ce qui a été dit dans les débats nationaux, à savoir qu'il y a un souhait des citoyens de voir la réflexion porter d'abord sur le contenu du projet européen, avant de parler du contenant institutionnel. Parce que notre objectif doit être de trouver une légitimité nouvelle à l'Union et, pour cela, il faut être capable d'abord de délivrer des preuves d'Europe. Si nous voulons répondre au populisme, il faut d'abord que l'Europe soit populaire.

Ensuite, il y a un lien évident entre le contenu et le contenant, et donc la nécessité de réforme ne fait pas de doute. Dans l'immédiat, il faut remédier au défaut de lisibilité du projet européen et en favorisant prioritairement l'émergence d'un espace public démocratique à

l'échelle européenne.

Ensuite, la concrétisation de cette exigence suppose, dans le respect des équilibres sur lesquels repose la méthode communautaire, des réformes ambitieuses des trois composantes du triangle institutionnel – n'en négligeons aucune – à savoir le Conseil, la Commission et le Parlement. J'ai trouvé là des propositions très intéressantes. Je pense au couplage de la désignation du président de la Commission avec les élections européennes, à la régionalisation du mode de scrutin européen et à une association plus étroite des parlements nationaux aux affaires européennes.

Enfin, le renforcement de la légitimité de l'Union passe naturellement par une plus grande proximité avec le citoyen et, sur ce point, je partage l'idée évoquée par le groupe de contact: une association plus étroite de la société civile aux processus de décision. C'est l'objectif de notre session d'aujourd'hui. C'était l'objectif des débats nationaux. Il faut travailler, sans doute, à relancer cette idée et à la pérenniser dans une nouvelle démarche. Je terminerai en disant que, pour des raisons tout à fait symétriques à celles de M. Abitbol, je pense effectivement que la formule du référendum s'imposera pour adopter le Traité que proposera la Convention.

1-092

IT

Speroni (Ch.E/G.-IT). - Signor Presidente, trovo fondate talune preoccupazioni sul ruolo dei ministri all'interno del Consiglio. I ministri vengono spesso accusati di privilegiare gli interessi nazionali, ma un rappresentante - che sia ministro o parlamentare - ha il dovere di interpretare e sostenere la volontà dei rappresentati, anche quando questa volontà è volta a tutela di interessi. L'Europa è comunità di uomini e donne uniti per vivere meglio, per meglio sfruttare le possibilità di sviluppo e progresso, per condividere i vantaggi di questa unione, ideali ma anche materiali. Questo è tra i nostri compiti: proporre una Costituzione che, in una visione democratica, contempra esigenze comuni ma anche differenti, perché nessuno possa poi dolersi di essere cittadino dell'Unione.

1-093

FI

Kauppi (PE). - Arvoisa puhemies, haluaisin lyhyesti kommentoida herra Hermanin puheenvuoroa, jossa hän mielestäni erinomaisella tavalla esitti ne syyt, joiden takia Eurooppa-neuvostosta ei voida tehdä EU:n hallitusta. Nykyään Eurooppa-neuvoston kokoukset, kuten viime viikonloppunakin saimme todeta, ovat ylikuormitettuja, ja se johtuu siitä Jacques Delorsin jo 1980-luvulla määrittelemästä tosiasista, että kaikki haluavat saada Eurooppa-neuvoston puolioikeudellisen hyväksynnän erilaisille hyville asioille, myös kansalaisjärjestöt.

Pääministereiden aikapulakin tulee olemaan jo liian suuri ongelma. Kolmenkymmenen valtion unionissa jo pelkkä pääministerin kierros eri maiden pääkaupungeissa kestäisi varmasti melkein puoli vuotta. Niinpä olen tullut siihen tulokseen, että tästä rotaatiosta pj-kausien osalta on jollakin aikavälillä luovuttava. Vaikka ne ovat olleet tärkeä tasa-arvon ilmentymä myös kansalaisjärjestöille, on järkevää siirtyä jonkinlaiseen ryhmäpuheenjohtajuuteen ja järjestää tämä konsultaatio kansalaisjärjestöjen kanssa eri tavalla.

Vielä haluaisin todeta lyhyesti, että avoimuus on kuitenkin aivan a ja o siinä, miten Eurooppa-neuvoston toiminta, joka kuitenkin tulee olemaan tärkeä osa Euroopan hallintoa ja hallintotapaa, järjestetään. Avoimuus, jota Sevillassa pikkuaskeleella lisättiin, on tärkeää. Me tarvitsemme lisää avoimuutta. Se, että kansalaiset tietävät ainoastaan yhteispäätösmenettelyasioissa, mitä neuvoston suljettujen ovien takana tapahtuu, ei ole riittävää. Tämä on sellainen asia, jota meidän pitäisi vaatia kovemmalla äänenpainolla.

1-094

EN

MacCormick (PE). – Mr President, one feature of parliamentary democracies in the modern world is that the elected legislature tends in practice to become subordinate to the executive, to which it is in theory superior. One of the great merits of the European Parliament is that this does not happen. We are not subject to masters. We do not have a single, all-purpose majority, and the upshot is that the Commission, as the executive, can by no means be sure of getting its own bills through all the time: most are heavily amended both by the Parliament and by the Council.

This is a vital feature of the situation and whatever we do in the way of improving the answerability of the Commission should not be such as to deprive the European Parliament of that particular, highly democratic virtue which it has, one which makes us much more accessible to civil society and more open to argument and discussion than we would be under other circumstances.

1-095

EN

Bruton (Parl.-IE). – Mr President, the election of the President of the Commission by Parliament, as suggested by Mr Herman and others, could put the Commission in a subordinate and dependent position vis-à-vis Parliament and blur the separation of powers which is the keystone of our current institutional balance.

In contrast, the direct election of the President by the people would avoid these dangers and would also directly associate each citizen with the person of the Presidency. It would do more to bring the people and the European Union closer together than any other proposal, including a referendum on the Treaty. At the end of the day, in modern times, people vote for the individual as much as they do for abstract ideas.

1-096

SV

Hjelm-Wallén (Ch.E/G.-SE). - Herr ordförande! Det civila samhället betyder väldigt mycket för en levande debatt om EU. Därför är öppenheten ifrån EU:s sida helt avgörande.

För ett år sedan åstadkom det svenska ordförandeskapet ganska stora förändringar vad gäller öppenhet, men mer behövs. Som representant för den svenska regeringen har jag föreslagit att vi bör gå vidare så att allmänheten får tillgång till handlingar också i fråga om de institutioner som inte ännu finns med på listan.

I förslaget ingår också att EU-tjänstemän skall ha yttrandefrihet som de har i många av våra länder. Vi behöver bättre förvaltning, som ombudsman Söderman sade, och öppenhet vad gäller rådets arbete när det handlar om lagstiftning. Jag tror att dessa öppenhetsfrågor är väldigt viktiga för hela kontakten med det civila samhället.

1-097

FR

Nahtigal (Gouv.-SI). – Je voudrais simplement vous parler du forum slovène qui travaille très dur et qui se réunit souvent en même temps que la Convention. Il soutient la légitimité des membres slovènes de la Convention. Le futur de l'Europe se joue en Slovénie sous la houlette du Président et du gouvernement. Lors des discussions sont également présents des représentants des universités, des syndicats, des organisations universitaires, des étudiants, l'académie slovène de Sciences et d'Art ainsi que différentes autres communautés. Nous nous penchons sur des sujets semblables à ceux du Parlement. Par exemple, nous nous demandons ce que nous attendons de l'Union Européenne, quel sera le rôle des petites nations dans l'Union Européenne du futur ou encore comment garantir les diversités culturelles en Europe. Le Président du Parlement, Monsieur Cox, s'est rendu récemment à Ljubjana pour évoquer la question. Selon moi et c'est mon voeu le plus cher, le débat qui se déroule en Slovénie renforce sans aucun doute la légitimité dont a parlé tout à l'heure Monsieur Moscovici.

1-098

FR

Le Président. – Ceci termine les débats d'aujourd'hui. Nous reprendrons demain à neuf heures trente avec les représentants des régions.

1-099

FR

Giscard d'Estaing (Président). – Nous sommes presque en avance, d'ailleurs, grâce à la très bonne organisation du débat et à l'esprit de méthode des intervenants. Nous reprendrons notre débat à neuf heures trente demain matin. Mme Palacio présentera d'abord les travaux du groupe de contact « Régions et collectivités locales ». Ensuite, les observateurs du Comité des régions prendront la parole. En fin de matinée, je vous donnerai quelques indications sur la session des jeunes, sur son organisation et son déroulement, et également quelques indications sur nos propres travaux, puisque nous avons notre session du mois de juillet qu'il convient de préparer. Dans la salle d'à côté, un verre de l'amitié est proposé à ceux et celles d'entre vous qui désirent prolonger leurs échanges avant la reprise de nos travaux demain matin à neuf heures trente.

(La réunion est levée à 19 h 56)

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**EUROPEISKA KONVENTET
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2-002

FR

PRÉSIDENCE DE Mr GISCARD D'ESTAING*(La réunion est ouverte à 9.36 h)*

Le Président.- Nous ouvrons la séance de la Convention. Avant de donner la parole à Madame Palacio pour présenter le groupe de contact « Régions et Collectivités locales », je vous indique que c'est aujourd'hui la Fête nationale de la Slovénie. Je vous invite donc à applaudir nos collègues slovènes.

(Applaudissements)

2-003

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SV

Regionala och lokala myndigheter

2-004

FR

Le Président. – Je donne maintenant la parole à Madame Palacio pour la présentation du groupe de contact qu'elle a animé.

2-005

FR

Palacio Vallelersundi (Ch.E/G.-ES). – Il me revient, en effet, l'honneur de faire rapport de la première réunion du groupe de contact « régions et collectivités locales » qui s'est tenue le dix juin dernier. Tout d'abord, je tiens à souligner la qualité des interventions qui ont été présentées pendant cette journée. Ensuite, je tiens à remercier les cent quatre-vingt-sept collectivités locales et leurs organisations représentatives qui se sont inscrites dans notre groupe de contact et ont consacré une entière journée à dialoguer en détail sur des questions liées aux travaux de la Convention. Monsieur le Président, elles m'ont demandé avec insistance que notre dialogue se poursuive à intervalle régulier, tout au long du mandat de la Convention. Je leur ai, d'ores et déjà, fixé rendez-vous pour une nouvelle rencontre de travail à l'automne prochain. Mon impression générale est que les organisations européennes des collectivités territoriales ont fait preuve d'un grand équilibre entre ambition et réalisme. Issus du suffrage universel, les gouvernements locaux et régionaux font historiquement partie du système de gouvernement de l'Union. C'est ce système qui caractérise l'Union Européenne dans son ensemble est une structure complexe et diversifiée qui s'organise sur quatre niveaux de responsabilité : l'Union Européenne, les Etats membres, les Régions et les collectivités locales qui, cela dit en passant, ont souvent précédé la naissance de nos Etats. Je vais simplement souligner deux des idées fortes qui sont apparues lors de ces débats. La première idée est qu'il est nécessaire de trouver des normes de gouvernance permettant de réguler de manière optimale les relations entre les différentes sphères de gouvernements. A cet égard, nous avons pu constater ensemble qu'il est nécessaire de mettre en place des procédures de consultation très en amont du processus décisionnel. Je crois très sincèrement que des procédures claires, transparentes et menées en temps utile résoudraient un grand nombre des difficultés que rencontrent les régions et les collectivités locales dans la mise en oeuvre de la législation communautaire. La deuxième idée, exprimée par tous, est le soutien du travail mené au sein du Comité des Régions qui dispose d'un statut d'observateur au sein de notre convention. Ainsi, sans plus attendre, Monsieur le Président, je cède la parole au premier Vice-Président Eduardo Zaplana, qui a lui aussi pris part à cette journée de travail.

2-006

FR

Le Président. – Vous jouissez d'une grande popularité dans la convention.

2-007

ES

Zaplana (NGO-REG/LOCAUT). - Señor Presidente, atendiendo a la invitación formulada por el *Praesidium*, esta mañana los seis representantes del Comité de las Regiones queremos transmitir a la Convención las demandas y las expectativas de los municipios y de las regiones de las que el Comité de las Regiones es, precisamente, cauce de expresión oficial en el seno de la Unión Europea.

Quiero manifestar que hemos abierto un proceso de debate intenso y riguroso no sólo en el seno del Comité sino también en diálogo con las asociaciones europeas representativas de las entidades locales y regionales y con los países candidatos. Este diálogo lo realizamos con el fin de presentar contribuciones escritas que estén investidas del más amplio respaldo y que expresen ante la Convención la posición común de las autoridades locales y regionales. Oirán ustedes hoy intervenciones de distinto contenido, fruto de los debates existentes en el seno del Comité de las Regiones, pero me centraré en aquellas cuestiones básicas que concitan el acuerdo unánime en el mundo regional y local.

Pienso que esta Convención no puede pasar por alto la enorme relevancia que tienen hoy los municipios y las regiones en la aplicación de las políticas de la Unión Europea. En materias tan diversas como protección del medio ambiente, transportes y telecomunicaciones, política regional, agricultura o pesca son, en muchos casos, los Gobiernos locales y regionales los llamados a ejecutar las decisiones de las instituciones y órganos comunitarios. Parece lógico, pues, que desde los municipios y las regiones se reclame una participación más sólida en la adopción de estas decisiones. No hay que olvidar por otro lado que los municipios y las regiones son los niveles de gobierno más cercanos e inmediatos a los ciudadanos, piezas básicas, por tanto, para la edificación de una Unión Europea más próxima, como reclamaba la declaración de Laeken.

Parece, pues, una exigencia que el nuevo marco institucional de la Unión Europea deba fortalecer el papel de los municipios y las regiones y el cauce para ello ya existe. El cauce es el Comité de las Regiones. No es preciso, por tanto, inventar nuevos mecanismos de participación de los municipios y las regiones en la política europea. Se trata, más bien, de mejorar y reforzar el instrumento del que ya disponemos. Otra cosa sería, desde nuestro punto de vista, retroceder o adentrarnos en caminos de gran incertidumbre.

El Comité de las Regiones concita consenso o al menos mucho más que cualquier otra vía. La apuesta por el mundo regional y local no puede ser otra. Y desde el Comité de las Regiones deseamos plantear a la Convención las siguientes demandas fundamentales, demandas que posteriormente desarrollaremos mediante una contribución escrita y que son, en primer lugar, la atribución al Comité de las Regiones del rango de institución de la Unión Europea, pues no parece razonable que una asamblea formada por representantes de instituciones de gobierno investidos de legitimidad democrática tenga el carácter de un mero órgano auxiliar de la Comisión y el Consejo. En segundo lugar, la atribución al Comité de las Regiones de legitimación activa ante al Tribunal de Justicia. En tercer lugar, ampliación de la lista de materias en que es preceptiva la consulta al Comité hasta extenderla a todas aquellas decisiones que afecten a las competencias de los entes locales y regionales. Y, en cuarto lugar, el fortalecimiento de los efectos jurídicos de los dictámenes, obligando, concretamente, a las restantes instituciones a motivar de forma expresa las razones por las que, en su caso, se apartan del dictamen del Comité.

Pensamos que la atención de estas cuatro reivindicaciones que desde el Comité de las Regiones planteamos como demandas mínimas e irrenunciables mejoraría claramente la participación de los entes locales y regionales en las decisiones de la Unión sin alterar, por

otro lado, el actual equilibrio institucional ni introducir complicaciones innecesarias en los procedimientos de adopción de las normas.

Es imposible, Señor Presidente, por limitaciones de tiempo, desarrollar estos puntos con mayor detalle. Nuestros debates son, como es lógico, mucho más amplios y mucho más ambiciosos, pero esta posición es defendida por todos y confío en que también lo será por la Convención.

Y permítame tan solo concluir con unas palabras del Presidente de la Convención, en su discurso inaugural del pasado 28 de febrero: "al mundo de hoy -afirmaba- le hace falta una Europa fuerte, unida y pacífica". Yo pienso que una Europa fuerte es también una Europa mejor vertebrada en la que las ciudades y las regiones puedan sentirse coprotagonistas.

2-008

NL

Chabert (NGO-REG/LOCAUT). - Dank u wel mijnheer de voorzitter, waarde collega's, het Comité van de Regio's is de jongste instelling van de Europese Unie. Het werd opgericht bij het Verdrag van Maastricht. Het heeft tot taak de lokale en regionale overheden nauwer te betrekken bij het Europees besluitvormingsproces. Het Comité is dan ook het enige officiële orgaan dat hen bij de Europese Unie vertegenwoordigt.

Ongeveer drie kwart van alle wetgevende acties van de Unie is van rechtstreekse invloed op de regionale, lokale bevolking en wordt uitgevoerd door de lokale en regionale overheden. Het is bijgevolg logisch dat deze bij de besluitvorming worden betrokken. Dit vereenvoudigt aanzienlijk de toepassing van de wetten en de verwezenlijkingen van de programma's van de Europese Unie.

Mijnheer de voorzitter, waarde collega's, een goed werkende democratie, die dicht bij de mensen staat, begint aan de basis. "Bottom-up" is het parool, en dit is des te meer het geval voor alle regio's die wetgevende macht hebben, zoals in Duitsland, Oostenrijk, België, Spanje, Italië, Portugal en zelfs in het Verenigd Koninkrijk. Dankzij hun nationale grondwet bezitten deze regio's op bepaalde gebieden soevereine rechten, die Europa moet eerbiedigen zoals dit ook gebeurt voor de nationale overheden.

Krachtens de Verdragen is de raadpleging van het Comité van de Regio's verplicht in tien gevallen: het gaat hier om materies die zeer dicht de burger raken. Regionale ontwikkeling, cultuur, onderwijs, volksgezondheid, Europese infrastructuurnetwerken voor energie en vervoersnetwerken, werkgelegenheid, beroepsopleiding, leefmilieu, vervoer en sociaal beleid. In deze gevallen kunnen de wetgevende organen van de Unie, de Raad en het Parlement, geen beslissing treffen indien het Comité van de Regio's terzake geen advies heeft verstrekt.

Ik wil nu nog niet voorstellen om deze lijst van de gevallen van verplichte raadpleging uit te breiden. Ik wil er wel op aandringen dat het Comité nauwer bij de wetgevende werkzaamheden van de uitgebreide Europese Unie wordt betrokken, zonder dat dit vanzelfsprekend tot vertraging van de werkzaamheden van de wetgevers mag leiden. Ik ben er immers van overtuigd dat Europa slechts door de bevolking begrepen, gedragen en aanvaard zal worden indien deze nauw bij het institutioneel mechanisme betrokken wordt via haar rechtstreekse, lokale en regionale vertegenwoordigers. Die zullen op dat ogenblik de ambassadeurs worden van Europa en niet langer de Europese Unie verantwoordelijk kunnen stellen voor alles wat misloopt.

Zo zou ik willen voorstellen dat de Raad en het Parlement, vooraleer zij hun beslissingen treffen, het Comité zouden inlichten over de eventuele redenen waarom zij dat advies niet hebben overgenomen. Ik moge u erop wijzen dat de Commissie dit nu reeds regelmatig doet. Het Comité moet ook betrokken worden bij de trilog Commissie - Raad - Parlement in het kader van de medebeslissingsprocedure. Dit moet ten minste het geval zijn in de tien gevallen van verplichte raadpleging. Het Comité van de Regio's moet een Europees wetgevend besluit voor een beperkte duur kunnen opschorten indien de wetgevende overheid het advies van het Comité niet heeft opgevolgd zonder hiervoor de redenen op te geven.

Het Comité herhaalt vanzelfsprekend zijn eis om een klacht te kunnen indienen bij het Europees Hof van Justitie indien het subsidiariteitsbeginsel niet wordt nageleefd en het vraagt eveneens vertegenwoordigd te zijn in het op te richten politiek orgaan dat de naleving van de subsidiariteitsbeginsel *ex ante* moet nagaan.

Mijnheer de voorzitter, ik denk dat een belangrijke versterking van de rol van het Comité van de Regio's aanzienlijk zal kunnen bijdragen tot een versterking van de doeltreffendheid, de transparantie en het democratisch karakter van onze instellingen in een uitgebreide Europese Unie. Deze Conventie heeft een historische kans om de burgers van *l'Europe profonde* nauwer te betrekken bij Europe. Wij mogen deze kans niet missen.

2-009

NL

Dewael (NGO-REG/LOCAUT). - Mijnheer de voorzitter en waarde collega's, deze zitting is gewijd aan het contact met de civiele maatschappij. Ik vind het ook nodig om de stem van democratisch verkozen en dicht bij de bevolking aanleunende bestuursniveau's te laten horen.

Als minister-president van Vlaanderen en als waarnemer in deze Conventie voor het Comité van de Regio's, wil ik aandacht vragen voor de regio's. Vlaanderen is een sterke regio met uitgebreide bevoegdheden en een grote autonomie.

Regio's, en in het bijzonder regio's met wetgevende bevoegdheden, zijn een onmiskenbare realiteit in het huidige Europa. In vele lidstaten heeft zich een belangrijk decentralisatieproces voltrokken. Ik denk dat deze regio's met wetgevende bevoegdheden, net als een Europese lidstaat, de vinger aan de pols moeten kunnen houden van de voorbereiding, de totstandkoming, de besluitvorming, de evaluatie, de controle en de aansprakelijkheid bij het Europees beleid. Om hun belangen in Europa te verdedigen, moeten de subnationale entiteiten nu langs twee kanalen te werk gaan.

In de eerste plaats op het terrein van de regionale organen in Europa, zoals het Comité van de Regio's en ik steun dan ook de verzoeken om het Comité te versterken, zoals die geuit zijn door mijn collega's. Erkenning als instelling, motiveringsplicht, toegang tot het Hof van Justitie. Ook op het terrein van hun eigen nationale regeringen. Want deze moeten als kernspelers in de Unie, die voorlopig slechts lidstaten erkent, ervoor warm worden gemaakt om de zaak van de regio's tot de hunne te maken. Daar moet ook een derde mogelijkheid bijkomen. Met name de directe en rechtstreekse erkenning door de Europese instellingen van het regionale bestuursniveau.

Het volgende basisprincipe moet, denk ik, daarbij het uitgangspunt zijn. De lidstaten waren en zijn nog altijd het ankerpunt en de basis van de Europese Unie. Ten tweede, het nieuwe Europese interinstitutionele kader moet wel aan de lidstaten de ruimte en de vrijheid geven om de subnationale entiteiten hun rol te laten spelen, waarbij in de eerste plaats gedacht moet worden aan de regio's met wetgevende bevoegdheden.

Ten derde, Europa mag de regio's met wetgevende bevoegdheden niet onthouden wat deze zelf op het nationale vlak hebben verkregen, want een dergelijke erkenning houdt, denk ik, ook voor de Unie voordelen in. Het is voor Europa nodig en interessant om zich te verzekeren van de betrokkenheid van alle actoren bij het Europese besluitvormingsproces.

Ten vierde, dit is ook belangrijk, kunnen de regio's via de EU, anderzijds ook geen aanspraak maken op meer rechten en bevoegdheden dan deze waarvan zij binnen de eigen lidstaat kunnen genieten. Daarom heb ik samen met medeconventieleden Karel de Gucht en Andrew Duff een voorstel ingediend om een aparte werkgroep op te richten, die zich specifiek moet uitspreken over de problematiek van de subnationale entiteiten en de regio's met wetgevende bevoegdheden.

Ik ben persoonlijk van mening, mijnheer de voorzitter, collega's, dat het Spaans constitutioneel model een aantal interessante mogelijkheden biedt. Dit model laat immers aan de verschillende autonome gemeenschappen de ruimte om zichzelf te constitueren. Ook een Europees grondwettelijke systeem kan een kader vormen dat lidstaten en subnationale overheden dan verder kunnen invullen. Op die wijze wordt de grondwettelijke situatie en de institutionele autonomie van elke lidstaat gerespecteerd. De lidstaten kunnen dan binnen dit Europees grondwettelijke kader met een verklaring aanduiden welke hun regio's met wetgevende bevoegdheden of Europese partnerregio's zijn. In die verklaring kan de draagwijdte van de bevoegdheden van de regio's worden vermeld in relatie tot het constitutioneel verdrag van de Europese Unie. Vanzelfsprekend worden de lidstaten niet verplicht om gebruik te maken van de mogelijkheid van zo'n verklaring. Op die manier kunnen regio's met wetgevende bevoegdheden binnen de Europese structuren hun legitieme rol spelen op het wetgevende, uitvoerende en justitiële vlak. Voor andere regio's, die veeleer over administratieve bevoegdheden beschikken en lokale besturen zijn eerder de uitvoerende Europese bevoegdheden van belang.

Zoals reeds werd gezegd, moeten op het wetgevende vlak de regio's met wetgevende bevoegdheden minstens het recht krijgen, om door de Europese Commissie te worden geraadpleegd, wanneer deze maatregelen plant die eerder onder hun bevoegdheden vallen. Ook moeten de lidstaten het recht krijgen om hun politiek gewicht in de besluitvorming van de ministerraden naar eigen inzicht te verdelen. Ook voor de regio's met wetgevende bevoegdheden is het op wetgevend gebied essentieel dat er richtsnoeren zijn voor de regeling van de bevoegdheden tussen het Europese, het nationale en het regionale beleidsniveau.

Ten slotte, moeten de regio's met wetgevende bevoegdheden een rechtstreekse toegang krijgen tot het Europees Hof van Justitie. Ik denk dat dat logisch voortvloeit uit de grondwettelijke situatie waarin verschillende regio's zich nu al bevinden. Ook hier moet Europa zich aanpassen aan het democratische rechtsgevoel. Enkel wanneer Europa meer ruimte geeft aan de regio's, zal het ook zijn doelstellingen van democratie, transparantie, efficiëntie en verantwoordelijkheid kunnen realiseren.

2-010

DE

Dammeyer (NGO-REG/LOCAUT), - Herr Präsident, verehrte Kolleginnen und Kollegen im Konvent! Das künftige Europa hat ungefähr 500 Mio. Einwohner. Es ist eine blanke Illusion anzunehmen, dass ein solches Europa zentral regiert oder verwaltet werden kann. Es bedarf verantwortlicher dezentraler Strukturen, und die Regionen, die Städte und Gemeinden, die Kreise und Provinzen sind nötig, um ein demokratisches Europa zu gestalten. Die Regionen und Kommunen sind keine nachgeordneten Instanzen oder dezentrale Behörden der Europäischen Union oder der Mitgliedstaaten. Sie sind es jetzt nicht, und sie werden es in der Zukunft auch nicht sein. Im Gegenteil, ihre Repräsentanten sind die gewählten Repräsentanten der Bürgerinnen und Bürger. Sie haben eigene Befugnisse, und sie verlangen Respekt vor ihren Aufgaben und Zuständigkeiten. Daher rührt die berechtigte Forderung nach dem Respekt vor der kommunalen Selbstverwaltung in ganz Europa. Daher rührt die Forderung, auch die Stellung der Regionen zu respektieren. Das gilt vor allem für die konstitutionellen Regionen mit Gesetzgebungsbefugnis. Sie sind schon jetzt im Rat der Europäischen Union an den europäischen Entscheidungen und Gesetzgebungen beteiligt, aber sie verlangen für sich auch den Zugang zum Europäischen Gerichtshof, wenn sie in ihren Rechten von der Europäischen Union beeinträchtigt sind.

Die Regionen verlangen Einfluss auf die Willensbildung, auf die Entscheidungsfindung und auf die Rechtsetzung auf europäischer Ebene. Sie wollen an den europäischen Entscheidungen beteiligt sein. Sie wollen Subjekte und nicht bloß Objekte europäischer

Entscheidungen sein. Als solches Organ betrachten sie übereinstimmend den Ausschuss der Regionen - Frau Palacio Vallelersundi hat darauf bereits hingewiesen -, der weiterentwickelt werden muss gegenüber seinen bisherigen Befugnissen und Arbeitsweisen, in seiner Zusammensetzung und in seinen Aufgaben und Funktionen. Er muss mehr und anders als beratend tätig werden. Der Konvent trägt auch Verantwortung für diese Weiterentwicklung.

Der Ausschuss der Regionen soll Organ der Europäischen Union sein. In bestimmten Fällen soll er beschlussfassend tätig sein. Man kann sich denken, dass das in Fragen der Regional- und der Strukturpolitik der Regionalfonds sein könnte, aber auch, wenn die Politik für den ländlichen Raum Regionalpolitik ist. Er soll ein Vetorecht haben, so dass die streitigen Fragen binnen dreier oder sechs Monate zwischen dem Ausschuss der Regionen und dem Rat oder der Kommission oder dem Europäischen Parlament verhandelt werden können. Wenn die Kommission oder der Rat vom Votum des Ausschusses der Regionen in Fällen, in denen er zwangsläufig gehört werden muss, abweichen wollen, müssen sie verpflichtet sein, ihr Abweichen zu begründen. In allen Fällen, in denen der Ausschuss der Regionen nach den Verträgen obligatorisch befasst wird, muss er an dem Prozess beteiligt werden, der bislang Trilog genannt wird. Er muss Zugang zum Europäischen Gerichtshof haben, wenn er sich in seinen Rechten verletzt fühlt.

Von Anbeginn an galt auch der Ausschuss der Regionen als Hüter der Subsidiarität. In seinen Stellungnahmen haben wir oft darauf hingewiesen, dass die Handlungsbefugnisse der europäischen Ebene durch die Verträge beschränkt und durch das Subsidiaritätsprinzip begrenzt sind. Wir haben dann auch Wege aufgewiesen, aber es ist klar, dass an diesen Prozessen, wie Subsidiarität interpretiert und gehandhabt werden soll, die Regionen beteiligt sein müssen und damit der Ausschuss der Regionen seinen Anteil haben muss.

Wenn also ein politisches Organ geschaffen werden soll, das die Kontrolle der Subsidiaritätspraxis in der Europäischen Union ausüben soll, egal ob *ex ante* oder *ex post*, wenn es nur ein politisches Organ ist, wird es erforderlich sein, dass daran auch der Ausschuss der Regionen beteiligt wird.

Die Regionen und die Kommunen haben ihre eigenen eigenständigen und verfassungsgemäßen Aufgaben in allen Mitgliedstaaten. Ihre Befugnisse sollen respektiert und nicht beeinträchtigt werden. Ihre Repräsentanten müssen an der politischen Willensbildung Europas beteiligt werden. Viele Konventsmitglieder haben in ihren bisherigen Beiträgen schon genau darauf hingewiesen. Sie haben Recht damit. Wir möchten ihnen vortragen, wie man so etwas praktisch tun kann.

2-011

FR

Granrut (NGO-REG/LOCAUT). – Monsieur le Président, permettez-moi, tout d'abord de vous féliciter de votre initiative de consacrer une session à l'écoute des attentes des représentants de la société civile, et que dans un souci d'efficacité, divers groupes de contact aient amorcé le riche dialogue que nous avons connu hier, et qui se poursuit aujourd'hui. L'un de ces groupes de contact a réuni, sous la présidence avertie de Madame Palacio, les diverses associations européennes d'élus locaux et régionaux. Ayant participé à ce groupe de contact, je voudrais insister sur l'une de ses conclusions qui me semble tout à fait essentielle, à savoir le consensus de toutes les associations présentes (municipalités, petites et grandes, régions à pouvoir législatif ou non) provenant des états membres ou des états candidats, sur deux points. Premièrement, les autorités locales et régionales, légitimées par le suffrage universel de leurs concitoyens, se sentent mandatées pour participer à la construction de l'Union européenne, dès lors que celle-ci se veut transparente et démocratique. Ces mêmes autorités qui font partie du système de gouvernement de l'Union, considèrent que le Comité des régions est leur représentant institutionnel et politique dans l'architecture de l'Union et qu'il doit être reconnu comme tel. C'est ce dernier point que je voudrais développer. L'Europe est diverse, non seulement par les Etats qui la composent, mais peut-être plus encore par les collectivités territoriales qui composent ses états, et qui ont souvent un passé historique de gestion autonome. C'est une source historico-identitaire, complémentaire à celle qui a été mentionnée à Séville. Cette diversité doit être préservée car elle est la garantie du maintien des racines culturelles et politiques des citoyens européens ainsi que du dynamisme de la démocratie locale et participative. L'élus local, qu'il soit municipal, provincial, ou régional est à la fois le premier dépositaire de la légitimité démocratique. C'est aussi celui qui connaît le mieux et qui exprime le plus efficacement les besoins ou les aspirations de ceux qui, par leur vote, ont fait le geste de lui déléguer la parcelle de pouvoir que leur octroie leur qualité de citoyen. Le Comité des régions regroupe l'ensemble de ces élus qui sont en charge de la vie quotidienne de leurs concitoyens dans tous ses aspects tels que le logement, l'éducation etc. Ces aspects, généralistes par définition, sont la première expression politique de ce qu'il est convenu d'appeler la société civile. De ce fait, le Comité des régions devient le lien naturel et politique entre les peuples d'Europe et l'Union à construire. L'Union européenne ne peut plus ignorer le rôle de ces acteurs régionaux et locaux de la démocratie, pas plus que celui de leur représentation ici au sein de l'architecture institutionnelle de l'Union pour plusieurs raisons. Premièrement, le processus de décentralisation qui tend à accroître leur responsabilité, correspond à un besoin profond des populations de se sentir écoutées et impliquées dans l'action publique. Tous les états d'Europe sont touchés par ce phénomène avec des variantes toutefois. Deuxièmement, ils sont désormais en charge de l'application de plus de soixante-dix pourcent de la législation européenne. Ils participent à la réussite de la mise en oeuvre des politiques de l'Union et ils sont les mieux placés pour expliquer à leurs administrés, et c'est souvent bien nécessaire, les motivations de ces politiques. Troisièmement, qu'ils soient responsables régionaux ou municipaux, nombre d'entre eux ont expérimenté un nouveau code de gouvernance basé sur la recherche du consensus et sur l'implication de tous les acteurs culturels, économiques et sociaux. Il s'agit tout simplement de mettre en place un mécanisme efficace et réaliste qui garantisse l'application des principes de subsidiarité et de proportionnalité. Non seulement, ils organisent ainsi la participation du plus grand nombre des citoyens à la prise de décisions mais dès lors qu'ils participent à la décision de la base, les citoyens peuvent remonter la chaîne du processus décisionnel et adhérer à la décision finale prise au niveau européen. Ils peuvent donc apporter à l'Europe une expression politique des attentes de la société civile, une démocratie de proximité, un nouveau mode de gestion du mandat politique, une perception citoyenne des enjeux européens. N'est ce pas donner un nouveau sens à l'Europe ? Monsieur le Président, mes chers collègues, permettez-moi de souhaiter que cette session

persuade la Convention d'associer à la construction politique qu'on attend de l'Union celle qui existe au niveau régional et local, parce qu'elle est la seule qui garantisce à l'Union son ancrage démocratique.

2-012

IT

Martini (NGO-REG/LOCAUT). - Signor Presidente, gli originari ideali dell'Unione europea sono sottoposti, oggi, a tensioni forti e sempre nuove e sembrano talora inadeguati a dar le tante risposte che i cittadini chiedono pressantemente ai responsabili politici di ogni livello. Nello stesso tempo, il quadro mondiale subisce profonde e non preventivabili modificazioni, in particolare per l'avanzare del processo di globalizzazione. E' dunque necessario, per l'Europa del futuro, un progetto politico altrettanto nuovo, che vada oltre la riforma dell'assetto istituzionale e che sappia radicare un nuovo fondamento ideale dell'Unione. Occorre rispondere ai bisogni e alle aspirazioni dei cittadini di oggi e di domani e affermare nel mondo il messaggio fondamentale di democrazia, di pace e di solidarietà. Tutto ciò va reso completamente chiaro e comprensibile dai cittadini, per farne protagonisti di questa nuova fase della vita politica del continente e rendere più democratica l'attività dell'Unione.

Dobbiamo evitare, però, ogni ipocrisia: troppo spesso si tende a porre sulle spalle dell'Unione l'intero *deficit* di democrazia che percorre l'Europa. A essere sinceri, questo *deficit* colpisce i cittadini anche a livello nazionale, regionale e locale. In ogni caso, un'Europa più forte, aperta e sociale aiuta un'effettiva ridemocratizzazione di tutta la filiera della rappresentanza politica e mette in moto energie e contributi oggi sopiti. Allora è necessario e urgente, a mio avviso, collegare più strettamente innovazioni istituzionali e progressi di contenuto: penso, ad esempio, all'obiettivo primario della coesione economica, sociale e territoriale; ad esso vanno ispirate e subordinate tutte le politiche dell'Europa: quelle agricole come quelle infrastrutturali, quelle del mercato unico come quelle monetarie, quelle della conoscenza come quelle della formazione e del lavoro.

La coesione non è soltanto un problema economico, che condiziona la stessa competitività globale dell'Unione; è soprattutto un valore politico che unisce le differenti popolazioni dell'Europa e ci fa raggiungere due obiettivi storicamente strategici per noi: la salvaguardia e la valorizzazione delle diversità e specificità e il consolidamento di una vera solidarietà comune. Ci sarà più consenso popolare se si afferma nei fatti un'Europa non monocentrica ma policentrica, ricca di diverse culture e tradizioni, unita nella salvaguardia dei diritti dei cittadini e dei lavoratori e nella solidarietà tra le diverse aree e generazioni. L'Europa deve portare tale messaggio anche all'esterno, attraverso l'esempio di equità, tolleranza e solidarietà che applica al suo interno e che pratica verso gli altri popoli. Un'Unione autorevole ed aperta saprà, ad esempio, governare il fenomeno dell'immigrazione clandestina in modo aperto e innovativo, contro il quale, in mancanza di forti segnali di pace e cooperazione, si cede verso il rimedio antistorico della repressione e della discriminazione.

Un altro esempio è possibile citare: le politiche europee verso il Mediterraneo. L'Unione si è proposta di fare molto in questa parte così prossima e delicata del mondo, ma la sua azione è stata sin qui affidata ai soli rapporti fra gli Stati, senza scommettere sul coinvolgimento delle popolazioni locali e delle loro autorità rappresentative; ma così si sono ottenuti risultati insufficienti. La via giusta è, dunque, quella della coesione fra le diverse realtà all'interno dell'Unione e della cooperazione verso l'esterno. Queste due idee forza, iscritte nel codice genetico del modello sociale europeo, non si realizzano senza il contributo fondamentale delle regioni e delle autorità locali. L'Unione deve quindi valorizzare il ruolo dei livelli di democrazia locali, che sono per tutti i cittadini primo e fondamentale elemento nell'architettura della vita sociale dei pubblici poteri democratici. Del pari, se l'Europa vuole affermare il suo ruolo di pace nel mondo, deve far leva anche sulle attività di cooperazione internazionale decentrata, nelle quali sono impegnate tante regioni e numerosi enti locali.

Tutto ciò è, in sostanza, il fondamento della carta costituzionale di una vera nuova Europa, policentrica e solidale, prossima ai suoi cittadini. Quanto più l'Europa sarà questo, tanto più potrà contare sul ruolo attivo delle regioni, e ciò giustificherà ancora di più la nostra rivendicazione fondamentale, che è quella di decentrare la vita dell'Europa senza rinazionalizzarne le politiche.

2-013

FR

Le Président. – Je vous remercie beaucoup.

Nous passons maintenant aux porte-parole qui ont été désignés lors de la réunion du groupe de contact, et je transmets la responsabilité de la présidence à notre collègue Jean-Luc Dehaene.

PRÉSIDENCE DE M. DEHAENE

2-014

DE

Hoffschulze (NGO-REG/LOCAUT), Rat der Kommunen und Regionen Europas. - Herr Präsident! Zunächst herzlich Dank für die Einladung, dass die Kommunen und Regionen gemeinsam ihre Anliegen hier vorstellen können. Ich bin dafür sehr dankbar, und ich wünsche Ihrer Arbeit einen großen Erfolg. Wir haben uns zusammengesetzt mit fünf Verbänden. Wir sind der RGRE, Rat der

Gemeinden und Regionen Europas, die Konferenz der peripheren maritimen Regionen, die Versammlung der Regionen, die Arbeitsgemeinschaft europäischer Grenzregionen und Eurocities, deren Vertreter nach mir sprechen werden.

Ich könnte den Vortrag recht kurz fassen, weil die wesentlichen Züge in den schriftlichen Bericht eingeflossen sind, den Frau Palacio Vallelersundi Ihnen über unser Treffen am 10. Juni vorgelegt hat. Deswegen will ich auch nur einige wenige Akzente setzen. Wir haben uns darauf konzentriert, mit konkreten Vorschlägen den Weg zu ebnen für das, was wir für den Verfassungsvertrag für notwendig halten. Dies ist zum einen der Hinweis auf Artikel 1 des Vertrags über die Europäische Union, in dem es heißt: *as closely as possible to the citizen*, also so nahe wie möglich beim Bürger. Meine Vorredner haben wiederholt darauf hingewiesen: Dies bleibt eine Illusion, wenn man nicht anerkennt, dass insbesondere die Städte und Gemeinden, aber auch die Kreise und Regionen hier eine federführende Rolle haben. Wir sind in 60 - 70% der Entscheidungen gegenüber dem Bürger die Federführenden, die Handelnden. Bürgernähe muss durch uns möglich werden, und dies heißt eben auch Respekt vor der kommunalen und regionalen Selbstverwaltung, damit die entsprechende Flexibilität erhalten bleibt. Diese Verpflichtung zur *proximity* oder zur Bürgernähe muss deswegen wesentlicher Bestandteil auch des neuen Vertrages werden, wie bisher in Artikel 1 des Unionvertrags.

Wir schlagen außerdem vor, dass das Prinzip der Subsidiarität - wie es in Maastricht definiert wurde, das ist heute der Artikel 5 - präzisiert wird durch den Hinweis auf die Mitgliedstaaten mit ihren Regionen und Kommunen. Wir halten dies für eine notwendige Ergänzung dieses Artikels. Überhaupt müssen Subsidiarität und Proportionalität im Vertrag wichtige Hinweise sein. Ich betone auch Proportionalität, was bisher zu kurz gekommen ist, denn die Tiefe des Eingriffs der Union in Handlungsfähigkeiten der Regionen und Kommunen ist auch eine Frage der Proportionalität. Dies führt beispielsweise dazu, dass wir sagen: Die Union sollte sich zurücknehmen auf fundamentale Entscheidungen, auf Rahmenentscheidungen, auf Rahmenrichtlinien und sich bei Details zurückhalten.

Es wird viel diskutiert über die Kontrolle der Subsidiarität, ob sie eingehalten wird. Wir sind in unseren fünf Verbänden der Meinung, ein Instrument ist das wertvollste jenseits der politischen und der gerichtlichen Kontrolle, das ist das Prinzip der Konnexität. Wo immer Sie veranlassen, dass der, der die Musik bestellt, sie auch bezahlen muss, wird es Zurückhaltung geben, und deswegen fordern wir Sie auf, dieses Prinzip in den Verträgen zu verankern. Frau Palacio Vallelersundi hat darauf in ihrem Bericht schon Bezug genommen.

Wir haben ferner - gerade als RGRE - die Bitte, die Charta der Grundrechte, wie sie in Nizza verabschiedet wurde, in die Verträge zu integrieren. Ich nehme an, das ist bei Ihnen schon Konsens. Wir weisen aber ausdrücklich darauf hin, dass wir darin auch die Präambel integriert sehen wollen, und zwar deshalb, weil dort zum ersten Mal das Verhältnis der Union auf der einen Seite mit den Mitgliedstaaten auf der anderen Seite verankert wurde, aber mit ihrer Organisation der öffentlichen Gewalt auf nationaler, regionaler und lokaler Ebene. Diese Formulierung, für die ich den Mitgliedern des damaligen Konvents außerordentlich dankbar bin, insbesondere Präsident Herzog und Herrn de Vigo, aber auch Herr Professor Meyer, die sich damals dafür eingesetzt haben, diese Formulierung muss Einzug halten in die Verträge! Hinter dieses Niveau der Grundrechteerklärung kann eigentlich niemand mehr zurückfallen wollen. Dies kann man auch machen, indem man Artikel 6 des Vertrags beschränkt und das dort aufnimmt.

Ein weiterer Punkt ist die Bitte um Integration der Charta der kommunalen Selbstverwaltung des Europarates in einem eigenen Kapitel, wo immer sie die Essentiale ja unterbringen können. Ich halte dies für ein dringendes Signal an die neuen Staaten in Mittel- und Osteuropa, die in dieser Frage eine Zusicherung finden müssen, dass, nachdem sie aus dem Zentralismus entlassen sind, sie sich dort wiederfinden, mit der Garantie der lokalen Demokratie. Wir sind bereit, uns in einer Arbeitsgruppe, die hier im Präsidium diskutiert wird, einzubringen, falls eine Arbeitsgruppe Kommunen und Regionen eingesetzt wird.

2-015

EN

Gustav (NGO-REG/LOCAUT). – Mr President, I speak on behalf of the CPMR which brings together 148 regions. My proposals resume the results of consultations conducted within our various organisations and a broad-based survey, a summary of which has been addressed to the Convention.

With regard to the issue of the task of the European Union, there is convergence of opinion within our cities and regions in favour of redefining the European project. We all want a Europe capable of playing a greater role in world affairs and affirming its identity within the international arena. This role demands increased responsibilities in certain policy areas, such as foreign policy, immigration and justice, international trade and sustainable development. We all want the European Union to strengthen its internal cohesion in order to cope with the growing economic, social and territorial disparities that exist not only between our states but also between and inside the different regions and cities.

We are in favour of enlargement, but it needs policies that require a certain number of adaptations. These dual missions, both at home and abroad, must become the priority of the European Union's project to be defined in the forthcoming constitutional treaty.

In conveying this clear message in the Treaty, which would commit the European Union to a greater balance between its economic dimension and its social and political dimensions, we might more easily restore a climate of confidence between our populations and the European integration process.

Two conditions are necessary. Firstly, from a legal point of view, there is a need to emphasise the priority value of the principle of economic and social cohesion set out in the Treaty. The notion of territorial cohesion needs to be added. It is vital to ensure that a

Member State's commitment to reducing the disparities between the EU territories is made clearly visible. This objective should be pursued for all regions and cities.

Secondly, from a more operational point of view, we need to execute and adapt this principle through ambitious Community policies. At present, most policies that have an impact on the development of our territories fail to contribute sufficiently towards this. We need to ensure that this gap does not persist in future. We are therefore against renationalisation in areas such as regional and agricultural policy. This would undermine the principle of cohesion within the European Union.

Far-reaching reforms are necessary to make the policies with a high territorial impact more participatory by ensuring a greater involvement of actors on the ground when they are being drawn up, by means of consultation mechanisms. These policies should be more flexible and better adapted to territorial diversities, for example in areas such as transport policy, the common agricultural policy or the system of state aids. They should be more decentralised in their implementation. In all these areas, competences are shared between the European Union, the Member States and the regions and cities and should remain so. The chapters of the Treaty thus need to be streamlined and follow the same plan, a plan that would detail the content, the instruments, the degree of flexibility and also the distribution of competences.

We must strengthen our partnership to coordinate better our public policies, if we wish to complete our internal market effectively. For us this is one of the major challenges of the discussions on the division of competences. Let us avoid, however, a move towards too inflexible a system that would not only hinder the progress of the European integration process but also hinder cooperation between public sector players, the European Union, the Member States and the regions and cities.

2-016

EN

Van Nistelrooij (NGO-REG/LOCAUT). – Mr President, for the European regions, this is a great day. The Committee of the Regions and all the organisations are moving in one direction, with more possibilities for direct participation in Europe. We agree what that direction should be. The most important point is that Europe cannot be strong and lasting if we do not root it in the regions and communities as they exist and are active in all Member States.

From our point of view, the objective of the Convention must be a new constitutional treaty which creates a union of states and associates regional and local authorities, giving them the right to define and implement policies.

On the basis of the existing treaties and in accordance with the principles of subsidiarity and our daily practice in regions, the constitutional treaty should summarise the competences of the European Union. These competences of the European Union could be classified as exclusive competences, shared competences and complementary competences. Central areas of responsibility of Member States, which limit the exercise of the European Union responsibilities, should be protected in the future treaty in order to improve clarity of task allocation. But, above all, the regional and local governments must be involved.

Protecting minorities, guaranteeing their rights, implementing European regulations and promoting culture at the national, regional and local levels are all important responsibilities.

The financial consequences of European Union action for regional and local governments need to be taken into account from the outset, given that the local and regional governments implement most European legislation.

Although there is a need for specific competences to be set out, the European Union needs to be able to address new issues and add new competences, if necessary, but only where the Council and the Parliament so agree - possibly on the basis of a special majority. Furthermore, the European Court of Justice should have the power to determine whether the European Union's other institutions are acting beyond the scope of their competences.

It is also important to expand the division of responsibilities by applying a series of principles which are already the subject of the Treaties: the principle of limited individual powers and the principles of subsidiarity and proportionality.

It is very important that we cooperate in the special Working Group on Subsidiarity because it is the keystone on which to build the future Europe.

2-017

DE

Gabbe (NGO-REG/LOCAUT), - Herr Präsident! Ich spreche für die Arbeitsgemeinschaft europäischer Grenzregionen, der 160 Grenzgebiete angehören. Ich komme aber gleich mit einem Thema, das so gar nicht in den juristischen Rahmen passt. Etwas haben wir in der Vergangenheit gelernt: Die grenzübergreifende Zusammenarbeit ist nicht immer eine nationale Priorität, aber sie ist mit Sicherheit eine topeuropäische Priorität, denn ob uns die Integration in Europa gelingt, das wird sich auch an den Grenzen entscheiden. Das heißt, wir brauchen in den europäischen Verträgen eine Absicherung dieser grenzübergreifenden Zusammenarbeit als politische Aufgabe der EU und als politisches langfristiges Ziel.

Wir sprechen von dem Reichtum der Bürger, der regionalen Vielfalt als Reichtum. Einen Reichtum soll man mehr und pflegen. Der Reichtum besteht aber in Unterschieden, und diese Unterschiede treffen sich an den Grenzen. Sie sind nicht verursacht von der regional-lokalen Ebene, die dieses überwinden muss, die grenzüberschreitende Zusammenarbeit in die Praxis bringen muss. Das heißt aber, dass der Bürger, der seine Identität und seine Vielfalt nicht verlieren will, der mit diesen Barrieren - seien sie sozialer, wirtschaftlicher, psychologischer Natur, manchmal zwischen den Ohren - an den Grenzen lebt, kooperieren muss, um dies zu überwinden.

Das heißt, wir brauchen nicht nur den Rahmen der Verfassung, wir brauchen sicherlich auch eine eigenständige europäische Politik und ein eigenständiges Instrument. Die Kommission erreicht mit ihrer eigenständigen Politik 40% der Bevölkerung in den Grenzgebieten, mit der interregionalen Kooperation fast 100%, und das lebt bei den Bürgern. Also dürfen wir das nicht auf Teilbereiche aufsplitten. Wir müssen diese Politik europaweit machen, und wir müssen ein eigenständiges Instrument schaffen, das sie aus den Strukturfonds herauslöst, damit wir in diesen Bereichen europäische Politik losgelöst von nationalen Hindernissen machen können.

Ich möchte abschließen mit dem Hinweis, dass grenzüberschreitende Zusammenarbeit sicherlich ein Prüfstein dafür ist, ob es gelingt, in Partnerschaft und Subsidiarität miteinander zu leben, ob es gelingt, trotz unterschiedlicher Partner, trotz unterschiedlicher Mentalitäten zu kooperieren, ob wir Bürgerinstanzen und Politiker trotz der Unterschiede grenzüberschreitend beteiligen und ob es uns gelingt, für den Bürger das Leben in seiner Gemeinde, in seiner Nation in Europa so zu gestalten, dass er nicht glaubt, er ist in einem Halbkreis. Aus dem Grunde die Bitte, den rechtlichen Rahmen, der unbedingt nötig ist, damit wir politisch keinen nationalen Wechselbädern ausgesetzt sind, juristisch zu verankern und eine Politik und ein Instrument zu schaffen, die diese transeuropäische Kooperation ermöglichen.

2-018

EN

Siitonen (NGO-REG/LOCAUT). – Mr President, I represent Eurocities, the network of more than 100 European major cities. We in Eurocities have been working together with the other European networks of local and regional authorities to develop a common approach to the important issues being addressed by the Convention.

Together, we are calling for a more inclusive and participatory approach to governance in the European Union. This means ensuring more effective cooperation among all the spheres of governance: local, regional, national and European.

It is important to recognise that the cities and regions play a major role in terms of the implementation and financing of policies and legislation which have been decided at European level. In a number of important areas, including economic, social and environmental policies, competences are already being shared among different spheres of governance.

We welcome the proposal that the existing Treaties should be replaced by a common text, which would be a constitutional treaty. This is necessary in order to make the European Union more transparent and to clarify relations between the EU institutions and the local, regional and national authorities. We believe that the principle of local self-governance should be included in the Treaty, together with a clear definition of subsidiarity.

It is also important to clarify the aims and objectives of the European Union. The concept of sustainable development is very important, and we would like to see a more holistic and integrated approach towards policy-making which takes into account the economic, social, environmental and cultural dimensions. In particular, we would like to see a better balance between the objectives of economic growth and social cohesion.

Across a wide range of policy areas, local and regional authorities have a positive contribution to make to the policy-making process. In order to ensure good governance, it is essential that the experience and expertise of the cities and regions should be taken into account at an early stage in the development of proposals for new policies and legislation.

We are therefore calling for a more systematic dialogue between the Commission and representatives of local and regional authorities. Our existing European networks could play a useful and necessary role which would complement the valuable work being done by the Committee of the Regions.

Cities and regions have sometimes faced problems with the implementation of EU directives. We think more decisions should be left to the responsible authorities who can take account of specific local circumstances. Local and regional authorities are close to the citizens. We most often know what needs to be done and how best to do it. We are convinced that closer dialogue between the different spheres of governance will bring positive benefits for everyone in terms of improving the quality and the effectiveness of policies and legislation.

We hope the Convention will consider our proposals and we look forward to continuing our dialogue with you all during the coming months.

2-019

DE

Doerler (NGO-REG/LOCAUT). - Herr Präsident, meine sehr geehrten Damen und Herren! Die Präsidenten der gesetzgebenden Versammlungen bzw. Parlamente auf regionaler Ebene, die ich hier vertrete, sind sehr erfreut, dass wir gehört werden. Sind es doch die Regionalparlamente, die die legislative Kompetenz auf regionaler Ebene inne haben. Acht Länder der Europäischen Union verfügen über Parlamente auf regionaler Ebene. Es gibt derzeit 70 Regionalparlamente. Deutschland, Österreich, Belgien, Spanien und Italien setzen sich in der Gesamtheit ihres Staatsgebildes aus gesetzgebenden Regionen zusammen. In Großbritannien haben Schottland und Nordirland legislative Kompetenzen, in Portugal verfügen die Azoren und Madeira über eigene Parlamente, und in Finnland sind es die Åland-Inseln. Insgesamt leben 203 Mio. Menschen, das sind 54% der Bevölkerung in der Europäischen Union, in gesetzgebenden Regionen.

Diese Regionalparlamente arbeiten seit längerer Zeit intensiv zusammen. So haben sie die 1998 in Oviedo die CALRE gegründet und treffen sich seither jährlich einmal, um ihre gemeinsamen Interessen zu beraten. Im letzten Jahr haben die Präsidenten in Madeira eine gemeinsame Erklärung zum europäischen Reformprozess angenommen, wie er vom Vertrag von Nizza in Gang gesetzt wurde. Zur Kompetenzabgrenzung haben sich die Präsidenten zu einer doppelten Strategie entschlossen. Zum einen schlagen sie unter Anwendung des Subsidiaritätsprinzips bessere Kompetenzabgrenzung sowie einen Kompetenzkatalog vor. Zum anderen sind sie der Ansicht, dass die Kompetenzaufstufung von weiteren Maßnahmen begleitet werden sollte. Hier nennen sie einerseits die Überarbeitung des Artikels 10, in dem die Achtung der mitgliedstaatlichen Verfassung und somit ihrer internen Organisation durch die europäischen Institutionen verankert werden sollte.

Was die Kontrolle anbelangt, streben die Präsidenten ein Klagerecht der gesetzgebenden Versammlung beim Gerichtshof an. Das wurde von meinen Vorrednern schon angeschnitten. Der Ausschuss der Regionen muss ebenfalls gestärkt werden, indem ihm der Status einer Institution zukommt und das Klagerecht beim Gerichtshof verankert wird. Die Präsidenten sind der Meinung, dass die Rolle der Parlamente in der zukünftigen Union stärker sein sollten als in der Vergangenheit. Das europäische Rechtssystem, das auf drei Ebenen gründet, muss zu einer offenen Kooperation zwischen nationalen Parlamenten, Europäischem Parlament und regionalen Parlamenten führen.

Wir sind auch überzeugt, dass die Grundrechtscharta in die Verträge aufgenommen werden muss und die Rolle der Bürgerinnen und Bürger zu verstärken ist. Seit letzten Oktober können wir Fortschritte - bescheidene, aber doch sichtbare - verzeichnen. Das Europäische Parlament hat sich dafür ausgesprochen, obwohl sonst keine Lösung für den Status der gesetzgebenden Regionen gefunden wurde, dass die Präsidenten der Regionalparlamente in die Arbeit des Regionalausschusses miteinbezogen werden sollen. Das ist ein wichtiger Fortschritt.

Während der Arbeit des Konvents wurde das Problem der gesetzgebenden Regionen angesprochen. Die Regionalparlamente, die die Arbeit des Konvents unterstützen, sind erfreut über die heutige Gelegenheit, ihre Ansicht direkt vor dem Konvent äußern zu können. Das Thema befindet sich im Stadium stetiger Entwicklung, und die Debatte ist noch nicht geschlossen. Wir sind uns dessen bewusst, dass unsere ehrgeizigen Ziele in ein realistisches Ergebnis münden müssen. Dabei ist aber den Aufgaben, die uns unsere nationale Verfassung vorgegeben hat, Rechnung zu tragen. Ich möchte Ihnen jedenfalls versichern, dass den Positionen des Konvents von den Präsidenten der Regionalparlamente große Aufmerksamkeit zuteil wird, und wir werden dem bei unseren nächsten Arbeiten im Rahmen der CALRE Rechnung tragen.

2-020

DE

Teufel (Parl.-DE). - Herr Präsident, meine sehr verehrten Damen und Herren! Das Selbstverwaltungsrecht der Städte und Gemeinden ist bisher in keinem einzigen Vertragswerk verankert. Das muss sich ändern, denn die Regionen und Kommunen sind etwas anderes als das, was heute Zivilgesellschaft genannt wird. Sie sind keine gesellschaftliche Vereinigung von Bürgern, sie sind aber auch nicht lediglich administrative Einheiten. Sie sind die politischen Körperschaften, die den Bürgern am nächsten stehen. Dies gilt für das praktische Leben, es gilt aber auch für die Identität der Bürger.

Sie sind elementarer Grundpfeiler der Demokratie in Europa seit der griechischen Antike. Das Europa des Mittelalters bis zur Neuzeit war ein Europa der Städte. Das künftige Europa muss daher eine föderative und subsidiäre Struktur haben. Aufgebaut werden muss es von unten nach oben auf der Basis der kommunalen Selbstverwaltung. Den lokalen Gebietskörperschaften kommt deswegen eine ganz besondere Rolle zu. Ich unterstütze auch die Forderung, die Rolle der Regionen in der künftigen europäischen Verfassungsordnung im Herbst im Konvent zu diskutieren. Auch der Ausschuss der Regionen sollte so gestärkt werden, wie es deren Vertreter heute morgen in der Anhörung dargelegt haben.

Diese Diskussion muss in einer Arbeitsgruppe vertieft werden. Dazu bereits heute drei Gesichtspunkte: Wichtig ist, dass in einem neuen Verfassungsvertrag noch deutlicher wird, dass die bereits heute in Artikel 6 Absatz 3 EU-Vertrag verankerte Achtung der nationalen Identität der Mitgliedstaaten auch den innerstaatlichen Aufbau der Mitgliedstaaten umfasst. Bei der Definition des Subsidiaritätsprinzips sollte ein Hinweis aufgenommen werden, dass vor dem Erlass von EU-Regelungen die Handlungsmöglichkeiten der Mitgliedstaaten einschließlich ihrer Regionen und Kommunen berücksichtigt werden müssen. Im Rahmen ihrer Rechte und Zuständigkeiten sollten die Regionen mit Gesetzgebungsbefugnis wie auch der Ausschuss der Regionen ein eigenständiges Klagerecht vor dem Europäischen Gerichtshof erhalten. Auf dieser Grundlage können die Regionen und Kommunen zu tatkräftigen Partnern der Europäischen Union werden.

2-021

DA

Bonde (PE). - Hr. formand, på topmødet i Sevilla fik vi et gennembrud på åbenhed, men Frankrig og Luxembourg blokerede et planlagt gennembrud; derfor efterlyser jeg franske og luxembourgske kolleger, der vil være med til at lægge pres på deres regeringer.

Så til emnet om lokale og regionale myndigheders indflydelse på EU-lovgivningen. Der har vi jo en stærk folkelig støtte i Eurobarometer nr. 52 og 53, hvor 60% de af europæiske borgere foretrækker lovgivning ved lokale, regionale og nationale myndigheder, og kun 18% foretrækker et højere niveau. Alligevel har vi 85.000 sider EU-lovgivning, 10.000 love og lige så mange ændringsforslag, som efterhånden også berører alle de regionale lovgivende myndigheder. Hovedparten af den regionale lovgivning er i dag indrammet af EU-regler.

Det, vi derfor har brug for, er et reelt subsidiaritetsprincip, som styres nedefra og opefter, og der har vi prøvet med Kommissionens initiativmonopol at få de nationale parlamenter og de regionale lovgivende parlamenter til at foretage en parallel læsning af alle EU-lovforslag, således at der bliver mulighed for at bremse overnational lovgivning, hvis den går de nationale og regionale lovgivende parlamenter for nær. De regionale myndigheder kunne også få søgsmålsret ved domstolen. Regionsudvalget kunne få vetoret i forbindelse med fortolkningen af subsidiaritetsprincippet, og de kunne f.eks. lave en årlig rapport om subsidiaritet, så vi kunne få mange eksempler på overcentralistisk lovgivning på bordet.

Som eksempel kan nævnes, at vi i en dansk kommune har oplevet, at det lokale sporvejselskab ikke var i stand til at styre sin egen virksomhed. Efter min opfattelse ville det være en oplagt EU-sag, hvis de bød på sporvejskørsel i Hamburg eller et andet sted, men når de holder sig til deres egen kommune, kan jeg ikke se, hvorfor Kommissionen skal blande sig i det. Lad os få den type eksempler på bordet til den arbejdsgruppe om subsidiaritet, der mødes igen her i eftermiddag, så vi kan slå et slag for decentralisering.

2-022

IT

Speroni (Ch.E/G.-IT). - Signor Presidente, giusto una visione dell'Europa a più livelli - Unione, Stati, regioni, autonomie locali - va riordinata, come già sancisce la rinnovata Costituzione italiana. L'Unione deve riconoscere tali livelli, astenendosi tuttavia dal definire i particolari, restando ogni Stato libero di darsi l'assetto istituzionale interno ritenuto più confacente alle esigenze dei propri cittadini. Vediamo che, anche qui, nell'ambito della Convenzione, Belgio e Danimarca, secondo i propri ordinamenti istituzionali e le proprie scelte, hanno inviato esponenti regionali come membri, così come questi Stati si fanno rappresentare nel Consiglio, in talune occasioni, da ministri delle regioni secondo le loro competenze legislative. L'Unione deve quindi rispettare tali scelte e coordinare i propri ordinamenti con gli assetti istituzionali degli Stati, dando un ruolo, nei propri procedimenti decisionali, a quelle regioni cui gli Stati abbiano riconosciuto competenze legislative; di conseguenza, le regioni devono avere diretto accesso alla Corte di giustizia di Lussemburgo.

Concludo ricordando che, nell'Ufficio di presidenza della Convenzione, regioni e autonomie locali sono degnamente rappresentate dal Presidente Giscard, presidente di consiglio regionale in Francia, e dal Vicepresidente Dehaene, borgomastro in Belgio.

2-023

EN

Wittbrodt (Parl.-PL). - Mr President, democracy cannot exist if it does not have a solid basis. The basis for democracy is a just civil society, which functions through non-governmental organisations and through regional and local authorities, including Euro-regions and sub-regions. If we want Europe to be closer to its citizens, we have to conduct dialogue directly with the citizens. We will not be able to achieve this if we act without the commitment of NGOs. Therefore, the Convention's decision to open itself up to NGOs is an excellent one. This session shows how rich and beautiful Europe is in its national and regional diversity. I agree that it should be preserved.

Some of the proposals submitted by the NGOs are, in my view, very important. Firstly, as we know, subsidiarity is a basic principle for the Union. Subsidiarity is even more important for the existence and actions of NGOs. After all, regional, local and small voluntary organisations have a great impact on the development of civil society. The subsidiarity principle must, however, be accompanied by adequate instruments, including financial resources.

Secondly, local and regional level organisations have to be consulted in the decision-making process which directly refers to them. We should enhance and facilitate civil society involvement in the decision-making process and the new constitutional treaty should contain such statements. We should also bring in proposals from the European Commission's White Paper on European Governance.

Thirdly, the idea of civil society is based on common universal values such as the protection of human rights, and solidarity with the poor. Europe must find a deeper spiritual and religious dimension. This, and the Charter on Fundamental Rights should also be anchored in the constitutional treaty.

2-024

FR

Barnier (CE). – Monsieur le Président, chers amis, chers collègues, j'ai relevé dans les interventions ce matin trois points qui méritent, me semble-t-il, notre attention et notre soutien.

Premier point, assez général, un attachement aux grandes politiques communautaires qui font, je le disais hier dans le dialogue avec des organisations sociales, que l'Union ne se réduit ni ne se résume à un supermarché organisé, et qu'elle est beaucoup plus que cela. Elle est une communauté. Elle est également l'attachement à la politique de cohésion, à la politique régionale, à la politique agricole mais aussi à la politique de concurrence. Qu'on ne renationalise donc pas ces politiques, qu'on ne les détricote pas. C'est un premier point important, majeur, même, dans le grand débat sur l'avenir de l'Union.

Deuxième point: si ce premier point est acquis, il est alors possible de décentraliser la vie de l'Union, de reconnaître le fait régional dans la gestion de certaines politiques, et d'aller assez loin, comme nous y travaillons actuellement, de telle sorte qu'il y ait peut-être moins de bureaucratie à Bruxelles et plus de responsabilités, de confiance à l'échelon régional. Et ce qui a été demandé pour la politique transfrontalière vaut sans doute pour d'autres politiques régionales auxquelles nous réfléchissons pour après 2007.

Dernière conviction: sans remettre en cause l'autonomie institutionnelle des États membres, qui est un principe fondamental de la construction européenne, il est possible, pour réduire la fracture démocratique et pour rapprocher les citoyens de la construction européenne, de s'appuyer davantage sur le cadre démocratique de dialogues, de débats, d'informations que constituent les régions. Voilà pourquoi, Monsieur le Président, je voulais remercier le Comité des régions, les principales organisations qui se sont exprimées ce matin, non seulement pour la qualité de leurs interventions depuis le début de la matinée, mais aussi pour la qualité de leurs relations avec la Commission européenne et les autres institutions.

2-025

FR

Duhamel (PE). – Monsieur le Président, nous passons donc de l'écoute à l'étude. Je voudrais profiter de ce que beaucoup de gens y ont fait allusion ce matin pour enfoncer le clou de la simplification du vocabulaire. Simplifier l'Union européenne va être très difficile, simplifier sa langue est assez aisé. Ne pourrait-on pas poser la question, par exemple, de la pertinence de la terminologie ? Par exemple, on parle de Comité des régions, alors qu'en vérité, il s'agit d'un Comité des pouvoirs locaux. Afin d'avancer sur cette question de la simplification du vocabulaire, le Praesidium ne pourrait-il pas demander à l'Institut universitaire européen de Florence de travailler sur cette problématique en liaison avec les groupes de contact que l'on a entendus hier et aujourd'hui, afin de nous adresser rapidement des propositions écrites dont nous pourrions disposer à l'automne vu d'une part, qu'il ne s'agit pas d'une question politique de fond nécessitant au préalable des discussions fortes entre nous et d'autre part, qu'il existe un accord sur cette nécessité. Pour avancer, il faut tester chacune de ces terminologies avec les personnes concernées. Ils pourraient nous y aider.

2-026

DE

Einem (Parl.-AT). - Herr Präsident! Ich denke, es ist notwendig zu betonen, dass die Gemeinden mehr Rechte bekommen, dass der Artikel 16 ausgestaltet wird, dass die Gemeinden im Bereich der Daseinsvorsorge einen größeren Spielraum bekommen. Es wurden dazu gestern Vorschläge gemacht, ich selbst habe auch schriftliche eingereicht. Ich denke allerdings, man muss klar und deutlich Nein dazu sagen, dass alle Wünsche, die wir heute gehört haben, an die EU-Ebene gerichtet werden. Die Ausgestaltung der Struktur der Mitgliedstaaten ist die Angelegenheit der Mitgliedstaaten und muss es auch bleiben. Daher geht es primär dort darum, die Rechte der Regionen entsprechend zu respektieren. Ich bin sehr dafür, dass wir mehr Informationen an die Betroffenen, auch an die Regionen geben, damit sie sich entsprechend orientieren und an die entsprechenden Stellen wenden können. Ich bin aber sehr dagegen, dass wir diese Kraftmeierei auf europäischer Ebene einlösen müssen.

2-027

DE

Berger (PE). - Herr Präsident! Ich denke, so sehr wir uns hier im Konvent auch bemühen werden, die Europäische Union bürgernäher und demokratischer zu gestalten, wir werden dem Bürger nie so nahe kommen, wie es die lokale Ebene und ihre Vertreterinnen und Vertreter tun können. Ich denke daher, dass wir dafür von der europäischen Ebene alles tun sollten, um die lokale Ebene zu stärken. Zum einen, dass wir das Prinzip der lokalen Selbstverwaltung anerkennen, damit insgesamt die Demokratiebilanz in der Europäischen Union besser wird. Wir müssen die Leistungen, die die Gemeinden erbringen, davor schützen, dass sie dauernd durch das europäische Wettbewerbsrecht verunsichert und behindert werden. Ich denke, wir sollten eine *de minimis*-Klausel einführen, die uns vor allzu tiefgehenden Regulierungen bewahrt. Wir sollten diese Ausformung des Subsidiaritätsprinzips als eine der Aufgaben des Ausschusses der Regionen sehen, in dem aber die Gemeinden in Zukunft besser vertreten sein sollten. Insgesamt denke ich, dass die europäische Ebene den Gemeinden den Rücken stärken soll, wenn es denn sein muss, auch gegen die Regionen und die Mitgliedstaaten!

2-028

DE

Rack (PE). - Herr Präsident! Ich möchte eigentlich in die selbe Kerbe schlagen wie eine Reihe von Wortmeldungen, die jetzt gerade aus dem Kreis der Konventionalisten gekommen sind. Es ist wichtig und richtig, dass die Vertreter der Regionen und der Gemeinden

Bürgernähe mit sich bringen, und wir brauchen Bürgernähe in Europa - mehr als wir derzeit haben! Aber hier gibt es sehr große Unterschiede. Es ist darauf hingewiesen worden, dass Regionen mit Legislativbefugnissen in einer ganz anderen Situation sind, wenn es um die Vertretung der Interessen ihrer Bürger geht, als wenn es um bloße rechtsanwendende Institutionen geht. Wir müssen aber auch sicher sein, dass wir das europäische Rechtsetzungsinstrument nicht noch komplizierter machen, als es schon ist. Vereinfachung ist angesagt und nicht totale Verkomplizierung, denn sonst verlieren wir all das, was wir an möglicher Bürgernähe gewinnen, sofort wieder mit mangelndem Verständnis am Gesamtsystem.

2-029

EN

MacCormick (PE). - President, one thing seems to have become very clear to me this morning: there are very urgent issues here on which many of us profoundly agree. I understand the Praesidium is still in some doubt over whether it needs to have a working group in the autumn about regional and sub-regional government. I hope that the conversation of this morning has absolutely dispelled these doubts. It is vital that we have such a working group in order to get into the detail of these matters.

I would like to mention one point coming as I do from Scotland. It seems to me very logical that in the current structure of the states and regions of the Union, Scotland, for example, has only half as many Members in the European Parliament as Denmark. There are sixteen Danish representatives whereas there are only eight from Scotland because we are part of a large state. The population is the same but the representation is different. Apply that to the Committee of the Regions and it looks much less sensible. Luxembourg has more members of the Committee of the Regions than Galicia, Wales, Scotland and Catalonia. That is absurd. We should really look again at making the Committee of the Regions into just that: a Committee of *Regions*.

2-030

IT

Amato (Vicepresidente). - Mi ha colpito, stamani, che i rappresentanti delle regioni, in particolare, si preoccupassero, giustamente, di rafforzare il ruolo del loro Comitato nella fase di elaborazione della legislazione comunitaria - trovo giusto che il loro parere conti, trovo giusto che si motivi quando se ne disattende il parere - e che si siano mostrati meno preoccupati di garantire le loro competenze legislative con lo strumento che il collega Lamassoure ha più volte proposto e che il Parlamento europeo ha accettato, che è quello di definire ovunque possibile la competenza legislativa comunitaria come una competenza di principi. In qualche modo ce lo ha chiesto la dichiarazione di Laeken dicendoci di fare una migliore delimitazione delle competenze, e questo è il presupposto più naturale per un ricorso alla Corte di giustizia che, altrimenti, fondato sull'attuale sussidiarietà, ha dei profili molto molto problematici.

2-031

FR

Le Président. – Nous en terminons ainsi avec le groupe « Régions et Collectivités locales ». Je crois pouvoir dire que c'est un sujet que nous reprendrons en séance plénière et c'est aussi un sujet sur lequel le Président envisage un groupe de travail, comme cela a déjà été répété.

2-032

DA

Menneskerettigheder

DE

Menschenrechte

EL

Δικαιώματα του Ανθρώπου

EN

Human rights

ES

Derechos humanos

FR

Droits de l'homme

IT

Diritti umani

NL

Mensenrechten

PT

Direitos humanos

FI

Ihmisoikeudet

SV

Mänskliga rättigheter

2-033

FR

Le Président. – Nous en venons maintenant au groupe « Droits de l'Homme », dont Monsieur Vitorino a pris la présidence.

2-034

EN

Vitorino (CE). – Mr President, we in the Human Rights Contact Group have had a very lively and rich discussion which I am sure will be reflected in the contributions of the speakers that follow me.

By way of an introduction, I would like to emphasise there is an important lesson to be drawn from the Contact Group. Human rights protection in the European Union is about much more than just having good texts such as the Charter or the European Convention on Human Rights. It is a wider challenge in a European Union that wants to be a political union. It is also about structural implementation in the institutions, the mainstreaming of human rights in all European Union policies, particularly issues of gender equality. It is about effective access to the courts for everyone and it is about better parliamentary and ombudsman control, as Mr Soderman mentioned yesterday. Last, but not least, it is about enhanced transparency, accountability and the enhanced involvement of civil society in the process.

Beyond the technical issues that will be dealt with by the Working Group, there are a number of important political issues to be taken into consideration. Several members of the Contact Group have put forward concrete proposals for consideration by this plenary. Our Contact Group had a fascinating debate on the Charter. The Charter was welcomed and its importance underlined by all sides. It is an open question, however, whether the rights in the Charter should be strengthened. Some in the Contact Group emphasised this point. Others said that reopening the Charter now would not necessarily make it better.

Finally, a point which was unanimously agreed in the Contact Group was that the integration of the Charter should not be seen as an alternative to accession to the European Convention on Human Rights. Both initiatives might be considered as complementary in the sense that they both tend to reinforce fundamental rights in the European Union.

2-035

EN

Oosting (NGO-HUMRIGHTS). – Mr President, I speak on behalf of the Human Rights Contact Group and, particularly, on behalf of the extensive network of human rights, democracy and conflict prevention NGOs that have submitted a joint paper to the Convention.

That network in turn participates in the Civil Society Contact Group, together with the social, environmental and development NGOs and the ETUC and has thus contributed to that group's brief common statement already referred to yesterday. Let me underline that the common statement encapsulates the key findings and views of networks all over Europe that together stand for many millions of people and, I suspect, may be the largest European constituency that you have before you.

As the first speaker on the human rights sector, I will present our general views on the European Union's values, missions and policies in relation to human rights. More specific issues will be subsequently addressed by my colleagues, including, and particularly, the Charter and the question of accession.

Values: from an economic community that sought peace, stability and prosperity within its own borders, the European Union has become a community of values, with aspirations at a global level. The principles of liberty, democracy, respect for human rights and

fundamental freedoms and the rule of law are enshrined in the Treaties and are not questioned by anyone.

Yet there is a strong notion prevailing in the debates on the future of Europe that when redefining its mission, the European Union should somehow also reaffirm and strengthen its value base.

It has proclaimed that human rights should be at the heart of all its policies, internally as well as externally. But there seems to be uncertainty as to what that means. How important are human rights really for the European Union? Is this something we impose mainly on others or are we taking it seriously ourselves also?

That is not all that evident. Human rights observance within EU borders is in fact a chronic weak spot in the European Union's human rights policies. Human rights within the EU are regarded as a matter of codification and proclamation rather than of implementation and accountability. Serious human rights problems still occur inside the European Union, but these are considered as national responsibilities only. This complacent attitude is not just a credibility problem, it is also the best recipe to ensure that the candidate countries now still under close scrutiny will stop bothering too, as soon as they are full members.

Let me mention some other relevant and complicating aspects. There is no implementation framework and there are limitations in terms of instruments and competences. Article 51 of the Charter makes clear that the European Union can do no more to implement fundamental rights than it has been given powers to do.

There is no accountability, even at political level, for violations in Member States. Serious problems should be not just a matter for the Member State in question to address but must be a concern for the European Union as a whole. Article 7 of the Treaty reflects that and even provides for sanctions, but that is clearly a matter of unlikely last resort. We argue that there is a need for a positive and more proactive approach as well.

Finally, the whole domain of Justice and Home Affairs is burgeoning and poses vital questions for human rights observance by and within the European Union. However, divided as it is between the first and third pillars and subject to different regimes, it is about as untransparent as can be. So much for human rights within the European Union.

On the external front, the human rights clause has become almost a dead letter. Here too, the partners with whom the EU has signed up to a formal commitment to respect human rights do not need to bother too much either.

A fixation on the sanction element, on the one hand, and the reluctance to move beyond silent diplomacy, on the other hand, have so far prevented the development of the human rights clause into an active instrument to stop abuse and build mechanisms capable of prevention. Lack of transparency exacerbates the problem here too. The picture is not only negative; there is enormous effort and there certainly are results. The Council's own annual report on human rights is an impressive catalogue of activities. But it has so far stopped short when it comes to the question of what the result of all that effort really is.

The overall balance is not good. Where human rights within the EU are at issue, the EU remains largely invisible. Where human rights are supposed to be central in external endeavours, too often the results are limited at best and at worst sidelined by larger interests, as we saw after 11 September and again now with regard to the fight against illegal immigration.

To those who think we may be overly critical, it is precisely the EU's own very high priority for human rights and its own very high ambition to be a force for change that justify a critical assessment. If human rights are considered to be at the heart of all EU policies, it should show and it does not, not nearly enough at least.

When reviewing the overall picture, there is a clear discrepancy between the way the European Union asserts its values and the way it gives effect to those values in the field of human rights. There are good intentions, great efforts and certainly also positive results, but also an increasing sense of the collective human rights effort hitting a glass ceiling. This has to do with the nature of human rights, of course, with the highly charged and politicised context in which the battles have to be fought. Human rights work is a long haul.

The current sense of frustration also has to do with the fact that the past year has shown how fragile the human rights effort really is, how easily standards of international human rights and humanitarian law can be compromised and become negotiable. It also has to do with how the big issues - the fight against terrorism and the fight against illegal immigration - can move human rights right off the agenda; how in the major human rights crises in Israel and the Occupied Territories, in Chechnya and Columbia, there is time and again a failure to put human rights effectively at the heart of the peace process. The answer lies in part in stepping up the effort, putting words into action, and being more open and assertive. But at a different level, the EU should also reflect on how it can bring a proper human rights perspective into its policies and actions across a range of endeavours. The time to undertake that reflection clearly is now.

There is one important point I will make before concluding. When talking about a proper human rights perspective, we must be clear that it cannot be limited any longer to the traditional context of civil and political rights. The full and indivisible spectrum of human rights must be taken into account when reviewing the European Union's value base and its mission. It is necessary to take human rights out of the box they are in right now, to ensure coherence between values, objectives and the policies and methods to achieve those objectives. It is necessary to ensure coherence between the internal and external dimensions and to ensure, last but not least, that the over-arching global objective of sustainable development in its social dimension encompasses the full spectrum of human rights.

To conclude, there is a problem of delivery and implementation. There are problems of coherence and of accountability. I argue that there is a deeper problem also, a need for a comprehensive vision of the way that the European Union's fundamental values guide both its internal policies and the European Union's key role in the world. Therefore, we call for the European Union's value base to be strengthened and revitalised by asserting international human rights standards as absolute benchmarks; by developing a policy framework that reflects the inter-connections and the indivisibility of human rights; and by asserting an implementation regime. That regime will remain problematic but should engage in more direct and effective dialogue with civil society; increase transparency regarding the impact of actions and regulations; introduce proper monitoring, evaluation and accountability and review the ability of institutional arrangements to enhance these objectives.

On this last point, how all this should translate into competences in institutional arrangements is for you to determine. All we say is that it needs a strong European Union to deliver on its promises. I have no doubt that civil society will be greatly responsive to a European Union that manages to do that.

2-036

FR

Sedou (NGO-HUMRIGHTS). – Toujours au nom des ONG du groupe de contact « Droits de l'Homme », je ciblerai là les questions relatives à la Charte et à l'adhésion à la Convention européenne des Droits de l'Homme. Si, effectivement, l'existence d'une charte des droits fondamentaux de l'Union européenne constitue déjà en soi une avancée, cette dernière n'est cependant pas encore entièrement satisfaisante et des lacunes sont à souligner. Sans être exhaustive, je citerai quatre aspects principaux. D'abord, en terme de protection des droits économiques et sociaux, la Charte est en retrait par rapport à la Charte sociale européenne révisée. Elle est en retrait également par rapport à la Convention européenne, tant au niveau des droits garantis qu'au vu des limitations qu'elle impose par rapport à la Convention. De plus, des formules ambiguës dans certains articles laissent une marge de manoeuvre pour des interprétations restrictives. Enfin, elle introduit, dans plusieurs articles, une distinction entre citoyens européens et ressortissants d'autres nationalités, alors qu'à nos yeux, elle devrait garantir ces droits fondamentaux à tout résident de l'Union, sans discrimination basée sur la nationalité. La charte actuelle doit donc être considérée comme complémentaire à la Convention européenne, dans la mesure notamment où elle ajoute des droits mais en aucun cas, comme une alternative, ni en terme de garanties offertes, ni en terme de contrôle juridictionnel.

Si les avis sont partagés en ce qui concerne le mode et le degré d'intégration de cette charte, il y a unanimité au sein des ONG pour considérer que cette intégration doit se faire dans le sens d'un renforcement des droits et des garanties. Cela implique tout d'abord que le mode d'intégration devra donner une force contraignante à la Charte. Cela signifie que les droits garantis par la charte doivent être considérés comme faisant partie de l'acquis communautaire minimal. Cela implique donc que toute révision ou toute modification de la charte, que nous appelons de tous nos voeux dans les délais les plus brefs, se fasse dans le sens d'une amélioration par rapport à l'acquis de base, dans le sens donc d'une avancée en terme des droits garantis. Nous estimons, par ailleurs, que le mode de révision devrait prévoir un dialogue effectif avec la société civile et les ONG concernées qui ont des revendications précises en la matière. Pour les détails, je vous renvoie aux contributions des ONG. Je soulignerai juste que certaines de ces revendications pourraient être prises en compte et intégrées dans l'élaboration du ou des nouveaux Traités, ce qui constituerait une alternative, si l'amélioration de la charte s'avérait pour le moment impossible. Nous estimons en tout cas que la référence au sein de ces textes à d'autres sources juridiques de protection des droits humains doit absolument être maintenue, notamment les références à la Convention européenne et la jurisprudence de la Cour de Strasbourg.

L'intégration de la charte aura également des conséquences en terme d'incohérence ou de dédoublements entre certains articles de la charte et des dispositions des traités, ou même du droit dérivé, au niveau des droits et de leur étendue. Je ne dresserai pas non plus ici la liste de ces problèmes. Vous pouvez trouver cela dans les contributions. Mais quelle que soit la méthode choisie pour résoudre ces questions, cela devra se faire par une approche au cas par cas, avec pour objectif de maintenir le niveau le plus élevé des droits. Au niveau des questions de compétence, il ne fait pas de doute pour nous que les compétences, tant de l'Union, que de la Cour de justice des Communautés, doivent être étendues aux dispositions de la Charte, et ce dans tous les domaines d'action de l'Union, y compris bien-sûr celui de la justice et des affaires intérieures. En effet, la législation communautaire est appelée à se développer dans des matières qui vont toucher au coeur même des libertés de tous, notamment dans les deuxième et troisième piliers (politique d'immigration, la coopération judiciaire et policière etc). Or, actuellement, cette législation n'est soumise à aucun contrôle juridictionnel digne de ce nom, ni direct ni externe. Pour qu'une telle extension des compétences de la Cour de Luxembourg soit valide, elle devrait bien-sûr s'accompagner d'un assouplissement conséquent des conditions d'accès pour les particuliers, afin d'assurer l'effectivité de ce contrôle. Elle devrait également veiller à assurer une plus grande cohérence possible avec la Cour de Strasbourg. Et là, nous souhaiterions soutenir une suggestion précise qui serait la possibilité, pour les associations, d'introduire des actions collectives auprès de la Cour, sur le modèle du système de la Charte sociale européenne.

Pour être effective, cette extension des compétences requiert bien-sûr que l'Union et ses Institutions soient dotées des moyens adéquats pour atteindre ces objectifs et pour contribuer, non seulement au respect, mais aussi à la mise en oeuvre de la Charte. Sur la question de l'adhésion à la Convention européenne des Droits de l'Homme, la charte ne constitue en rien une alternative à cette adhésion. D'abord, parce que la Charte ne prévoit en l'état actuel aucun système de contrôle et ensuite parce que cette adhésion représenterait une avancée, une plus-value par rapport à la Charte. En effet, elle permettrait d'assurer l'instauration d'un mécanisme de contrôle juridictionnel externe et spécialisé en matière de droits humains. Elle assurerait également une plus grande cohérence, car la plupart des actes communautaires sont soumis à une forme de contrôle indirect en matière de droits humains, au moment de leur mise en oeuvre par les états, qui eux, sont soumis à la Cour de Strasbourg, d'où un risque d'incohérence entre les systèmes des Etats et

surtout, le texte, qui est à l'origine même de cette application et qui, lui, échappe à ce contrôle. L'adhésion renforcerait également l'autorité et la crédibilité du droit de l'Union, contrairement à certaines craintes exprimées et ce, non seulement sur un plan pratique mais également sur un plan symbolique. Cela renforcerait l'idée d'appartenance à une construction politique basée sur les valeurs communes.

Certaines ONG estiment également que ceci pourrait être un signal fort pour les pays candidats, mais aussi pour les Etats membres, qui les dissuaderait d'éventuelles tentations de déroger à leurs propres obligations en terme de respect des droits humains. Les questions plus précises, telles que les modalités de l'adhésion, la base juridique, la personnalité juridique ou la répartition des compétences ne constituent pas selon nous un problème juridique véritable ou insoluble. Toutes peuvent être résolues par une volonté politique véritable. De même, les craintes d'un affaiblissement ou d'une atteinte à l'autonomie du droit communautaire nous paraissent complètement injustifiées. En effet, il existe déjà des interférences entre la Cour de Luxembourg et la Cour de Strasbourg. Celles-ci ne peuvent donc que profiter d'une formalisation de ces échanges en matière de clarté et de cohérence. C'est plutôt l'absence injustifiée d'un contrôle juridictionnel crédible qui affaiblit le droit communautaire. Quelle que soit l'approche envisagée, la solution devra garantir aux individus trois principes de base : la simplicité, l'accessibilité et l'effectivité de recours possibles. Et là nous craignons que l'élaboration de formules alternatives complexes qui ont pu être suggérées, ne portent préjudice à ces principes. Je conclurai en disant que les ONG du groupe préconisent également, dans la mesure du possible, l'adhésion de l'Union aux autres instruments européens et internationaux de protection des droits humains (Charte sociale européenne révisée, Convention-cadre pour la protection des minorités et charte relative aux langues régionales et minoritaires, pactes internationaux et différentes Conventions internationales, notamment contre la discrimination tant raciale que les femmes ou les personnes handicapées). Nous souhaiterions également la signature du statut de la Cour pénale internationale. Cet engagement collectif serait un signe politique fort qui obligerait les pays qui ne l'auraient pas encore fait, de s'y soumettre également.

2-037

FR

Spiliotopoulos (NGO-HUMRIGHTS). – Nous nous réjouissons que la convention mette les Droits Fondamentaux au coeur de son travail. L'acquis communautaire en matière de Droits Fondamentaux définit l'identité européenne. Il constitue le fondement de l'Union, voire sa raison d'être. Cet acquis découle du droit écrit, Traités et droits dérivés, des principes généraux que la Cour élabore, des Traités ratifiés par les Etats Membres et de notre édition constitutionnelle. Cet acquis est en évolution constante. La violation de cet acquis par un Etat Membre entraîne des sanctions graves. Son respect une condition primordiale de candidature à l'adhésion. L'acquis en Droits Fondamentaux est le noyau dur de l'acquis communautaire dont le Traité de l'Union exige le maintien intégral et le développement. L'objectif de la Charte était de rendre visible des droits existants, sans pour autant en bloquer l'évolution. Cependant, à côté de ces avancées incontestables, la Charte contient aussi des dispositions en retrait par rapport à l'acquis et elle ne répond pas à certaines préoccupations majeures dans l'Union. Dans la mesure où elle maintient l'acquis ou le développe, la Charte est un acquis elle-même. Ainsi, elle n'est susceptible que d'être améliorée. Je vais illustrer tout cela au moyen de quelques exemples. L'article de la Charte qui proclame l'égalité entre hommes et femmes dans tous les domaines était requis par le Traité qui érige cette égalité en mission et objectif de la Communauté. Le Traité impose l'obligation positive d'éliminer les inégalités et de promouvoir l'égalité entre hommes et femmes. Ces inégalités sont des situations de fait qui affectent surtout les femmes et sont dus à des préjugés et stéréotypes. Elles ne peuvent être éliminées sans action positive. Les femmes ne sont ni groupe ni minorité mais une des deux formes de l'être humain. Et elles souffrent souvent d'inégalités multiples.

En ce qui concerne les actions positives, la Charte doit être complétée en conformité avec le Traité afin de montrer que les actions positives ne sont pas des discriminations mais des moyens nécessaires pour atteindre l'égalité réelle. La participation équilibrée des femmes et des hommes à la prise de décision doit aussi être prévu. En matière de maternité, paternité et articulation de la vie professionnelle et familiale, l'acquis communautaire dépasse largement la Charte. Il garantit des droits cruciaux pour l'avenir, voire la survie même de l'Europe et pour la qualité de vie des femmes, des hommes et des enfants et il est en évolution constante. En ce qui concerne plus particulièrement les droits des enfants, la Charte ne reflète pas l'acquis qui découle de la Convention sur les droits de l'enfant. Des propositions concrètes à ce sujet sont faites. Elles devraient reconnaître que les enfants ne sont pas seulement des objets de protection, mais surtout des sujets de droits. La Charte interdit les expulsions collectives et le refoulement mais elle ignore les droits des ressortissants d'un Etat de ne pas être expulsé même individuellement, et de ne pas se voir refuser l'entrée dans leur pays, droit absolu et indérogeable selon la Convention des Droits de l'Homme et la jurisprudence de la Cour. La Charte devrait aussi répondre à certaines préoccupations majeures dans l'Union, notamment en interdisant toute violence physique ou morale, en reconnaissant le droit d'asile à tous ceux et celles dont les droits fondamentaux ou l'intégrité physique ou morale sont menacés, en garantissant la liberté et le pluralisme des médias en cas de concentration des médias. L'article qui interdit les discriminations constitue une avancée mais il ignore le droit à l'égalité des chances pour les personnes appartenant aux groupes et minorités. Il ignore également les droits des minorités tel que garantis par le Pacte des Droits civils et politiques.

La Charte ignore ou reconnaît insuffisamment des droits sociaux garantis par des Traités internationaux tel que le droit au travail, à un revenu minimum, à un logement décent, à la sécurité sociale, à la protection contre la pauvreté et l'exclusion sociale. Quant à son champ d'application, celui-ci est restrictif par rapport à l'acquis communautaire. La Cour exige l'application des Droits Fondamentaux là où les Etats agissent dans le domaine du droit de l'Union. Ensuite, la limitation des droits est permise sur la base de critères généraux et vagues où des critères classiques des Traités internationaux tels que la référence à une société démocratique sont absents. Dès lors, les limitations sont souvent invisibles. Par conséquent, on doit préserver les avancées de la Charte et combler ses lacunes tout en maintenant et développant l'acquis communautaire. Un des moyen d'y parvenir est de, comme le proposent nombre d'ONG,

faire référence à la Charte, au paragraphe deux de l'article six du Traité de l'Union, en plus de tous les Traités ratifiés par les Etats Membres et des traditions constitutionnelles.

Il faut également renforcer les droits fondamentaux garantis par les Traités en ajoutant certaines dispositions qui serviront aussi de base pour des instruments de droits secondaires. On pourrait imaginer une disposition qui interdirait toute discrimination et exigerait l'égalité des chances pour tous sans discrimination, l'égalité des droits entre femmes et hommes dans tous les domaines et les actions positives, la protection de la maternité, de la paternité et de l'articulation de la vie familiale et professionnelle et l'interdiction de tout traitement favorable direct ou indirect en rapport avec ces situations. Il faut également reconnaître à toute personne un droit individuel à la sécurité sociale et le fonctionnement ainsi que le financement des services d'intérêt général doit être réglementé dans le but de garantir les Droits Fondamentaux. L'Union doit aussi avoir les compétences nécessaires à la mise en oeuvre des droits, y compris les droits sociaux, tel le droit à l'éducation sans oublier l'harmonisation en matière de santé publique. Il faut aussi instituer un médiateur de l'Union qui recevrait les plaintes contre les Etats Membres en vue d'éventuelles procédures d'infraction. Ce faisant, nous aurions un système cohérent et efficace de Droits Fondamentaux qui maintiendrait intégralement l'acquis et le développerait. Je terminerai en plaidant pour que "Droits Fondamentaux" soit définitivement remplacé par "Droits de l'Homme" comme vient une nouvelle fois de le proposer Madame Berès.

2-038

IT

Muscardini (PE). - Signor Presidente, operare in campo politico, culturale e sociale ed economico affinché i diritti e la dignità della persona siano rispettati nell'Unione e nei paesi con i quali abbiamo rapporti politici, commerciali o di cooperazione, è uno degli impegni che la Convenzione si è posta nella prima riunione, discutendo delle missioni dell'Europa.

Nell'Unione spesso la dignità della persona è violata da una criminalità organizzata e transnazionale che trascina minori, bambini e bambine, sulla strada della prostituzione e della pedopornofilia, per non parlare del lavoro minorile e delle violenze domestiche. Dobbiamo difendere i diritti politici, civili, culturali ma, oggi più che mai, anche il diritto all'integrità fisica e psichica. Per difendere questi diritti, per combattere questi soprusi occorrono univoche leggi europee e anche maggiore cooperazione tra le polizie, fino ad arrivare a un organismo europeo che operi per la lotta agli specifici reati di violazione dei diritti umani. L'Europa, inoltre, ha il dovere di chiedere a tutti i governi con i quali ha rapporti di rispettare il diritto di ogni essere umano all'integrità fisica, ad una vita dignitosa, all'accesso all'informazione e alle libertà democratiche. Ogni volta che un essere umano è impedito nell'esercizio dei suoi diritti e dei suoi stessi doveri, che è sradicato dalla sua famiglia, menomato nel fisico o assoggettato con il sopruso, l'Europa della libertà, della pace e della democrazia deve avere il coraggio e la forza di intervenire, e la Convenzione ha oggi il dovere di chiedere alle future Istituzioni europee di sancire norme che vincolino i rapporti commerciali e politici a rispetto dei diritti della persona.

2-039

EN

Nahtigal (Gouv.-SI). - Mr. President, I would like to emphasise the question of consistency. We need to look at human rights on a European level, enforced and implemented by the European Court of Justice, and ways in which we can bring in the European Court of Human Rights in order to enhance human rights at the European and wider levels.

Traditionally, case law has been created by the European Court of Human Rights. Firstly, therefore, we need to study in greater detail the level of human rights which has been traditionally adopted by these institutions before trying to incorporate the Charter of Human Rights into a European Constitution. In so doing we should take care not to lower the standard of human rights at European level once the Charter has been incorporated in the European Constitution.

We should not hesitate to enhance gradually the level of human rights in the European Constitution, perhaps by gradually amending the Constitution as we go, as was the case with the American Constitution, to which amendments were adopted over the years in the light of empirical findings and controversial cases such as the 14th Amendment etc.

The development of human rights at the European Constitutional level should, therefore, be gradual. We should not raise expectations at the beginning by incorporating social rights which are perhaps too broad and promises that we will subsequently not be able to keep.

2-040

NL

Timmermans (Parl.-NL). - Dank u wel, voorzitter, ik heb goed geluisterd naar de bijdragen van de contactgroep en die bijdragen hebben mij gesterkt in de conclusie dat het Handvest moet worden opgenomen in de gereviseerde verdragen en dat de Europese Unie zo spoedig mogelijk moet toetreden tot het Europees Verdrag voor de Rechten van de Mens.

Dat is des te noodzakelijker nu we op het punt van de derde pijler steeds meer vorderingen maken. De bescherming van de rechten houdt op dit moment geen gelijke tred met de uitbreiding van bevoegdheden van de verschillende overheden om op die rechten in te grijpen. Iedere Europese burger heeft het recht op bescherming tegen het handelen van de overheid, of dat nu de nationale of de

Europese overheid is, en daarom moet het Handvest ook zo snel mogelijk worden geïncorporeerd en moet het EVRM door Europa worden ondertekend.

Maar het gaat om meer dan alleen juridische bescherming van rechten. In onze samenleving in de Europese Unie, die gebaseerd is op lotsverbondenheid, vergen mensenrechten constant de aandacht en constant onderhoud. Als het niet goed gaat met de mensenrechten gaat het niet goed in een samenleving, en dat zijn dan altijd vroege indicatoren dat er iets fout gaat in de samenleving, die we zien in het respect voor de mensenrechten. Staat de persvrijheid onder druk, staan de rechters onder druk, dan hebben wij allemaal in de Unie een probleem en daar moeten wij elkaar op kunnen aanspreken op Unie-niveau, dat is niet meer de *chasse gardée* van nationale lidstaten.

Tot slot, voorzitter zou ik speciale aandacht willen vragen, zeker in de uitgebreide Unie, voor de positie van nationale minderheden. Dat is in de huidige Unie nog een onderbelicht aspect. In de uitgebreide Unie zullen wij daaraan meer aandacht moeten schenken; het gaat hier om zaken als het recht op gebruik van de eigen taal, het recht op eigen vertegenwoordiging. Voorzitter, er is veel werk te doen, laten we dit in de Conventie opnemen.

2-041

NL

Maij-Weggen (PE). - Voorzitter dank u wel, voorzitter ik wil de inleiders hartelijk danken voor hun interventies, ik wil ze hartelijk danken voor de steun die ze ons altijd geven in het Europees Parlement als het gaat om de achtergrond van bepaalde mensenrechtenkwesties.

Naar mijn oordeel zijn mensenrechten een geweldig belangrijk thema in de Europese Unie. Het is bijzonder belangrijk dat we de lidstaten en ook toetredende landen kunnen toetsen aan een aantal elementaire zaken en daarvoor hebben we dan het EVRM, daarvoor hebben we het Handvest voor de Grondrechten, daarvoor hebben we de VN-verdragen. Het is daarom van cruciaal belang dat de Europese Unie een eigen rechtspersoonlijkheid krijgt, zodat we kunnen toetreden tot die Verdragen en ze beter kunnen toetsen. Natuurlijk moet het Handvest in de Verdragen worden geïncorporeerd.

Voorzitter, we hebben ook een taak met betrekking tot de Derde Wereld. Ik wil dat ook nog eens benadrukken vooral omdat er op dat gebied sprake is van veel hypocrisie. We hebben clausules over mensenrechten in de handelsverdragen en ook in de afspraken met betrekking tot ontwikkelingssamenwerking, maar ze worden in heel wisselende mate toegepast. Op dit moment is het zo dat zeker tien landen uitgesloten zijn van ontwikkelingssamenwerking en van handel vanwege het feit dat ze de mensenrechten niet handhaven maar er zijn ook landen, ik denk aan Soedan, Birma, waar dat niet gebeurt. De reden hiervoor is dat één of twee lidstaten zich daartegen keren en meestal omdat ze daar handelsbelangen hebben, of iets dergelijks. Het is ook heel belangrijk dat de besluitvorming bij unanimitéit wordt doorbroken wanneer het gaat om de toepassing van mensenrechten in de Derde Wereld.

De belangrijkste drie eisen voor onze conventie, voorzitter, lijken mij de volgende te zijn: de Europese Unie moet een rechtspersoonlijkheid krijgen, zodat ze toe kan treden tot alle internationale verdragen op dit gebied; het Handvest moet in de verdragen worden geïncorporeerd en het unanimitéitsbeginsel moet worden doorbroken bij de toepassing van mensenrechten buiten Europa.

2-042

EN

Söderman, Ombudsman. - Mr President, in Nice in December 2000, the Presidents of the European Parliament, the Council and the Commission stated that the Charter was an important commitment for the Union's institutions to make to European citizens. Since then, the Ombudsman has tried to encourage the institutions to follow the Charter. This has included looking at the freedom of expression of officials, their right to parental leave, age discrimination and the recruitment procedure, indirect sex discrimination against women, the secondment of national officials, the right to good administration by following the European Code of Good Administrative Behaviour, and a suggestion that there should be a code to deal with complaints. The Commission has cooperated in dealing with most of these issues.

There can be no doubt that the Charter should be legally binding on the Union's institutions and bodies, including when they legislate. This means that the Charter will also be binding whenever Community law is being applied. The citizens should then have remedies available if the Charter is not followed. Both judicial and non-judicial remedies could be used.

The Network of Ombudsmen and similar bodies could surely make an important contribution here. The constitutional role of the Court of Justice should be further developed to include a focus on human rights. The European Ombudsman would be ready to accept responsibility for referring fundamental rights cases to the Court of Justice if no solution can be found in a normal investigation by the Ombudsman. This could limit the need for individuals themselves to seek to bring fundamental rights cases before the Community courts.

2-043

EN

Yilmaz, Ayfer (Parl.-TR). - Mr. President, I fully share the views expressed concerning the importance of the protection and monitoring of human rights. Indeed, this question should be handled on a global scale and the Union should fulfil its responsibilities for the promotion of the human rights situation of millions of people around the world.

It is essential for the Union to defend objective values without discrimination and double standards. Extended dialogue with civil society is needed for the implementation of human rights. This is crucial for the credibility of the Union. The Union should recognise terrorism as a violation of human rights. Only with coherent and effective measures can we fight against terrorism, which has caused the death of hundreds of thousands of people.

Lastly, the Union should focus on gender equality issues. It should also ensure the protection of the rights of non-EU citizens resident in Member States.

2-044

EN

Bruton (Parl.-IE). - Mr. President, I have a question about human rights. What is human? What is the scope, therefore, of *human* rights? Is a child before it is born human? If it is human, does it have human rights? For instance, the right to life under the Charter. We have heard about the rights of the child after it is born, but does the child have any rights before it is born? Does the Charter take the view, if such rights exist, that these are entirely at the discretion of the child's parents and that neither the Union nor the Member State has the responsibility to vindicate the rights of the human before the human is born? This is an important question which we need to address because it determines the scope of humanity and, therefore, the scope of human rights.

2-045

FR

Berès (PE). – Simplement pour attirer l'attention du praesidium et peut-être du secrétariat sur un problème linguistique en ce sens qu'il ne concerne que quelques langues de l'Union, mais qui a une portée bien plus générale. Il s'agit de la façon de traiter les droits de la moitié de l'humanité, à savoir les droits de la femme. La meilleure expression que nous puissions utiliser est celle que nous avons retenue dans la précédente convention, s'agissant de la rédaction de la Charte des droits fondamentaux en parlant de droits la de la Personne. J'espère qu'il puisse en être de même dans cette convention.

2-046

DA

Udvikling

DE

Entwicklung

EL

Ανάπτυξη

EN

Development

ES

Desarrollo

FR

Développement

IT

Sviluppo

NL

Ontwikkeling

PT

Desenvolvimento

FI

Kehitys

SV

Utvecklingsfrågor

2-047

FR

Le Président. – Nous en venons au groupe « Développement » qui était présidé par Monsieur Christophersen.

2-048

DA

Christophersen (Ch.E/G.-DK). - Hr. formand, jeg blev assisteret af tre af mine kolleger her på Konventet, Anne Van Lancker, Lord Tomlinson og Kimmo Kiljunen, og først ønsker jeg at takke dem for deres meget aktive indsats, som har bidraget til en god diskussion. Jeg har fem bemærkninger til indholdet af den diskussion.

For det første var alle deltagere meget positive over for ideen om, at Konventet konsulterer civilsamfundet, både gennem kontaktgrupper og gennem den diskussion, som vi havde i går, og som vi har i dag, og nogle gik så vidt, at de ønskede en institutionalisering af den kontakt, men det var der dog ikke enighed om. Andre advarede om, at det kunne have en forsinkende virkning, hvis det blev en del af den almindelige fællesskabsproces.

Min næste bemærkning drejer sig om de ønsker, der blev fremført af organisatorisk og strukturel karakter. For det første understregede næsten alle deltagere behovet for at etablere en langt klarere forbindelse mellem Fællesskabets udviklingspolitik og Fællesskabets øvrige eksterne politikker samt en bedre koordinations-, gennemførelses- og beslutningstagningsmekanisme på dette vigtige område. Herudover blev det understreget, at der skulle være mere kohærens, mere overensstemmelse mellem, hvad man gør på udviklingsområdet, og hvad man gør på andre politiske områder i Fællesskabet. I den forbindelse var der mange, som understregede et ønske om, at man fortsat skulle have et særligt ministerråd, som beskæftiger sig med udviklingspolitik, men vi ved jo nu, at beslutningen i Sevilla bl.a. har ført til, at disse drøftelser overføres til det råd, som behandler generelle eksterne politiske spørgsmål.

En tredje bemærkning drejer sig om det politiske indhold, som deltagerne gerne så, at en ny traktat fik, for så vidt angår udviklingspolitik. Der var ønske om, at udryddelse af fattigdom skulle have den højeste prioritet i en eventuel traktattekst; der var ønske om, at de sociale aspekter skulle understreges stærkere, både for så vidt angår den eksterne, og for så vidt angår den interne dimension i Fællesskabet; der var et ønske om, at der skulle være mere fokus på demokrati og respekt for menneskerettighederne, og endelig skulle der være mere fokus på hele ligestillingsproblematikken. I den forbindelse blev der også udtrykt ønske om, at charteret om grundlæggende rettigheder blev indføjjet i traktaten.

Min næste bemærkning er, at der var et stærkt ønske om, at Den Europæiske Udviklingsfond, i fremtiden skulle inkorporeres i traktaten og i Fællesskabets budget og være underkastet samme regler, både for så vidt angår gennemførelse af politikken og udførelsen af bevillingerne, som gælder for Fællesskabet i øvrigt.

Til sidst, hr. formand, udtrykte alle deltagere en tilfredshed med, at der også i gruppen, som var samlet, var repræsentanter for ansøgerlandene. Det blev understreget, hvor vigtigt det var, at ansøgerlandene allerede fra starten af deres medlemskab er engagerede i udviklingspolitikken.

På vegne af Konventet udtrykte jeg og mine tre kolleger vores vilje til at fortsætte dialogen gennem bidrag fra medlemmerne af kontaktgruppen især, og at vi gerne så konkrete forslag blive fremsendt til Konventet.

2-049

EN

Stockner (NGO-DEVE). – Mr President, the Development Contact Group agreed that there would be three people making the presentation. I will give a general overview presentation, followed by specific presentations on gender and a perspective from the candidate countries.

This statement of development policy is made on behalf of a wide range of European development and humanitarian NGOs. We have a collective membership of some 1,000 NGOs from all parts of the European Union working in partnership with civil society actors in countries all over the world - particularly where large numbers of people live in poverty. As part of the Civil Society Contact Group, we are actively working with NGOs from the human rights, environmental and social sectors as well as the European Trade Union Council. Your attention has already been drawn to our common statement.

I will address five areas in this statement. The first is the legal framework for the European Union's development policy. The Laeken Declaration identified the future task of Europe as being to play a stabilising role worldwide, "to shoulder its responsibilities in the governance of globalisation ... seeking to set globalisation within a moral framework, in order words to anchor it in solidarity and sustainable development".

The European Union is recognisably a global force, economically if not politically. With the introduction of the euro and upcoming enlargement, this global aspect has been and continues to be strengthened. Such a position carries responsibilities, not only to the people of Europe but also to the global community as a whole. We believe it is here that the Europe Union's development policy has to play a crucial and central role. Unlike most of the EU's policies, which are primarily motivated by the internal interests of the EU, development policy should focus on the interest of people outside our borders and particularly people living in poverty in developing countries.

As a global player, the EU needs to ensure that the legal base for its development objectives is sufficiently strong to be properly asserted. We do not believe that the current legal base under Title 20 is sufficient. We are therefore calling for the following: firstly, a common development and humanitarian policy based on its own specific objectives, identified in the Treaties, with a legal standing in the Treaties that is equal in weight to the other elements of external policies, including the CFSP. This policy needs to address the whole spectrum from relief to development in a coherent continuum as well as to address disaster preparedness.

Secondly, the eradication of poverty both within the European Union as well as externally should become one of the overall objectives of the European Union.

Thirdly, the Treaty should establish an approach to development that asserts international human rights standards as the absolute benchmark for the EU's policies and actions. The policy framework of the Treaty should reflect the interconnectedness and indivisibility of all rights - economic, social, cultural, civil and political - as set out in the UN Declaration of Human Rights and the related core charters and conventions as well as international humanitarian and refugee law.

Fourthly, the Treaty should specify that social protection needs to be integrated into the definition and implementation of Community policies. Actions are needed with a view to promoting sustainable social development both internally and externally.

Fifthly, legal instruments should be established to ensure that financial resources intended for development and humanitarian purposes are utilised strictly in accordance with the objectives and policies in these areas.

Sixthly, a comprehensive external policy framework should be established that guides all external actions. This should be based on the overriding objective to eradicate poverty, the fight against inequality and an active EU involvement in conflict prevention. We must promote sustainable models of development in which social, environmental and economic aspects are held in balance; assert international human rights standards as the absolute benchmark; promote equity and fairness in economic and social affairs, particularly for the excluded and marginalised, as well as equality between women and men, and compliance with international commitments including the millennium development goals.

The second area that I address is the institutional and political set-up of Europe's external relations. The Convention needs to address these issues to ensure that the development objectives can be effectively pursued. We strongly believe that such capacity needs to have a clear identity and definition that enables the promotion, further development and implementation of development policies based on the values that are enshrined in the objectives.

We deplore the decision taken by the European Council in Seville, according to which development and humanitarian issues will, in future, be incorporated into a General Affairs and External Relations Council. While the justification is made on the grounds of increasing coherence of policies, we fear that the result will weaken the impact of the EU's development and humanitarian policies and effectively erode the capacity of the EU to implement its responsibilities towards the global community. There is a real danger that the EU's development and humanitarian policies will become an instrument for promoting its own external interests. The linking of EU aid to migration policy and of linking aid to fisheries policies are cases in point. We need to emphasise that it is of the utmost importance that humanitarian aid remains disconnected from political considerations, as agreed under international humanitarian law.

These are some of the reasons why we urge the Convention to establish a separate working group for development.

The third area is coherence and consistency of policies. Currently, the Treaties require consistency in external actions of the EU and for policies and practices of the European Union that impact on developing countries to take account of the European Union's development objectives. We propose that, in future, the comprehensive external policy framework I have outlined should guide all of the European Union's external policies and actions. This framework should also guide all Community policies that have a direct or indirect impact on developing countries, including those of agriculture, trade, fisheries, transport, energy and so on.

The fourth area concerns visibility, transparency and civil dialogue. While recognising that steps have been taken over the past few years to make the institutions and their decision-making processes more open and accessible, they continue to lack transparency. This clearly strengthens the feeling of remoteness that European people feel towards the EU's institutions. We therefore urge the Convention to promote an increase in accountability and transparency in the workings of the European Union, including in the development of policies and positions that govern the European Union's relations with developing countries. We believe that there should be an increased role for the European Parliament in scrutinising policy that is being developed. Therefore, all of the

Community's cooperation with developing countries, including under the European Development Fund, should be incorporated into the Community budget framework.

The primary objective of this Convention is to bring Europe closer to its citizens. This is an urgent and vital task for the credibility of the European Union, particularly in the face of a substantial enlargement. In this respect, a treaty article should be proposed by the Convention on establishing a civil dialogue directly between citizens and their organisations, on the one hand, and the decision-making bodies of the European Union, on the other.

This should be an additional but necessary mechanism for ensuring that a consistent and ongoing dialogue takes place. Given the role of the European Union in the world and the effect that the EU's policies and activities have on the lives of people in developing countries, specific recognition should be given to the need for a civil dialogue that includes civil society actors from developing countries. We believe that the provisions established in the Cotonou Agreement could be followed.

I now turn to the fifth and final issue, the definition of institutional competence for development. In the current Treaties, competence for development between the Community and Member States is complementary. There has been much confusion, however, in defining the basis on which complementarity can be determined. This has led to competition and inefficiency, contributing to the criticisms of the effectiveness of EU development cooperation. We believe that there is a clear need for competence for development to remain both at the level of the Community and in individual Member States. Since the development objectives reflect principles of solidarity between the people of Europe and people in developing countries, this has to be anchored and assured through a national development programme. At the same time, the European Union's global responsibility requires a development capacity at the centre of the European Union that promotes a common development policy for the EU as a whole. We would urge that our proposals for a comprehensive external policy framework should not only govern the external actions of the Community but should also guide those of the Member States. If this were so, it would be easier to contemplate definitions of complementary action guided by concepts of added value and based on comparative advantages. It would also provide a clearer framework in which the coordination of actions between Member States and the Community would be facilitated.

Let me end by observing that the true test will be in the implementation of proposals made by this Convention, and, ultimately, the decisions of the Intergovernmental Conference to follow. We would urge the Convention to address this question so that the implementation of a new Treaty is a true reflection of the principles and values that were intended.

It was in 1973 that Shridath Ramphal, then minister of foreign affairs of Guyana, famously said that as we face the future, we are conscious that a Europe that builds community by bringing economic disaster to developing countries sacrifices values that are themselves essential to the strength and permanence of that community, eroding those concepts of care and concern and of responsibility for the future of our planet, which lie at the very heart. For many outside of Europe, the question is not whether the Community is going to be a rich man's club, it is a society of rich states whose association will grow increasingly more intimate. The question, rather, is whether being rich and highly developed, the enlarged community will adopt these values and elevate them to the level of ethos.

We strongly believe that the strength of the European Union is in its ethical foundation and its intention to bring peace, stability, harmony and economic prosperity. Upon you rests the weighty responsibility to ensure that the European Union continues to place these values at the very centre of its policies. We wish you well in this important task and wholeheartedly commend to you the recommendations we have outlined above.

2-050

FR

Godin (NGO-DEVE). – Je fais partie de l'ONG "Equilibre et Population" mais je représente aujourd'hui toutes les ONG qui ont fait partie de la réunion du groupe de contact dont Monsieur Stocker vient d'évoquer la représentativité. Concernant le thème "genre et développement", nous considérons que l'inégalité des sexes freine l'épanouissement des individus, le développement des pays et l'évolution des sociétés. Nous rappelons que l'Union Européenne, pour atteindre son objectif de réduction puis d'éradication de la pauvreté, a décidé d'inscrire l'égalité des sexes en tant que thème transversal prioritaire de sa politique de développement. Nous constatons malheureusement, que si l'Union a montré sa volonté d'inscrire cette thématique au sein des priorités de son action, dans la pratique, les résultats ne sont pas toujours probants. Nous considérons qu'il ne s'agit pas de réinventer des principes généraux qui ont déjà été arrêtés par l'Union mais plutôt de leur donner une force contraignante. Pour intégrer la dimension homme-femme évoquée dans la communication du vingt et un juin deux mille un, à l'action de l'Union, nous proposons d'assortir chacun des trois axes de plusieurs mesures concrètes, seules capables de garantir les objectifs que l'Union s'est fixée. Le premier axe est l'intégration du thème de l'égalité des femmes et des hommes dans les domaines prioritaires. Nous formulons la recommandation suivante: toutes les conditions préalables à l'égalité homme-femme devront être réaffirmées afin de constituer un ensemble de normes intégré aux règles de fonctionnement de l'Union. Il ne faut pas oublier par ailleurs que des objectifs tel que la réduction de moitié du nombre de personnes vivant dans la pauvreté d'ici deux mille quinze, reconnue par l'Union Européenne, ne pourront être atteints si la moitié de l'humanité n'est pas impliquée. Nous pensons donc que l'Union Européenne doit donner à ses engagements une force contraignante en les inscrivant dans le Traité constitutionnel qui sera élaboré par la Convention. Le deuxième axe est le renforcement de l'intégration de l'égalité des sexes dans les projets et programmes régionaux et nationaux. Nous constatons que la collecte et la diffusion des données et informations par sexe tel que les indices sexo-spécifiques proposés par le PNUD depuis mil neuf cent quatre-vingt quinze permettrait de mieux évaluer et de planifier les efforts à fournir. Nous proposons donc que l'analyse sexo-spécifique soit retenue tout

au long du cycle du projet de la définition à l'évaluation, et que par ailleurs, la prise en compte de cette analyse constitue la condition préalable à la mise en oeuvre des projets et programmes tant au niveau du budget de l'Union que des cadres stratégiques de lutte contre la pauvreté qui sont proposés par les Etats récipiendaires et acceptés ou non par l'Union dans le cadre du FED. Le troisième et dernier axe est le renforcement des capacités institutionnelles en matière de genre. Nous considérons qu'une formation à l'analyse et à la prise en compte des statistiques ventilées par sexe est indispensable et doit s'entendre tant au nord qu'au sud. Ainsi, le personnel européen des directions générales ou des délégations devrait être systématiquement formé à l'approche de genre et à la prise en compte de l'analyse sexo-spécifique. Par ailleurs, le renforcement des capacités des acteurs locaux doit comporter une sensibilisation et une formation à l'approche de genre et à la prise en compte de cette analyse. Enfin, d'une façon générale, les ONG réunies au sein du groupe de contact « Développement » demandent que l'Union rédige un guide pratique recensant l'ensemble des mesures concrètes susceptibles de préciser les principes généraux concernant l'intégration de l'égalité des sexes dans la coopération au développement. Ce recueil s'imposerait à tous les acteurs concernés par l'aide communautaire au nord comme au sud. En conclusion, les ONG réunies au sein du groupe de contact « Développement » considèrent qu'aucune politique n'est neutre sous l'angle du genre et qu'il est essentiel que la dimension égalité femme-homme joue un rôle moteur dans la définition des politiques extérieures de l'Union. Ceci exige que les objectifs d'égalité des sexes et l'analyse sexo-spécifique soient intégrés pleinement dans la définition, la mise en oeuvre et l'évaluation des politiques extérieures de l'Union, y compris la politique de coopération au développement et les programmes de réduction de la pauvreté. Vous pourrez trouver cette contribution sur la passerelle.

2-051

EN

Gezgin Eris (NGO-DEVE). – Mr President, I speak on behalf of the Economic Development Foundation, a non-governmental organisation in Turkey which has been dealing with EU affairs and Turkey-EU relations since 1965.

The launch of the Convention has triggered a lively debate in Turkey. To channel this excitement into practical action, we established a network of 113 participants representing universities and NGOs. This network, called Europe's Future Turkey Group, prepared a comprehensive opinion report covering all issues discussed in the Convention. We have submitted our views and proposals to the Convention Secretariat.

Today I speak on behalf of Europe's Future Turkey Group and the NGOs participating in the Development Contact Group, especially those from the applicant countries with whom we have identified many common points. We have observed that, in the context of the Convention discussions, development is perceived in terms of the narrow concept of the EU's development policy. According to this definition, the EU should evaluate development with respect to increasing the efficiency of allocated resources on the one hand and to improving democracy and the rule of law by relating development aid to these areas on the other hand.

For the applicant countries, however, who are at the receiving end, development is much more than this. For us, development is not only advancement in economic terms but a change in quality of life. EU membership is considered to be the fastest possible way to reach this aim. Therefore, an enlarged Europe should be committed to the promotion of sustainable economic, social, cultural and humanitarian development. Future Member States should be better informed about the principles and means of development cooperation. The EU policy of solidarity should be extended to include the recipient countries' perspectives.

At present, applicant countries receive most of the EU's development aid. This should continue for a while, since, firstly, these countries are the European Union's nearest neighbours. Secondly, today's applicant countries will attain sustainable levels of development and will become donor countries in the near future. They will also enlarge the size of the European market from which all developing countries might take advantage. This will, at the same time, enhance the EU's efficiency as a role model based on the principles of economic development, social management, solidarity and democracy. However, the strengthening of these components will depend on the reconstruction of democratic, transparent and speedy organisations focusing on skills and a knowledge-based society.

Issues such as education and youth, that are also important in shaping the future of the EU and the world, should be broadened both in Member States and countries which receive development aid.

One important topic that we all agree upon is that the EU's founding Treaties should be transformed into a constitutional treaty, in which the Charter of Fundamental Rights should be included and made legally binding. The EU also needs to be a part of the European Convention on Human Rights. The European constitutional treaty should confirm our European identity, our desire to live together in peace and our will to build Europe by sharing the assets of our cultural, local, religious and ethnic variety.

The conclusion of the enlargement process that involves 13 applicant countries will help the EU to become an important world power. The European Union will be able to strengthen its position in the international arena as long as it formulates stable policies, based on social development, harmony, security and solidarity. For a secure future, however, the attainment of stability for EU Member States is not sufficient. With its expanding borders, the European Union is turning into a real world power and its influence is highly dependent upon the ways in which it transfers universal democratic values beyond its borders and the contributions it makes to world peace.

2-052

EN

Baroness Scotland of Asthal (Ch.E/G.-GB). – Mr President, it is right that we should hear a strong voice from civil society on development issues. The EU and its Member States combined are a major force in the fight against global poverty, providing the bulk of global development assistance.

Our efforts will play a large part in determining whether the key Millennium Development Goals set out at the UN's Millennium Assembly are actually met. These goals included halving by 2015 the proportion of people living on incomes of under one dollar a day, reducing maternal mortality rates by 75% and providing primary education for all children. To do this we need an efficient, poverty-focused programme, then, combined with a pro-development trade policy and access to the world's largest single market, our development programmes could galvanise an enlarged EU behind huge resources and progressive policies. That is certainly the United Kingdom's ambition and really should make a difference.

We must build on the clear EC development policy agreed in 2000 and the Commission's own management reforms. EC aid should add value to Member States' efforts when it is delivered strategically and efficiently. We must make good our Treaty commitment to ensure all our policies, including choices at the mid-term Common Agricultural Policy review, are consistent with our development goals. This will help us reduce absolute poverty in developing countries. Europe's people are concerned about the poor of the world. It is our duty to show that our governments and institutions can meet their aspirations.

2-053

EN

Kiljunen (Parl.-FI). – Mr President, the figures on absolute poverty in the world are staggering. UNICEF estimates that around 10 million children die annually as a result of malnutrition. Is it not morally and politically unbearable that, in the modern world, we have several hundred million people whose most elementary need, the need for nutrition, is not satisfied? We have 800 million illiterate people, about a billion without proper health services and pure water. Nearly half of the world's population has to live on an income of less than two dollars per day.

These figures are about absolute poverty. Statistics on relative poverty are even more staggering. According to the UNDP, the richest 20% of the world's population earn 86% of world income, while the poorest 20% earn 1.4%. Is there in the world a country where income distribution is as unequal as it is on the global scale? I would say no, not a single state.

We have to ask what is lacking at global level that exists at nation-state level? In simplified terms, at supranational level, we do not have proper governance with redistributive functions.

Yesterday, I was in Oslo chairing the opening session of the World Bank annual conference on development economics. There was a demonstration against the World Bank and global institutions. I had a dilemma. I could sympathise with the worries of the demonstrators about global poverty and development problems and the need to address these problems seriously. But why be against international and supranational institutions whose task is to alleviate and solve global problems? We have the same dilemma here when developing the European Union and its institutions. Are the people, are the citizens with us?

In Finland, the government has put an effort into activating the debate on the future of the European Union, and a written report has been submitted to the Secretariat for distribution to all of us.

2-054

ES

Palacio Vallelersundi (Ch.E/G.-ES). - Señor Presidente, se ha dicho que a los europeos les interesa la cooperación al desarrollo. Es probablemente "la nueva frontera", una de las pocas políticas que concita el interés de nuestros jóvenes. También es cierto que la Unión Europea es uno de los grandes actores internacionales de la cooperación al desarrollo en términos económicos, y eso hay que recordarlo.

Pero voy a hablar de otra cuestión, retomando las palabras de la Sra. Scotland. La cooperación al desarrollo es una de las políticas donde más claramente se ve la artificiosa complejidad de los Tratados, la confusa redacción de los preceptos y la esquizofrenia institucional que deriva del sistema de pilares. Hasta Maastricht la Comunidad Europea no tenía base jurídica específica para la cooperación al desarrollo; había una multiplicidad de bases jurídicas: el artículo 182 y siguientes para la asociación de los países de ultramar, el artículo 133 para las preferencias generalizadas y el 308 para casos de cooperación económica y técnica, a veces asociado con el artículo 113 cuando se trataba de una cooperación también comercial, incluso podía recurrirse al 238.

Bien, hoy, podríamos decir: después de Maastricht esto ha cambiado. No, señor, no ha cambiado porque las bases específicas son bases residuales, que sólo se pueden utilizar cuando no hay otra base directa. Seguimos con esa esquizofrenia y decimos: ¡Qué complejo! Pues no termina ahí la complejidad, porque tenemos bases que provienen del segundo pilar, ya que el artículo 11 del TUE incluye la cooperación al desarrollo en su planteamiento.

Esto es un ejemplo del trabajo que tiene que hacer esta Convención con los Tratados.

(Aplausos)

2-055

FR

Akyol (Gouv.-TR). – L'éradication de la pauvreté est un des plus grand défis qui se pose à l'humanité à l'heure actuelle. Ce défi ne pourra être réalisé que par un développement soutenable et une utilisation des ressources appropriée. Chaque pays est responsable au premier chef de son développement économique et social. Toutefois, étant donné les ressources et les moyens limités dont disposent les pays en voie de développement, le soutien et la coopération des pays développés et la création d'un environnement favorable à la coopération internationale sont vitaux. En ce qui concerne l'Union Européenne, la politique de développement est une des politiques communautaires parmi les plus importantes et elle continue également à être une des dimensions significatives des relations extérieures de l'Union. Nous sommes heureux aujourd'hui dans ce contexte que ce débat ai lieu au sein de la Convention. Le Sommet de Barcelone des quinze et seize mars deux mille deux a constitué, à notre avis, une des pierres angulaires de la politique de développement de l'Union européenne. Les Etats membres se sont entendus pour utiliser l'aide au développement afin d'éradiquer la pauvreté dans les pays en voie de développement. Il a été décidé, dans ce cadre, d'augmenter de manière significative le montant global de l'aide au développement assuré par l'Union, considérant le fait que l'Union et ses membres assure cinquante-cinq pourcent de l'ensemble de l'aide internationale au développement. Les efforts de l'Union européenne à cet égard peuvent être mieux appréciés ainsi. Il est néanmoins évident qu'afin de réaliser les objectifs fixés dans le domaine du développement durable, l'Union doit déployer davantage d'efforts en terme d'allocations de ressources financières supplémentaires. A Séville, les pays membres ont également décidé d'abolir le Conseil de développement et de traiter désormais les questions relatives à la politique de développement dans le cadre des Conseils d'affaires générales et relations extérieures. Ceci peut être considéré comme un effort de la part de l'Union pour que la politique de développement devienne un élément déterminant de sa politique étrangère. Nous espérons que, par cette décision, l'Union sera capable d'exploiter plus efficacement les ressources dont elle dispose afin d'assurer le succès de la mise en oeuvre de sa politique de développement. Enfin, nous sommes convaincus que l'agenda de Doha pour le développement et le commerce jouera un rôle important lors des conférences de Johannesburg pour un développement durable.

2-056

EN

De Rossa (Parl.-IE). – Mr President, I intervene in strong support for a working group of this Convention on the issue of development, as it is a key area of interaction between the European Union and the rest of the world. Are we to be partners or predators of the developing world?

There is a key issue here which we need to address in our Treaties and in constitutionalising them. We must incorporate an obligation on European-based companies, obliging them not be involved in slavery in developing countries and not to use tied labour or child labour. There is a whole range of issues here which need to be addressed by the European Union.

I urge that we use our position with the IMF to insist that the neo-liberal dogma, which the IMF applies to developing countries, should be altered. It is a shame and a crime to oblige developing countries literally to destroy their infrastructure in order to fit in with a neo-liberal dogma which many developed countries in Europe cannot sustain.

2-057

IT

Basile (Parl.-IT). - Signor Presidente, vorrei pregare il signor Christophersen di chiarire meglio, anche in una prossima occasione, la sua proposta riguardante il Fondo di sviluppo europeo. In secondo luogo, sono d'accordo col signor Stocker quando afferma che finora è stata dedicata troppa attenzione alla moneta, ai mercati, all'euro, all'unificazione economica e monetaria e poca alla solidarietà e all'uomo. In terzo luogo, voglio sottolineare il problema di creare un bilancio più ricco per far fronte alle tante esigenze, per i diritti umani, per eliminare la povertà, come diceva la Baronessa Scotland. Credo che il problema del bilancio sia un problema molto importante. Il bilancio va riformato aumentando le risorse proprie, quindi il valore assoluto, e riarticolando la distribuzione fra i vari settori in considerazione delle nuove politiche.

2-058

EN

Lenmarker (Parl.-SE). – Mr President, we are not self-critical enough in the European Union when it comes to relations with the developing countries because Europe is still far too protectionist. The important issue for the European Union is to dismantle barriers between Europe and the developing countries. Why should there be tariffs on imports from developing countries, including agricultural products?

Therefore, it is the right step to dismantle the Development Council and to bring that area of responsibility into the General Affairs Council. Relations between Europe and the developing countries require coherence in all policies, not just development aid, which is a minor part of this complex issue.

2-059

DA

Kultur

DE

Kultur

EL

Πολιτισμός

EN

Culture

ES

Cultura

FR

Culture

IT

Cultura

NL

Cultuur

PT

Cultura

FI

Kulttuuri

SV

Kulturfrågor

2-060

FR

Le Président. – Nous en venons ici au dernier groupe de contact présidé par Monsieur Peterle, à qui je donne la parole.

2-061

FR

Peterle (Parl.-SI). – Chers collègues, membres distingués de la Convention, je suis très heureux et honoré au moment où la Slovénie célèbre son indépendance, de pouvoir dire quelques mots sur la culture. C'est grâce à la culture, grâce aux poètes, aux prêtres également que nous avons pu développer notre culture depuis plusieurs siècles en Slovénie. Je pense que la culture deviendra une question majeure. Nous avons le Traité sur le Charbon et l'Acier mais nous devons également brandir la culture contre les régimes dictatoriaux qui ont prévalu au vingtième siècle. Nous voulons également faire reconnaître les différentes identités culturelles et nationales car la culture est quand-même une question traitée par les institutions européennes. Nous pensons qu'il faut faire davantage. Le vote à la majorité doit être introduit pour la Charte et pour le traité. Nous pensons que la culture continue d'être sous-estimée et peu exploitée au plan intérieur et extérieur en Europe. Nous voulons que l'Union européenne s'intéresse davantage à la culture. Nous voulons une Europe unie et élargie. L'unification ne peut se faire que parmi les gens qui souhaitent effectivement vivre ensemble dans une Europe libre et unie. La diversité des langues et des cultures doit être défendue. Plus l'Europe s'intéresse à sa diversité intérieure, plus elle pourra exporter de manière globale cette richesse vers l'extérieur. C'est un concept de force. Et cette force est fondée sur la diversité culturelle. Une simplification idéologique se traduit toujours en Europe par l'émergence de grands problèmes. Je ne vois aucune contradiction entre des politiques nationales en matière de culture et d'éducation et des projets européens communs, comme par exemple le projet Erasmus. Je ne parle pas d'unification de la politique culturelle européenne. Je parle simplement d'un renforcement de notre approche aux diversités, aux spécificités culturelles en Europe. Par exemple, hier, j'ai rencontré un représentant

des églises. Les églises ont précisément contribué à affirmer la diversité de la culture de l'Europe tout au long des siècles. Les choses ont quelquefois évolué différemment selon que l'on se trouvait de l'un ou de l'autre côté du « Rideau de fer ». Il s'agit là en tout cas d'un exemple de valeur ajoutée à la diversité culturelle européenne, d'attention accordée à l'être humain et d'une nécessité de transcendance. Plus de cinquante organisations ont émis des propositions très concrètes aux groupes de contact. Je terminerai en vous remerciant, Monsieur le Président, pour les mots aimables que vous avez eu envers la Slovénie à l'occasion de sa Fête nationale.

2-062

EN

Gabletz (NGO-CULT). - Mr President, culture comes last on your agenda, but it is good this way because, as our chairman has already underlined, this is common ground, applying to all the efforts of the Convention, re-legitimising the Union at this crucial stage in its evolution.

The main message to come from the different groups at the Culture Contact Group on 12 June was that there should be more room for culture and education in a wider and stronger Union. This message is conveyed with a special sense of urgency, using this unique opportunity to make up for some of the serious deficits in the current construction of Europe.

There are four main reasons for urging the European Union to actively promote a European space of culture and education, a kind of 'fourth pillar' of common policy.

The first reason: a Europe of citizens, a democratic Union, will only emerge if the European Union can play a visible and pioneering role in the fields of culture and education. These are the fields where society prepares its future, where human and cultural values shape its identity and where its fundamental political consensus is formed.

The second reason: the enlargement process will only succeed if the build up of a wider Union is accompanied by a growing perception by all its citizens that they belong to a common European civilisation which must be revived and strengthened by the integration process.

The third reason: the world-wide challenges of economy-led globalisation and a knowledge-based society very urgently require joint European responses in the field of culture and education if Europe wants to preserve and reassert its identity and its place in the modern world.

The fourth reason: the renewed awareness of the common roots of our national and regional cultures in Europe will also help to develop a more even-handed policy in all our states in dealing with the problems of the multicultural mix which is worrying our citizens.

The European Union is a most dynamic political force in shaping Europe for the 21st century and in determining its place in the modern world. At this juncture of European evolution, it shoulders a heavy responsibility for ensuring that our continent remains a creative area of culture and of educational excellence, as it has been throughout its history.

In our age of globalisation, the wealth of Europe's cultural diversity can only be preserved by a new awareness of the common civilisation which underlies this diversity and which has helped national and regional cultures to develop and to flourish. It is crucial for the enlargement process to realise that asserting the national culture and asserting at the same time the common European civilisation is not a contradiction. On the contrary, national and European policies in this field are two sides of the same coin.

The European Union will have to live up to this very heavy responsibility at this stage in its evolution. This does not necessarily imply a transfer of powers from Member States to the European Union, but it does mean that the European Union can make full use of the present Treaty provisions dealing with culture and education. Mrs Chabaud will make a few remarks on this subject. With due respect to the principle of subsidiarity, there is ample room for common action with a view to creating a climate in the European Union which is favourable to cultural creativity and educational innovation on the basis of that common European civilisation. Often it will not be the constitutional powers that count, but the power of example, the convincing force of best practices, and the quality of European guidelines that states and regions would ignore at their own risk.

Finally, a few remarks on three particular areas. First of all: education. There is a unique chance here because all our educational systems will have to be reformed under the impact of the modern, knowledge-based society. We should use this chance to inject the necessary European dimension. After all, democracy needs educated people and a democratic Europe needs educated Europeans.

Regarding culture: economic globalisation brings a serious challenge in the restructuring of the media and the entertainment industry. It is the European Union's responsibility to identify the trends which could lead to an impoverishment of our cultural development and to develop common policies.

Finally, heritage: Europe's heritage of buildings, works of art and cultural landscapes represents a visible and tangible testimony of our common culture. Most of the monuments are more than just stones. They are a constant reminder of the original civilisation, the binding force of which has to be developed for a Europe which can catch the imagination of its citizens.

2-063

FR

Chabaud (NGO-CULT). – L'affirmation de la présence et du respect du patrimoine mais aussi des arts, des médias, de l'éducation doit s'appuyer non seulement sur les instruments existants du Traité de Maastricht mais également sur l'observation et une meilleure mise en oeuvre des objectifs et mesures qu'ils impliquent. C'est ainsi que nous mettrons en relief les articles cent quarante-neuf, cent cinquante et bien sûr l'article cent cinquante et un, qui est au coeur de la dynamique culturelle européenne. Nos recommandations seront les suivantes : conserver l'article cent cinquante et un dans le Traité, voire même de le renforcer, faire en sorte que l'Union l'utilise comme base légale de son action complémentaire, faire en sorte que les articles soient mis en application, en particulier le paragraphe quatre de l'article cent cinquante et un, modifier le paragraphe cinq de cet article, à savoir la règle d'unanimité qui devrait être changée en vote à majorité qualifiée. Il faudrait éventuellement envisager la fusion des articles cent quarante neuf et cent cinquante sur l'éducation, tout en renforçant légèrement les instruments de l'Union en la matière.

Le domaine du cinéma et de la radio-diffusion publique recommande l'intégration du protocole d'Amsterdam dans le Traité. Le pluralisme de l'information et des médias devrait figurer parmi les valeurs fondamentales communes de l'Union Européenne, au même titre que la diversité culturelle. A cette fin, le protocole d'Amsterdam sur le système de radio-diffusion public dans les Etats Membres doit être retenu comme étant partie intégrante des Traités. En outre, les politiques publiques nationales favorisant le respect de la diversité culturelle devraient être légitimées dans le même Traité, en se voyant attribuer une garantie juridique. Ceci vaut tant pour l'article quatre-vingt sept sur le contrôle des aides d'Etat du secteur audiovisuel que pour l'article cent trente-trois sur une relation égale entre politique commerciale commune et culture. Comme pour les secteurs social et de santé, une réglementation des secteurs culturels et audiovisuels sous le seul aspect commercial et de concurrence ne correspond pas aux fonctions de ces services d'intérêt général.

L'ensemble des associations présentes le douze juin se sont accordées pour demander l'intégration de la Charte des Droits fondamentaux dans le Traité, tout en regrettant qu'hormis la mention du droit à l'éducation (article quatorze), le droit à la culture soit diffus (articles treize et vingt-cinq) et n'ait fait l'objet d'aucun article à part entière. Une autre proposition serait de considérer l'introduction du droit pour chaque citoyen, de créer une fondation la liberté de travailler à travers l'Europe entière signifie aussi mettre en oeuvre un des aspects importants de la coopération culturelle. Ces considérations tant sur les articles du Traité, toujours autour du même article cent cinquante et un, et la notion de culture comme droit fondamental soutiennent les objectifs d'une vraie action communautaire, complémentaire des Etats Membres. Il s'agit en l'occurrence de la création d'un climat favorable pour les arts et l'éducation, par des mesures d'encouragement, d'incitation à la création, à la mobilité, aux échanges, à la coopération et l'accès à la culture en général. Dans cet encouragement, on retrouve le souci de diversité culturelle à partager horizontalement et verticalement, avec la valeur primordiale de liberté du citoyen européen, grâce au pluralisme de l'information et de ses sources.

L'action de l'Union répond donc d'une manière incitative et dynamique complémentaire aux exigences de la subsidiarité dite verticale, et doit cependant reconnaître explicitement l'apport de la subsidiarité horizontale, notamment en matière d'éducation. Cette complémentarité doit être reprise afin d'établir les bases d'un dialogue, d'une consultation que je qualifierais de raisonnable avec la société civile à tous les niveaux de responsabilité politique et bien sûr à plus forte raison au niveau européen. Le maître mot est ici la transparence. L'appui unique que peuvent fournir les réseaux européens sont un atout majeur à ne pas négliger. Dans ces efforts communs de réflexion et de projection dans un avenir européen commun, il ne faut pas oublier l'importance d'initiatives fondamentales comme le rapport Ruffolo et ses recommandations, le travail d'organisations internationales telles que l'UNESCO et le Conseil de l'Europe, dont l'expérience en matière d'approche de la diversité culturelle par exemple, ou encore d'observation des politiques culturelles dans les pays européens au sens le plus large du terme, est précieuse. Ainsi, la complémentarité des expériences des divers acteurs institutionnels, réseaux culturels, artistes et intellectuels saute aux yeux. Reprenons la balle lancée par la Convention et l'initiative des groupes de contact. La Fondation européenne de la culture a proposé de réunir ceux d'entre vous qui le désirerons à l'automne, afin de partager cette expérience. Je terminerai en reprenant une phrase prononcée le douze juin, qui est en fait la véritable raison de notre participation à tous dans cette aventure sans précédent qui consiste en la refonte d'un Traité en temps de paix, en un élargissement et une intégration volontaire de l'ensemble des citoyens. La phrase que je voulais vous faire partager est la suivante « we look to the candidate countries with their all brand culture, traditions, to reinforce the place of culture at the open level ».

2-064

EN

Jenkins (NGO-CULT). - President, I want to begin by thanking the Culture Contact Group, which agreed to Churches and religious associations, and more broadly, communities of faith and conviction, having this longer space in the presentation.

Because our associations are concerned with a wide range of topics and interests, communities of faith and conviction have difficulty finding their place in a single contact group. This time is important to a group of self-financing organisations representing between them tens of millions of citizens.

My first point is that the communities of faith and conviction shared with many others in the contact group the belief that the European Union must be a community of values. It is not simply a more efficient way of achieving policy objectives, nor is it simply a market. The values expressed in the contact group included the centrality of the human being, promotion of peace and reconciliation, liberty and justice, solidarity and sustainability, tolerance, democracy, human rights, the rule of law and respect for minorities. There was a broad consensus on all of these.

But these values must be realised. My second point is that a commitment to them has consequences. First, one of the stated objectives of the European Union should be to work for a Union based on human rights, liberty and solidarity, drawing on the richness of Europe's cultural, religious and philosophical traditions.

Second, in pursuing the common good, another key objective must be support for poverty eradication at the global level and support for the marginalised and those threatened by social exclusion globally and within the Union. This is a necessary response to the challenge in the Laeken Declaration to make the European Union a power seeking to set globalisation within a moral framework, in other words to anchor it in solidarity and sustainable development. The European Union needs the means to work with a single voice on the global scene, to develop a fair and just system of global governance.

Third, the Union should develop greater capacity for preventative diplomacy and peaceful resolution of conflicts.

Fourth, in the process of the accession of new Member States to the Union, there must be a full debate on the values which we want to pursue together. This must be reflected in the outcome of the Convention.

Fifth, a future constitutional text must incorporate fundamental rights. These are universal, based on the dignity of the human being, transcending all policies, laws or powers. Without discriminating against other convictions, for the Christian churches and other religious traditions, that dignity comes from God. For communities of faith and conviction, freedom of thought, consciousness and religion in their individual corporate and institutional dimensions are essential.

The European Humanist Federation, which was part of the group, asked for a separation between religion and governance with no differentiation between those who believe and those who do not. On the basis of the values mentioned, the institutional reforms to be proposed by the Convention should re-invigorate democracy and democratic political life and ensure that citizens sense that their concerns are heard and taken seriously.

This has two consequences: one is that there is a need to develop the democratic legitimacy and transparency of the Union and its institutions. The second, which constitutes my third point, is that the principle of subsidiarity must be made real. This is important because it is a way of respecting the diversity of Europe while seeking unity within the Union. This applies to the vertical dimension of subsidiarity: at which political level is a particular decision most appropriately made? It would be appropriate to have some kind of structure for monitoring the application of this principle in its vertical dimension and we hope that the Convention will continue to explore that aspect.

Declaration 11, the final act of the Treaty of Amsterdam, is an expression of the vertical dimension of subsidiarity. It states that the European Union respects the status of churches, religious associations and communities, and also non-confessional bodies as recognised by each Member State. We believe that this Declaration should be incorporated in a future constitutional text as a sign of respect for diversity.

It is also true of the horizontal dimension. There are structures, institutions and organisations other than political institutions which have a role to play in addressing issues in society. This aspect applies to every aspect of society - recognising the dignity of the human person and his or her relationships, starting from the family as a basic unit of society. We ask that this horizontal dimension should be taken up by a future constitutional text, providing for structured dialogue between the European Union and its institutions and the variety of institutions, associations and communities in society in general.

Within such dialogue, the communities of faith and conviction ask that the specificities of churches, religious communities and non-confessional associations should be recognised. This is not because they want a privileged position but because of their concern for and relevance to a range of topics, interests and spheres of policy making.

Here I would stress the important role played by non-statutory and charitable providers of social welfare, education and other services of general interest. This was a matter raised in the contact group not only by representatives of some communities of faith and conviction but also by organisations concerned with service provision. Provisions are needed to ensure the right to establish and maintain educational and caring institutions and to ensure that the high level of services is not put in danger by inappropriate applications of competition law or by privatisation.

My final point concerns the sources of European cultures and values. Communities of faith and conviction have contributed to the formation of European cultures and values. It must be acknowledged frankly that not all of these contributions have been positive. They have sometimes led to divisions within Europe. Nevertheless, the religious, spiritual and philosophical contribution to European values has been significant. The Christian churches believe that they have contributed and continue to contribute positively and significantly to the building of Europe.

Both in the past and nowadays, other faith communities make a contribution to the plurality and diversity which are part of Europe's rich texture. People and movements without religious or transcendental belief have contributed fully. Churches and religious associations believe that it would be entirely appropriate to acknowledge the specific contribution of the religious, spiritual and philosophical heritage in any constitutional text.

The European Humanist Federation would prefer to base itself solely on common values such as the dignity of women and men, freedom, equality, solidarity and the principles of democracy and the rule of law. Values which the Churches and religious communities would also defend.

In conclusion, I want to emphasise that the Convention's success will depend on citizens seeing the Union as a community of values which invites full participation at all levels. If citizens are to feel that they have a stake, they must have trust in the values and objectives of European integration, such as its promotion of the centrality of the human being, solidarity, subsidiarity and transparent democracy. The churches and communities of faith and conviction, in whose name I speak today, remain committed to an active role in building up this trust.

(Applause)

2-065

EN

Brezigar (NGO-CULT). - Mr. President, the European Bureau for Lesser Used Languages represents European Union citizens speaking original or minority languages, but my presence here today does not relate only to minority languages. I will focus on linguistic diversity as the general wealth of Europe. We share our point of view with other NGOs dealing with the same topic, so I will present you with an overview of our common thinking.

I will first explain the needs of the communities we represent. We expect the European Union to lay down strict provisions relating to linguistic diversity. We understand the principle of European citizenship as the affirmation of identity of every single European citizen. Europe is not a melting pot. Its real wealth lies in the richness of its cultures and languages. Europeans will accept economic standardisation only if their identity is maintained. This seems to be a European issue as well and it is our opinion that cultural and linguistic diversity should become part of the *acquis communautaire*.

The Union has not been active enough in this domain so far. To give an idea of the low priority given to this topic, I would stress that in the non-discrimination clause, Article 13 of the Treaty, languages have not been included, setting them at a lower level of priority than that they are given in the basic United Nations and Council of Europe human rights documents. This should be amended in accordance with Article 21 of the EU's Charter of Fundamental Rights.

Article 22 of the Charter calls upon the Union to respect linguistic diversity. This Article should also be implemented. Some will object to this, arguing that this issue falls under the principle of subsidiarity and must therefore be dealt with on a state or even a local basis. If this happens, the large, strong languages will become larger and stronger and the weaker ones will risk extinction. European Union intervention is therefore needed to keep diversity as our common wealth, our common heritage.

We understand that nowadays most states do not want to give the European Union any legislative competence in this domain, but we hope that there could at least be a general agreement about the possibility of European Union incentive measures to maintain the linguistic mosaic. It is in our common interest to do this, as no mosaic is complete if even a small piece is missing. Maintaining linguistic diversity is a European issue. It is the heritage of the whole of Europe and not only of the speakers of each particular language. These proposals are included in the document entitled 'A Package for Linguistic Diversity' which has already been forwarded to the Convention.

Finally may I assure you that the European Bureau for Lesser Used Languages is willing to guarantee the Convention any support needed in the domain of regional or minority languages.

2-066

NL

Van Mierlo (Ch.E/G.-NL). - Mijnheer de voorzitter, er is een zeer belangrijk woord gesproken. De heer Gabletz heeft namens alle culturele instellingen de indringende wens naar voren gebracht dat de Unie zich zou bevrijden van de dwanggedachte dat cultuur een exclusieve bemoeienis is van de lidstaten en dat de Gemeenschap en de Unie daar zo veel mogelijk buiten moeten blijven.

De uitspraak van de culturele instellingen is daarom zo belangrijk omdat juist zij in het verleden verondersteld werden cultuur te zien als een prerogatief van de lidstaten. Nu dat niet meer het geval lijkt te zijn, hebben wij als Conventie de plicht te bezien hoe de Unie of de Gemeenschap haar passieve rol wenst te herzien. Begrijp me niet verkeerd, voor mij staat vast dat de nationale cultuur in de eerste plaats een zaak blijft van de lidstaten, of daarbinnen van regio's of deelstaten. Europa is terecht trots op zijn culturele diversiteit en beschouwt die als zijn dierbaarste bezit. Maar het zou een taak van de Gemeenschap moeten zijn juist die diversiteit als een gemeenschappelijk belang, als een Europese cultuurgood te beschermen, te bevorderen en uit te dragen.

Dat is evenwel niet alles. Eén van de belangrijkste motieven voor het houden van deze Conventie is het algemeen levende gevoel dat de afstand tussen de Europese burgers en Europa te groot is en overbrugd moet worden. Dat kan door de transparantie en de democratie te vergroten, maar de werkelijke instrumenten daarvoor zijn cultuur en onderwijs. Ik acht het onmogelijk om dat bestaande gat te dichten zonder dat we heel doelgericht gebruik maken van deze instrumenten. De vorming van Europees denkende en Europees voelende burgers begint bij het onderwijs. Daar zouden de eerste noties van democratie moeten worden bijgebracht, zowel voor de nationale als voor de Europese.

Het is in het belang van Europa zelf dat Unie en Gemeenschap, Raad en Commissie, actief optreden in dat culturele proces van bewustwording, bijvoorbeeld door middel van gemeenschappelijke educatieprogramma's. Ik ben nu aan het eind van mijn betoog. Om

die reden zou de Conventie serieus moeten bestuderen of artikel 151 zodanig kan worden herschreven dat het ons beter in staat stelt dat doel na te streven. Deze specifieke taak zou de instelling van een werkgroep kunnen rechtvaardigen.

2-067

EN

Kelam (Parl.-EE). - Mr. Chairman, today's discussion reminds me of the Maastricht Treaty Article which declares that the European Union is based upon common European cultural heritage. It is good to remind ourselves of this cultural dimension as we move on to the next stage of enlargement. Questions about the identity of our citizens bring us back to the perception of our national and cultural identity.

However, today, in integrating Europe, we need to develop a new sense of national and cultural identity: national as well as European. This will be the 'added value' for the European project mentioned by my colleague, Mr. Peterle.

In 1912, when Gustav Suits, a poet and leader of the young Estonian movement, proclaimed 'Let us remain Estonians but let us also become Europeans', he clearly had a healthy understanding that the two are not exclusive; rather, they are complementary.

I would like to thank representatives of civil organisations for their valuable contribution to today's discussion.

Yesterday, the European AgriCultural Convention proposed the inclusion in the Treaty of the right of citizens to healthy food, a healthy environment and clean water. Today, it seems fair to speak about the right of citizens to a healthy culture, a healthy moral environment and clear ethical values. The citizens' support for the EU will ultimately depend on how clearly they perceive a united Europe as a community of values and how clearly they see their identities rooted in this. Therefore, I support proposals to include references to culture in the Treaties, stressing our common cultural, spiritual and Christian values which have been important incentives for European integration.

2-068

EN

Tekin (Parl.-TR). - Mr. President, there have been some proposals to refer to religion in the EU Treaties. With all due respect, reference to religion in the treaties will not be in line with the universal values that the EU champions. The formula developed in the introduction to the Charter of Fundamental Rights, referring to the EU's spiritual and moral heritage, is a very well-balanced approach.

I hope for a Europe in the future where it simply does not matter if one is a Christian, a Muslim, a Jew, a Buddhist, a Shamanist or a non-believer. In short, I want a Europe that is secular, a Europe that is multicultural and multireligious.

(Applause)

2-069

EN

Demetriou (Parl.-CY). - Mr President, I think that I express the feelings and views of all the participants in this Convention when I say that the exercise entitled 'Civil Society' has been a success. Thanks to Mr. Dehaene for organising the debate and for encouraging and stimulating the exchange of views which took place beforehand.

2-070

IT

Spini (Parl.-IT). - Signor Presidente, il nostro lavoro avrà successo se l'Europa diventerà un soggetto politico più importante. Per diventare un soggetto politico più importante deve avere un'anima, una missione, dei valori, e credo che questi valori - giustizia, fraternità, libertà, solidarietà - siano valori in cui la tradizione cristiana si può riconoscere, e quindi credo che è sui valori che vi deve essere un intenso dialogo fra credenti e non credenti, fra i credenti di varie religioni. Da questo punto di vista io credo che, più che un omaggio rituale o un omaggio formale alla religione, dobbiamo essere capaci, negli articoli del nostro Trattato, di rispecchiare con autorevolezza e con forza questi valori. Ecco perché la religione, se deve essere citata, non dev'essere un elemento di divisione fra chi crede e chi non crede o fra chi crede in varie religioni - preferirei anzi, in questo senso, parlare di una fede - ma dev'essere un elemento di unità, di convergenza. Ecco la ragione per la quale io credo che siano importanti anche le iniziative che, a varie riprese, i presidenti di commissione hanno portato avanti per organizzare un dialogo con le religioni, ma, siccome i valori uniscono, credo che sarebbe estremamente sbagliato dividerci su temi e riferimenti formali: dobbiamo guardare, invece, alla sostanza e ai valori del nostro Trattato.

2-071

IT

Basile (Parl.-IT). - Signor Presidente, chiedo la parola soltanto per dire che anche in Italia è stato avviato un ricco dibattito sul futuro dell'Unione europea: è stato creato un apposito Osservatorio della Convenzione europea, attivato un gruppo di lavoro interistituzionale, attivati dibattiti all'interno del Senato e della Camera dei deputati, avviate alcune iniziative per i giovani coinvolgendo tutta la società civile. Chi vuole maggiori informazioni può trovarle su *Internet*.

2-072

FR

Le Président. – Ainsi se termine cette séance d'audition du forum de la société civile. Je tiens à remercier tous ceux qui ont pris la parole et qui ont contribué à cette réunion, ainsi que tous ceux qui ont participé aux réunions préparatoires. Je rappelle avec instance que ceci n'était qu'un moment fort qui s'inscrit dans une durée. J'affirme et confirme au nom du Praesidium que nous poursuivrons l'effort de dialogue avec la société civile. Le web du forum continuera. Il reste ouvert aux contributions et aux réactions que la société civile souhaiterait apporter par rapport à nos initiatives. J'insiste aussi pour que les débats nationaux soient continus et animés par les membres de la Convention. Nous poursuivrons aussi l'effort de contact avec les ONG au niveau européen, entre autres par les réunions facilitées par le Comité Economique et Social. A cet effet, nous avons encore une réunion cette semaine où nous pourrons faire le bilan de cette session. Nous prendrons d'autres initiatives avec le Praesidium afin de continuer ce dialogue qui, selon moi, est fort enrichissant pour tout le monde, et d'abord et avant tout pour la Convention. En effet, cette collaboration avec la société civile doit permettre à la Convention d'avoir un support beaucoup plus large au sein de l'opinion publique. Je passe maintenant la présidence à Monsieur le Président.

2-073

FR

PRÉSIDENCE DE Mr GISCARD D'ESTAING

Le Président.- Le Président prend la présidence pour vous dire simplement deux choses. La première, c'est pour remercier à la fois le vice-président Monsieur Dehaene, les présidents des groupes de contact, l'ensemble des intervenants qui sont intervenus dans cette discussion pour leurs remarques très intéressantes. Je pense qu'il serait sympathique que vous marquiez votre satisfaction en les applaudissant.

La deuxième chose est que vous serez remplacés dans cet hémicycle par notre Convention des jeunes, qui se tiendra à Bruxelles du neuf au douze juillet, et sur laquelle je voulais vous donner une rapide information. Le secrétariat a reçu la liste complète des noms des jeunes participants âgés de dix-huit à vingt-cinq ans, que vous avez proposé. Une lettre de ma part, ainsi qu'un dossier d'information complet leur ont été envoyés. La parité a été respectée, avec même une surreprésentation féminines : cent quatorze femmes et quatre-vingt-seize hommes. La qualité et la diversité des jeunes nous paraissent tout à fait remarquables, même si l'on doit constater le nombre important d'étudiants, et en particulier en sciences humaines, chose compréhensible compte tenu des différentes filières de formation. Toutefois, la jeunesse au travail, la jeunesse en apprentissage, la jeunesse professionnelle sera également représentée. Vous trouverez la liste ainsi que le déroulement des séances dans le document de la convention 131/02 qui vous a été distribué. Je vais vous donner quelques détails pratiques. L'ouverture formelle de la session des jeunes se tiendra le mercredi dix juillet à dix heures trente. Cette réunion se tiendra dans cet hémicycle afin de nous permettre de les accueillir. Il est par conséquent souhaitable que tous les Conventionnels et tous les jeunes soient présents. Ils travailleront en groupe à partir du mercredi après-midi et nous, nous commencerons à travailler en tant que Convention le jeudi onze à quinze heures pour notre réunion consacrée à l'action extérieure de l'Union. Compte tenu de ce qui a été dit par un certain nombre d'orateurs de la société civile, je n'ai pas besoin d'insister sur l'importance de ce sujet. Cette réunion se tiendra dans l'hémicycle afin d'accueillir les jeunes qui assisteront à notre débat précisément sur l'action extérieure de l'Union. Le lendemain matin, le vendredi douze, ils nous présenteront leurs conclusions. Vous pourrez alors leur faire part de vos réactions et répondre à leurs questions d'une façon que nous allons définir. Comme nous avons été frappés par l'intérêt et les motivations des membres de la société civile, je vous dirai que je compte beaucoup sur leur motivation et sur leur enthousiasme. En effet, nous avons besoin de leur propositions pour imaginer et construire l'Europe de l'avenir. Dans les interventions que nous écoutons ou même que nous faisons les uns ou les autres, j'ai souvent l'impression que nous cherchons à corriger les défauts de l'Europe du passé. Or ce n'est pas le sujet. Notre sujet est la préparation de l'Europe de l'avenir, c'est à dire une Europe plus nombreuse, plus large et qui vivra et continuera à vivre dans un monde qui ne cesse de se transformer. C'est pourquoi j'attends avec beaucoup d'intérêt et d'impatience, comme vous j'en suis sûr, le résultat de leurs travaux qui seront spontanés et naturellement entièrement libres. Je fixe donc rendez-vous aux membres de la Convention le jeudi onze juillet à quinze heures.

(La réunion est levée à 13.10 h)

DAINDHOLD

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IV.1.e. IGC documents, 2003-2004



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 26 September 2003
(OR. fr)**

12656/03

**PE 181
POLGEN 61**

NOTE

from :	General Secretariat of the Council
to :	Delegations
Subject:	European Parliament resolution on the draft Treaty establishing a Convention for Europe and the European Parliament's opinion on the convening of the IGC

Attached is the text of the resolution passed by the European Parliament, following the report by Mr José Maria Gil-Roblès Gil-Delgado and Mr Dimitri Tsatsos, on the draft Treaty establishing a Convention for Europe and the European Parliament's opinion on the convening of the Intergovernmental Conference, at its part-session in Strasbourg on 24 September 2003.

A summary of the debate is given in 12938/03 PE 1780.

ANNEX**European Constitution and IGC *****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 the second paragraph of Article 48 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 ¹ 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 ²,
- having regard to its resolution of 29 November 2001 on the constitutional process and the future of the Union ³,
- having regard to its resolutions of 16 May 2002 on the distribution of competences ⁴, of 14 March 2002 on the Union's legal personality ⁵, of 7 February 2002 on the role of the national parliaments ⁶ and of 14 January 2003 on the role of the regions in European integration ⁷,
- having regard to the Charter of Fundamental Rights of the European Union,
- having regard to the Commission's communication entitled "A Constitution for the Union" (COM(2003) 548),

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

² OJ C 47 E, 21.2.2002, p. 108.

³ OJ C 153 E, 27.6.2002, p. 310.

⁴ OJ C 180 E, 31.7.2003, p. 493.

⁵ OJ C 47 E, 27.2.2003, p. 594.

⁶ OJ C 284 E, 21.11.2002, p. 322.

⁷ P5_TA (2003)0009.

- 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),

Whereas:

- A. the citizens, parliaments, governments and 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 Parliament's evaluation of the draft Constitutional Treaty produced by the Convention on the Future of Europe,
- B. the preparation, 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 purely diplomatic negotiations are not capable of providing 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 far more successful than the method followed up to now of intergovernmental conferences held in camera,
- D. Parliament 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, like its predecessor on the Charter of Fundamental Rights, has initiated a new phase in European integration, during which the European Union will consolidate its legal order into a constitutional order binding on its Member States and citizens, even if the Constitution is ultimately approved in the form of an international treaty,

- G. despite the many differences of opinion initially existing between the members of the Convention, a large majority of all four component parts of the Convention, including Parliament, supported the Convention's final proposal, which is therefore based on a fresh and broad 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, linguistic and cultural diversity, the rule of law, social justice, solidarity, the rights of minorities and cohesion, all of which can never be deemed to have been definitely achieved but must be kept under constant review as to their meaning and must be fought for anew through historical developments and over generations;
 - b. respect for the European Union as an entity united in its diversity;
 - c. confirmation of the unique nature and of the dual legitimacy of the Union drawn from its Member States and citizens;
 - d. commitment to the preservation of the principle of equivalence between the Member States and the interinstitutional balance, which guarantees the Union's dual legitimacy;
 - e. efficiency in a Union composed 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, going beyond a common market and within the framework of a social market economy, aims at a better quality of life for Europe's citizens and society at large and seeks economic growth, stability and full employment, greater promotion of sustainable development and better implementation of citizenship of the Union;
 - g. strong political legitimacy in the eyes of the Union's citizens and through the European political parties;
 - h. an overall constitutional settlement which should enhance the Union's credibility and its role at home and abroad,
1. Welcomes the progress towards European integration and democratic development represented by the Convention's proposed "Constitution for Europe", to be established through a Treaty establishing a Constitution for Europe enshrined in a 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 entrenches to a significant extent the values, objectives, principles, structures and institutions of Europe's constitutional heritage, so that, to a great extent, the draft not only assumes the character of a constitutional text but also provides for 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 inclusion of the Charter of Fundamental Rights as an integral, legally binding part of the Constitution (Part II) and stresses the importance of human dignity and the fundamental rights of the individual as crucial elements of a civic, social and democratic Union;
5. Welcomes the new "legislative procedure", which will become the general rule, as an essential step towards increasing the democratic legitimacy of the Union's activities, acknowledges this notable extension of codecision and stresses that this must be pursued further;
6. Regards as positive the election of the President of the European Commission by Parliament and stresses that this is in any case an important step towards an improved system of parliamentary democracy at European level;
7. Acknowledges the possibilities for increased participation by European citizens and the social partners and, especially, the introduction of the citizens' legislative initiative;
8. Regards as important the increased role of the national parliaments and of the regional and local authorities in the Union's activities;
9. 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 of the Union, which is the effective way of ensuring the participation of national parliaments in the legislative work of the Union and in the shaping of common policies;
10. Instructs its competent Committee to organise joint meetings with representatives of national parliaments, if possible including former members of the Convention, to ensure the follow-up and evaluation of the proceedings of the Intergovernmental Conference;

Transparency

11. Regards as fundamentally important the fact that the Union will acquire a single legal personality and that the pillar structure will formally disappear, even if the Community method does not fully apply to all Common Foreign and Security Policy, Justice and Home Affairs and coordination of economic policy decisions;
12. 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 Union law over the law of the Member States;
13. Recognises the steps made towards greater transparency and clarification of the respective competences of the Member States and of the Union, with the retention of a certain level of flexibility to allow for future adaptations in an evolving Union comprising twenty five or more Member States;
14. Welcomes the separation of the Euratom Treaty from the legal structure of the future Constitution; urges the Intergovernmental Conference to convene a Treaty revision conference in order to repeal the obsolete and outdated provisions of that Treaty, especially those relating to the promotion of nuclear energy and the lack of democratic decision-making procedures;
15. Welcomes the commitment given by the President of the 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

16. Attaches great importance to the extension of qualified majority voting in the Council, as far as legislation is concerned; welcomes the improvement of the system, while underlining the need for further extensions of qualified majority voting or for the use of special qualified majority voting in the future, without prejudice to the possibilities provided for in Article I - 24 (4) of the draft Constitution;
17. Stresses that Parliament must be the responsible parliamentary body with respect to the Common Foreign and Security Policy and the European Security and Defence Policy in so far as EU competences are concerned;
18. Welcomes the fact that the draft Constitution makes other important improvements in the sphere of decision-making and policy-making, and in particular:
 - the fact that the Union has now acquired a clear commitment to a social market economy as expressed in its values and objectives, with emphasis being placed inter alia on the importance of growth, employment, competitiveness, gender equality and non-discrimination and on socially and environmentally sustainable development,

- the fact that the Legislative and General Affairs Council, although not acting as a wholly separate Legislative Council, will in the future always meet in public when performing its legislative duties,
 - the extension of qualified majority voting and co-decision to, in particular, the area of freedom, security and justice and the extension of the general system of jurisdiction of the Court of Justice of the European Communities to justice and home affairs,
 - the fact that, for international agreements and the common commercial policy, the assent of Parliament will now be 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 citizens,
 - the abolition of the distinction between obligatory and non-obligatory expenditure in the budget and the extension of co-decision to the common agricultural policy and the common fisheries policy,
 - the introduction of a multiannual 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 the adoption of delegated regulations by the Commission with "call-back" rights for Parliament and the Council,
 - the provision under which those countries which have undertaken to participate in enhanced cooperation may introduce, among themselves, qualified majority voting where unanimity is otherwise prescribed 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 NATO commitments;

Aspects requiring further monitoring during their implementation

20. Believes that the election of the President of the European Council cannot in itself solve all the current problems affecting the functioning of that institution and could entail unforeseeable consequences for the institutional balance of the Union; the role of the President must be strictly limited to that of a chairperson 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 leave 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's preparatory bodies;
22. Welcomes the disappearance of the link between the weighting of votes in the Council and the distribution of seats in Parliament, as established in the Protocol on the enlargement of the European Union annexed to the Treaty of Nice; supports the system set out in the draft Constitution as regards the future composition of Parliament and suggests that this be implemented without delay, because it is a core element of the global balance between the Member States within the different institutions;
23. Understands that the creation of the office of Union Minister for Foreign Affairs will enhance the Union's visibility and capacity for action on the international stage but stresses that it is vital that the Union Minister for Foreign Affairs be supported by a joint administration within the Commission;
24. Suggests that the European Ombudsman, who is elected by Parliament, and the national ombudsmen might propose a more comprehensive system of non-judicial remedies in close cooperation with 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 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. Regrets the insufficient congruence of Part III with Part I of the draft Constitution, particularly in relation to Article I-3;
27. Welcomes the introduction of the 'passerelle' clause which allows the European Council to decide to have recourse to the ordinary legislative procedure in cases where special procedures apply, after consulting Parliament and informing national parliaments;
28. Believes that Parliament must, within the budgetary procedure, retain the rights it currently has and that its powers must not be weakened; considers that the satisfactory exercise of Parliament's power to approve the multiannual financial framework presupposes the rapid opening of interinstitutional negotiations, 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;
29. Expresses its concern regarding the unsatisfactory answers given to certain fundamental questions, which were clearly pointed out in Parliament's previous resolutions, concerning in particular:

- further consolidation of economic and social cohesion policy, closer coordination of Member States' economic policies with a view to effective economic governance, and a more explicit integration of employment, environmental and animal welfare aspects in all EU policies,
 - full recognition of the role played by public services, (deletion) based on the principles of competition, continuity, solidarity and equal access and treatment for all users;
 - the suppression of the requirement of unanimity in the Council in certain vital areas, including in particular the Common Foreign and Security Policy (at least as regards the proposals made by the Union Minister for Foreign Affairs with the Commission's support), and certain areas of social policy;
30. 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 Commission will not weaken its collegiality or give rise to a lack of continuity; regrets that the system envisaged makes it difficult to keep a good European Commissioner for a second term;

General assessment

31. Notes that the draft Constitution prepared by the Convention represents the result of a broad democratic consensus involving Parliament and the national parliaments and governments of the Union, thus expressing the will of the citizens;
32. Welcomes the provision whereby Parliament now also has the right to propose constitutional amendments and, moreover, must approve any attempt to amend the Constitution without convening a convention, which will enable it to exert 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 or in accordance with other constitutional requirements will both still be *necessary* to allow the entry into force of constitutional amendments of even minor importance; strongly deplores the fact that Parliament's approval is not systematically required for the entry into force of newly adopted constitutional texts;
33. Resolves that notwithstanding certain limits and contradictions, the result of the work of the Convention should be endorsed, representing as it does an historic step towards a European Union which is more democratic, efficient and transparent;
34. 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; considers nevertheless that for future revisions it could be sensible for the Convention itself to elect its Praesidium;

Convening of the Intergovernmental Conference and ratification process

35. Approves the convening of the Intergovernmental Conference (IGC) on 4 October 2003;
36. 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;
37. Calls on the political parties, both in the Member States and at European level, the representative associations and civil society to reflect comprehensively not only on the outcome of the Convention but also on Parliament's views as expressed in this Resolution;
38. Strongly welcomes the Italian Presidency's assurance that Parliament will be closely and continuously involved in the IGC at both levels, namely that of the Heads of State or Government and that of the Foreign Affairs Ministers, and supports its intention to close the conference by December 2003;
39. Considers that the Treaty establishing a Constitution for Europe must be signed by all the twenty five Member States on 9 May 2004, Europe Day, immediately after the accession of the new members to the Union;
40. Considers that Member States that hold referenda on the draft Constitution should if possible hold such referenda or ratify the draft Constitution in accordance with their constitutional provisions on the same day;
41. Welcomes the fact that the deliberations of the IGC are to be publicised on the Internet, but calls on the Commission, the governments of the Member States and the political parties to envisage using all possible information media to acquaint the general public with the content of the IGC's work and the draft Constitution, including the organisation of national fora;

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o o
42. Instructs its President to forward this resolution, constituting Parliament's 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.

**CONFERENCE
OF THE REPRESENTATIVES OF THE
GOVERNMENTS OF THE MEMBER STATES**

**Brussels, 6 October 2003 (07.10)
(OR. fr)**

CIG 4/03

from : IGC Secretariat
dated : 6 October 2003
to : Working Party of IGC Legal Experts

Subject : ***IGC 2003***
***– Editorial and legal comments on the draft Treaty establishing a Constitution
for Europe – Basic document***

Delegations will find attached the document from the IGC Secretariat intended to serve as a basis for the legal experts' examination of the text of the draft Treaty establishing the Constitution.

* * *

Note to the reader:

For ease of use this document is to be printed recto-verso, so that comments and suggestions appear on the right-hand page, i.e. opposite the text of the draft Constitution which appears on the left-hand page.

Editorial and legal comments
on the draft
TREATY
ESTABLISHING
A CONSTITUTION
FOR EUROPE

based on: version of the text submitted by the Chairman
of the Convention in Rome on 18 July 2003
(CONV 850/03 of 18 July 2003)

GENERAL COMMENTS

INTRODUCTION

1. Delegations will find attached a document produced by the IGC Secretariat which is intended to serve as a basis for the examination by legal experts of the text of the draft *Treaty establishing a Constitution for Europe*.¹
2. On the left-hand page this document reproduces the text of the Convention's draft, with suggested changes being indicated in bold (changes to titles of Articles, which are already in bold, are italicised).
3. Opposite the text of the draft, on the right-hand page, are explanations of the suggested changes and observations on legal consistency, gaps, legally incorrect wording or ambiguities which might produce a legal risk.
4. Besides two preliminary comments, this introduction includes a number of technical remarks intended to facilitate the reading of the documents.

¹ The text used as a basis for the documents drawn up by the IGC Secretariat is the one given to the President of the European Council by the Chairman of the Convention in Rome on 18 July 2003, at the end of the Convention's proceedings (CONV 850/03 of 18 July 2003)

PRELIMINARY COMMENTS

Transitional provisions

5. Part IV of the draft Treaty establishing the Constitution provides for the repeal of the TEC and the TEU, and of other Treaties (amending and accession), of which the list is to be drawn up (Article IV-2). Implementing this approach will require provisions to be laid down to secure the succession and legal continuity. On this point, the IGC Secretariat suggests that some provisions should be added to Part IV, and in the "Protocol on the representation of citizens in the European Parliament and the weighting of votes in the European Council and the Council of Ministers", which it is suggested should be styled the "Protocol on the transitional provisions relating to the Institutions and bodies of the Union", given the expansion of its scope.
6. In cases which do not give rise to questions of political expediency (for example the continuing term in office of the members of certain Institutions or bodies), appropriate transitional provisions have been suggested.
7. For the Commission and the Union Minister for Foreign Affairs, the problem is more delicate. Firstly, both the Commission and the Secretary-General/High Representative for the CFSP in office on the date that the new Treaty enters into force will disappear on that date. Secondly, the text of the draft Constitution allows for a new Commission and the Union Minister for Foreign Affairs to be appointed only with effect from 1 November 2009. It is therefore clear that provisions must be amended to fill this gap for the period between the date when the Treaty establishing the Constitution enters into force and 1 November 2009.

However, these transitional provisions are not mechanical. They call for choices of political expediency. That is why no suggestion on this subject has been made.

Accession agreements, protocols and other primary legislation not examined by the Convention

8. This document does not deal with the approximately forty protocols which are an integral part of the current Treaties, and which have not been examined by the Convention; however, those protocols – some of which refer to Articles in the current Treaties and will therefore need technical changes – should be revised. Further, there is a need to clarify the question of the accession Treaties and other primary legislation not examined by the Convention. The Presidency has asked the Commission to assist the IGC Secretariat in this respect. The outcome of this work will subsequently be sent by the IGC Secretariat to legal experts (insofar as purely legal questions are concerned).

TECHNICAL REMARKS

Numbering and titles of Articles

9. At this stage, to avoid problems with references, Article numbers are preceded by the Roman number of the Part to which they belong (an "I" has been added for Articles in Part I). While understanding the reasoning behind this system of numbering, it should be noted that it is complicated. What is more, it risks creating confusion in several languages, particularly when the number is said aloud and then interpreted (thus "III-142" may be read out as "three – a hundred and forty two" which may lead to confusion with "three hundred and forty two"). Thus, from the point of view of legal certainty, transparency, simplicity and facility of use, it would be preferable to use continuous numbering in Arabic numerals throughout the text of the Constitution (from 1 to 465). This number could be reduced by about 30 if the suggested regrouping of Articles is carried out.

It should be noted that only the Articles in Parts I, II and IV have titles.

10. To make the texts easier to read, the numbers of the "ex Articles" in the TEC and TEU corresponding to the Articles in the draft have been indicated in brackets in Part III next to the new number of the Article, even when they have been amended by the Convention.

Abbreviations of names

11. Certain names recur frequently in the text: European Commission, Council of Ministers, names of legally binding acts (European law, European framework law, European regulation, European decision). It is suggested that their full name should be quoted once, in the Article defining them, and that for the rest of the text a shorter formulation should be used (Commission, Council, law, framework law, regulation, decision) which avoids making the wording unnecessarily cumbersome. Of course in the titles of acts the full name will be used (e.g. "*European law No .../... of the European Parliament and of the Council of Ministers*"). On the other hand, "European Council" and "European Parliament" will be written in full throughout the text.

Terminology and drafting

12. In the interests of editorial consistency, it is suggested that the word "*proposal*" should be reserved for Commission proposals, with "*initiatives*" by the Member States or the Minister for Foreign Affairs, "*recommendations*" by the ECB, etc.
13. The term "*agencies*", which is used in many Articles in the draft, risks giving rise to difficulties of interpretation as to whether it covers all the bodies created by an act of secondary legislation since the Treaty of Rome, where the creating act grants legal personality and defines tasks, resources, etc. It is therefore suggested that the term "*agencies*" should be replaced by "**offices and agencies**", which would cover all Community bodies without ambiguity, including executive agencies, whereas the term "*agencies*" risks excluding bodies called Offices, Centres, Foundations, etc. In any case this is the wording used in the OLAF Regulation ² and in other provisions ³.

² Regulation No 1073/1999 of 25 May 1999, OJ L 136, 31.5.1999, p. 1 (see Article 1(3) of the Regulation).

³ See also the current text of the TEC, point (c) of the first paragraph of Article 234, and the second sentence of Article 248(1); and the decision of the Representatives of the Governments of the Member States of 29 October 1993 on the location of the seats of certain bodies and departments of the European Communities and of Europol (Selected Instruments 1999, p. 803).

14. An editorial choice has been made to use the wording "*the law shall determine [the status ...], [the conditions and restrictions ...], [the structure, functioning, tasks ...], etc.*" and "*the law shall establish ...[measures], [programmes], etc.*" to avoid variations in the verbs used to describe the contents of the laws ("*set*", "*determine*", "*establish*", "*adopt the provisions relating to*", "*define*").
15. Unnecessary adverbs ("*fully, etc.*") have not been remarked upon since in most cases they are already in the text of the current Treaties.

Repetition between the Parts

16. The four-part structure chosen for the draft leads to repetition between Parts I, II and III, sometimes in non-identical terms. This *modus operandi*, which does not comply with the rules on the drafting quality of a legal text, results from a political choice which has been respected. The most significant occurrences are indicated on the comments page. Suggestions have been made in cases where legal difficulties result.
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Title IV

For greater clarity, it is suggested that the words "*and bodies*" should be added to the heading of this Title. Currently the Title is called "*The Union's Institutions*" even though it contains provisions on the advisory bodies. It is also suggested that the headings of the two Chapters should be changed and that a new one should be added (new Chapter III) called "*The Union's advisory bodies*".

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Title I

It is suggested that "*clauses*" should be replaced by "*provisions*".

Section 7

In view of the contents of this section, which does not only contain provisions on the harmonisation of laws, it is suggested that the section heading should be renamed as a result (see comments on Section 7).

Sections 3a and 4

It is suggested that Sections 3a and 4 should be renumbered to become Sections 4 and 5, and that the name of Section 4 should be changed (see comments on Sections 4 and 5)

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Chapter III

It is suggested that the word "*specific*" should be deleted.

Subsection 1

Given that there is only one subsection, and that furthermore it contains only one article (see suggestions re Articles III-113, III-114 and III-115), it is suggested that it should be deleted.

TITLE IV – ASSOCIATION OF THE OVERSEAS COUNTRIES AND TERRITORIES	350
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Chapter II

Given that Articles III-195 to III-209 apply to the whole of the CFSP (i.e. including the ESDP, which is an integral part of it), it is suggested that these Articles should be made into a new Section entitled "*Common provisions*" (the current Sections 1 and 2 would become Sections 2 and 3).

Subsection 4

Change in accordance with the name given in Article I-18(2) and the heading of Article I-25.

Subsection 5

Suggested change in accordance with the change of name suggested in relation to Article I-28.

Subsection 5a

It is suggested that a new Subsection on the European Central Bank should be added (see comments re new Subsection 5a)

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Protocol on the transitional provisions relating to the Institutions and bodies of the Union

It is suggested that the heading of this Protocol should be amended to reflect the major changes to its scope and field of application which are needed.

Article I-5a: Union law

The Constitution, and law adopted by the Union's Institutions in exercising competences conferred on it, shall have primacy over the law of the Member States.

Article I-6: Legal personality

The Union shall have legal personality.

TITLE II: FUNDAMENTAL RIGHTS AND CITIZENSHIP OF THE UNION**Article I-7: Fundamental rights**

1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes Part II.
2. The Union shall seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Constitution.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Comments and suggestions

Article I-5a

It is suggested that Article I-10(1) would be more appropriate here. It has therefore become a new Article I-5a.

Article I-6

Clearer French wording, which is moreover identical with that used in Article 281 of the TEC ("*a*" instead of "*est dotée de*").

Article I-7

Paragraph 2

The wording of the legal basis in the Constitution for accession of the Union to the ECHR could be improved by replacing the words "*seek accession*" by "*accede*". That said, the only pertinent interpretation will be to regard paragraph 2, even as drafted by the Convention, as a legal basis, given Article III-227, point (a) under (ii).

Paragraph 3

It is noted that unlike Article 6(2) of the current TEU, the draft does not provide that "*The Union shall respect fundamental rights...as general principles of Union law*".

PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, ~~goods~~, services, **goods** and capital, ~~and the freedom of establishment~~.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

Third paragraph

On the replacement of "*biens*" by "*marchandises*" in the French version and the order in which the freedoms are listed, see comment re Article I-4(1) above.

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter **and updated under the responsibility of the Praesidium of the European Convention.**

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

Fifth paragraph

The explanations "*prepared at the instigation of the Praesidium*" of the Convention which drafted the Charter of Fundamental Rights have been "*updated*" under the authority of the Praesidium of the European Convention (cf. CONV 828/1/03 of 18 July 2003).

Because these explanations are cited in the text of the Constitutional Treaty, they must be accessible to all. They should therefore be published in the "C" series of the OJ, or inserted into a declaration by the IGC in the Final Act, which will in turn be published in the "C" series of the OJ.

TITLE I: DIGNITY

Article II-1: Human dignity

Human dignity is inviolable. It must be respected and protected.

Article II-2: Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Article II-3: Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - (a) the free and informed consent of the person concerned, according to the procedures laid down by law,
 - (b) the prohibition of eugenic practices, in particular those aiming at the selection of persons,
 - (c) the prohibition on making the human body and its parts as such a source of financial gain,
 - (d) the prohibition of the reproductive cloning of human beings.

Article II-4: Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article II-5: Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

TITLE II: FREEDOMS**Article II-6: Right to liberty and security**

Everyone has the right to liberty and security of person.

Article II-7: Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article II-8: Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

3. Compliance with these rules shall be subject to control by an independent authority.

Article II-9: Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article II-10: Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Article II-11: Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Article II-12: Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article II-12Paragraph 2

On the use of the feminine in certain languages (e.g. in French "*des citoyens ou citoyennes*"), see comments above re Article I-3(2). It will be noted that in Part II, unlike in Part I, the feminine word ("*citoyennes*") follows the masculine word. (Does not apply to the English version).

Article II-13: Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article II-14: Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article II-15: Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article II-16: Freedom to conduct a business

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

Article II-17: Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

Article II-18: Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Constitution.

Article II-19: Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

TITLE III: EQUALITY**Article II-20: Equality before the law**

Everyone is equal before the law.

Article II-21: Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

Article II-22: Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article II-23: Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article II-24: The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private Institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article II-21Paragraph 2

In the French version, this paragraph is almost identical to Article I-4(2) (except for the words "*fondée sur*") (the legal basis is contained in Article III-7). It is suggested that the French wording be aligned on Article I-4(2) (which corresponds to the wording of current Article 12 TEC). Since this involves repetition, it could, moreover, be deleted. (Does not affect the English version).

Article II-25: The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article II-26: Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

TITLE IV: SOLIDARITY**Article II-27: Workers' right to information and consultation within the undertaking**

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

Article II-28: Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Article II-29: Right of access to placement services

Everyone has the right of access to a free placement service.

Article II-30: Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

Article II-31: Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article II-32: Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article II-33: Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article II-34: Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

Article II-35: Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Article II-36: Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Constitution, in order to promote the social and territorial cohesion of the Union.

Article II-37: Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article II-35

It will be noted that the second sentence reproduces Article III-179(1) word for word.

Article II-37

This provision is similar to Article III-4 (as redrafted and renumbered III-1(2)(c)), but the latter does not refer to "*the improvement*" of the quality of the environment, or to "*ensuring*" environmental protection "*in accordance with the principle*" of sustainable development.

Article II-38: Consumer protection

Union policies shall ensure a high level of consumer protection.

TITLE V: CITIZENS' RIGHTS**Article II-39: Right to vote and to stand as a candidate at elections to the European Parliament**

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Article II-40: Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article II-41: Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the Institutions, bodies, **offices** and agencies of the Union.
2. This right includes:
 - (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - (c) the obligation of the administration to give reasons for its decisions.

Article II-38

This provision is similar to Article III-5 (as redrafted and renumbered III-1(3)(c)).

Article II-39Paragraph 1

Repetition of Article I-8(2)(b).

Paragraph 2

Paragraph 2 is almost identical to the first sentence of Article I-19(2) (which refers to "*direct universal suffrage*" in a "*free and secret ballot*").

Article II-40

Repetition of Article I-8(2)(b).

3. Every person has the right to have the Union make good any damage caused by its Institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every ~~citizen~~~~person~~ may write to the Institutions of the Union in one of the languages of the Constitution and must have an answer in the same language.

Article II-42: Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the Institutions, bodies, **offices** and agencies of the Union, ~~in whatever~~ **their medium**~~form they are produced.~~

Article II-43: European Ombudsman

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 refer to the European Ombudsman cases of maladministration in the activities of the Institutions, bodies, **offices** or agencies of the Union, with the exception of the ~~European~~ Court of Justice **of the European Union** and the ~~High Court~~ acting in ~~its~~~~their~~ judicial role.

Article II-44: Right to petition

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.

Article II-41(4)Paragraph 4

Under Articles I-8(2)(d) and III-12, the right to write to the Institutions (and advisory bodies – which are not mentioned here) of the Union in one of the languages of the Constitution and to obtain a reply in the same language is granted only to citizens of the Union, and not to "*every person*". As Article II-41 will in any event have to be read and interpreted in the light of Article II-52(2), it is suggested that the text be aligned as regards this point.

Article II-42

Repetition of Article I-49(3). (The wording should be aligned on that suggested for the latter Article: "*whatever their medium*").

Article II-43

This Article is identical in its substance to the second sentence of Article III-237(1). The right for citizens to have recourse to the Ombudsman is also mentioned in Article I-8(2)(d). For the Court of Justice of the European Union, see comment above re Article I-28.

Article II-44

This Article is almost identical to Article III-236 (except that the latter specifies that the petition must concern "*a matter which comes within the Union's fields of activity*" and which affects the petitioner directly). The right for citizens to petition the European Parliament is also mentioned in Article I-8(2)(d).

Article II-45: Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Constitution, to nationals of third countries legally resident in the territory of a Member State.

Article II-46: Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the **nationals** of that Member State.

TITLE VI: JUSTICE**Article II-47: Right to an effective remedy and to a fair trial**

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Article II-45Paragraph 1

Paragraph 1 is identical in substance to Article I-8(2)(a).

Article II-46

This Article is identical in substance to Article I-8(2)(c). For the word "*nationaux*" in the French version, see comment above re the latter Article.

Article II-48: Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Article II-49: Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

Article II-50: Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

Article II-48

On the use of the feminine/masculine in the French version (here: "*Tout accusé*" instead of "*Tout accusé ou toute accusée ...*"), see comments re Article I-3(2). (Does not affect the English version).

TITLE VII: GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

Article II-51: Field of application

1. The provisions of this Charter are addressed to the Institutions, bodies, **offices** and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the other Parts of the Constitution.
2. This Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks defined in the other Parts of the Constitution.

Article II-52: Scope and interpretation of rights and principles

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by ~~law~~ **a legislative act** and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter for which provision is made in other Parts of the Constitution shall be exercised under the conditions and within the limits defined by these relevant Parts

Article II-52Paragraph 1

It is suggested that the term "*law*" be replaced by "*a legislative act*" in order to avoid any confusion with the term "*law*" as used in Article I-32 as a legal act of the Union.

3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by Institutions, bodies, **offices and agencies** of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.
6. Full account shall be taken of national laws and practices as specified in this Charter.

Article II-53: Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, ~~the Community~~ or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article II-54: Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

Article II-52Paragraph 5

It is suggested that "*offices and agencies*" be inserted in the second line.

**CONFERENCE
OF THE REPRESENTATIVES OF THE GOVERNMENTS
OF THE MEMBER STATES**

Brussels, 6 October 2003

CIG 5/03

NOTE

from: Presidency
to: Delegations

*Subject: IGC 2003
– Indicative timetable*

Delegations will find attached the revised IGC indicative timetable.

IGC – INDICATIVE TIMETABLE

Saturday 4 October 2003 – morning (Rome)	Heads of State or Government (opening)	<ul style="list-style-type: none"> – Final procedural questions – General political debate
Saturday 4 October 2003 – afternoon (Rome)	Ministers	<ul style="list-style-type: none"> – Legislative Council – Rotating Council Presidency (<i>questionnaire</i>)
Tuesday 14 October 2003 – morning (Luxembourg)	Ministers (on the occasion of the GAERC meeting)	<ul style="list-style-type: none"> – Minister for Foreign Affairs (<i>questionnaire</i>) – Composition of the Commission (<i>questionnaire</i>) – Preparation for the meeting of Heads of State or Government: <ul style="list-style-type: none"> ▪ All institutional issues including: composition of the European Parliament, European Council and its President, definition of Qualified Majority
Thursday 16 and Friday 17 October 2003 (Brussels)	Heads of State or Government	Institutional issues (orientations)
Monday 27 October 2003 (Brussels)	Ministers	<ul style="list-style-type: none"> – Follow up of the Heads of State or Government meeting – Scope of Qualified Majority (<i>questionnaire</i>) – Institutional questions (examination of pending issues on the basis of drafting proposals submitted by the Presidency in the light of previous discussions on the Legislative Council, the formations of the Council and the system of Council Presidency) – Non-institutional questions*
Tuesday 18 November 2003 – morning (Brussels)	Ministers (on the occasion of the GAERC meeting)	<ul style="list-style-type: none"> – Institutional questions (continue examination of pending issues on the basis of drafting proposals submitted by the Presidency in the light of previous discussions on the Union Minister for Foreign Affairs and, if appropriate, on other questions) – Defence (<i>questionnaire</i>) – Part IV of the draft Constitution (revision procedure)
Friday 28 and Saturday 29 November (+ poss. 30 November) 2003 (Rome)	Ministerial conclave	<i>Preparation of the overall package ahead of the meeting of Heads of State or Government</i>
Tuesday 9 December 2003 – morning (Brussels)	Ministers (on the occasion of the GAERC meeting)	<i>Preparation of the overall package ahead of the meeting of Heads of State or Government</i>
Friday 12 and Saturday 13 December 2003 (Brussels)	Heads of State or Government	<i>Discussion of the overall package</i>

* Delegations are invited to submit to the Presidency before the 20th of October 2003, non-institutional questions they wish to be raised, including those related to Part III of the draft Constitution. Some of these questions have already been mentioned: Christian values, minorities, economic governance. The Presidency reminds delegations however that in order to keep the discussions on the right track, a high degree of self-discipline is needed, therefore the issues raised should be limited, as far as possible, to the strict minimum. At the same time, the Presidency will welcome drafting proposals relating to these issues.

**CONFERENCE
OF THE REPRESENTATIVES
OF THE GOVERNMENTS
OF THE MEMBER STATES**

Brussels, 24 October 2003

CIG 37/03

PRESID 3

NOTE

from: Presidency
dated: 24 October 2003
to: Delegations

*Subject: IGC 2003
– Non-institutional issues; including amendments in the economic and
financial field*

1. Delegations will find attached a complete list, arranged by subject, of the non-institutional issues which have been submitted by delegations in response to the request from the Presidency. This list will constitute the basis for the discussions at the meeting of Ministers in Brussels on 27 October 2003. In this context, the Presidency reminds delegations that in order to keep the discussions on the right track, a high degree of self-discipline is needed.
2. The list is organised according to subject under broad headings. It does not include points relating to the scope of Qualified Majority Voting, since these are the subject of a separate document.
3. Several delegations have raised the issue of defence. However this has been identified as one of several key issues on which the Presidency has already scheduled separate discussions.

4. **A series of points have been included relating to the Union's finances/budget and to economic and financial policy. Many of these points have been the subject of discussions by ECOFIN Ministers: they are marked with an asterisk (*). A large number of delegations have indicated that they are prepared to accept them as a whole. Where delegations have indicated that they attached particular importance to certain points, this has been specified. Other delegations do not feel at ease with the initiative of the ECOFIN Council and are not ready to accept the ECOFIN Ministers' package as a whole as there is a risk that it would undermine, in particular, the overall institutional balance. Some of them would however be able to accept some of the points.**

 5. Several delegations referred in their submissions to issues which they did not intend to raise themselves, but on which they would support others. These have therefore only been included in the list if they were raised by other delegations.
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Preamble

1. **Name of the Treaty**: should be Constitutional Treaty for the EU (SK)
2. **Preamble**: include a reference to **Christian inheritance of Europe (ESP, IRL, MT, PL, PT, SK, LT; CZ** wishes to enlarge even more this proposal to a reference to Ancient Greek philosophy, Roman law, Jewish and Christian roots and rationalism. **T** and **CY** opposed to such a mention.)

General

3. **Union's values**: include new values (Art. 2):
 - **Rights of national and ethnic minorities (HU)**. **SK** and **LV** opposed to such a mention.
 - **Equality between men and women (SW)**
4. **Union's objectives** (Art. 3):
 - **Include new objectives**: economic and monetary Union and policies for economic and social cohesion (Art. 3.2) as well as public health (Art. 3.3) (**GR**)
 - **Scope of application of Union's objectives (Art. 3)**: include a sentence "in accordance with this Constitutional Treaty" or a similar one to avoid misunderstandings relating to its scope of application (Art. 3.2) (**PT**)
5. **Primacy of EU law**: Doubts over formulation (**UK**)
6. **Accession to the ECHR** (Art. 7.2): include a firmer intention of accession (**CZ**)
7. **Union's exclusive competencies** (Art. 12):
 - **Conclusion of international agreements**: need to examine it in depth in light of existing case law (Art. 12) (**IRL, FIN, SW, UK**)
 - Since competition policy is an exclusive competence, a provision should be included to put an obligation on the Commission to take into account the geographical dimension for certain island nations with small populations, which does not allow them to take full advantage of the internal market possibilities and to compete on an equal footing with other MS (Art. 12.1) (**CY**)

8. **Competencies: tourism**
 - **include as an area of shared competencies** (Art. 13) (GR)
 - **include as an area of supporting, co-ordinating or complementary actions and establish relevant legal basis** (Art. 16 and related) (ESP, F, LV, MT, PL, PT, LT, CY, SK)
9. **Include a new principle common to Union's legal acts** (Art. 37.2): principle that the laws should be written in a manner that makes it possible for ordinary citizens to understand them (SW)
10. **Introduction of equality between MS as another principle of democratic equality** (Art. 44) (PT, SL)
11. **Need precision on the definition of "significant number of MS" as regards "civic initiative"** (Art. 46) (SK)
12. **European Ombudsman** (Art. 48 and related):
 - **Election** (instead of appointment) of the European Ombudsman (Art. 48) (GR)
 - Foresee a provision allowing the cooperation of the European Ombudsman with ombudsmen and similar bodies in the MS (Art. III-237) (GR)
13. **Charter of Fundamental Rights (Part II): stronger and clearer reference or a more secure legal status of the Explanations and publication thereof** (NL, UK)
14. **Non-discrimination (Art. II-21)**: needs clarification (UK)
15. **Insert a horizontal clause** ensuring that social objectives are taken into account in all Union policies (create a new Article) (B)
16. **Services of general economic interest** (Art. III-6):
 - revert to existing terminology (ESP)
 - deletion of the full sentence in art III- 6 mentioning a European law (NL, ESP, FIN)
 - include a reference to the central role of local and regional authorities in providing these services (AUT)
 - a reference should be made to economic cohesion alongside social and territorial cohesion (PT)
 - as long as the concept is not defined, there should not be a legal basis (SW)

**CONFERENCE
OF THE REPRESENTATIVES OF THE GOVERNMENTS
OF THE MEMBER STATES**

Brussels, 4 November 2003

CIG 43/03

PRESID 7

NOTE

from: the Presidency

dated: 4 November 2003

to: Delegations

Subject: IGC 2003

– Issues to be dealt with by the Legal Experts group (new mandate)

Delegations will find attached the list of issues to be dealt with in the meeting of the Legal Experts group (new mandate) on 11 and 12 November 2003.¹

¹ See document CIG 42/03.

LEGAL EXPERTS GROUP
(new mandate)

*NB: All the issues in this list contain legal/technical aspects that need clarification as to their legal components. Consequently, in the interest of the smooth work process, these would gain by being examined in advance under a juridical angle before possible further consideration at political level. **In no case such a clarification may be subject to negotiations and does not prejudge any political solution.** Its aim is to either answer legal questions related to these issues or clarify them in order to pave the way for further consideration at political, ministerial level.*

Points marked with a cross (☒) are those suggested by ECOFIN ministers and submitted to the IGC by the delegations indicated below.

A. GENERAL

1. **Internal security** (Art. 5.1 and III-163): request to change for national security. (UK, NL)
2. **Primacy of EU law** (Art. 5 a)²: clarification as to whether this provision accurately reflects current jurisprudence as established by the ECJ. (UK, PT)
3. **Union's exclusive competencies** (Art. 12):
 - a. **Conclusion of international agreements**: clarification in light of existing case law (Art. 12.2) (IRL, FIN, SW, UK, PT)
 - b. **Special provisions as regards competition rules**: should the Commission take into account the geographical dimension for certain island nations with small populations, which does not allow them to take full advantage of the internal market possibilities and to compete on an equal footing with other Member States? (CY, MT)
4. **Charter of Fundamental Rights (Part II)**:
 - a. legal status of the Explanations and publication thereof (Charter preamble) (UK, NL)
 - b. non-discrimination (Art. II-21): clarification whether this article contains both rights and principles (UK)
5. **Data protection** (Art. 50): scope of Union rules (should JHA and CFSP matters be excluded from the scope?) (UK)

² Article 10 in draft Constitutional Treaty

B. UNION'S FINANCES/BUDGET

6. **Multiannual financial framework** (Art. III-308): clarification that the last Financial Perspective before entry into force of the Constitution shall be treated as the multiannual financial framework which has been adopted in accordance with Article I-54. (SW)
7. **Economic, social and territorial cohesion** (Art. III-119): amend to provide for the same approach as for the multiannual financial framework. (ESP, PT)

C. ECONOMIC AND FINANCIAL POLICY

8. **The European Central Bank** (Art. 29.3): Reference to the independence of national central banks and more precise drafting concerning issue of banknotes and coins denominated in euro (CION)
9. **ECB- procedure**
 - a. appointment of members of the Board of Directors by QMV (Art. III-84.2b) (CION, FIN)
 - b. possibility for the European Council on a proposal from the Commission or a recommendation from the ECB to revise decision-making rules and tasks of the Governing Council and Executive Board (Art. III-79 - enabling clause for revision of Art. 10-12 and 43 of the Statute of the ESCB and the ECB) (CION)
10. **Enabling clause to change the statute of the EIB** (Art. III-299): clarification on the need to keep this clause (ESP, CION)
11. **Eurogroup protocol** (Art. 1): Include participation of the Commission in the preparation of the meetings (ESP, PT, CION, B, GR)

D. JUSTICE AND HOME AFFAIRS

12. **General provisions (art. III-158, III-162)**: clarification, in particular on the standing committee (B, PL)
13. **Asylum and immigration (art. III-167, III-168)**: clarification, in particular on scope of the respective competencies of the Union and MS' (SW, LV, NL)

14. **Judicial Cooperation in civil matters (art. III-170):** clarification, in particular on the scope of European laws and framework laws and its possible cost implications (PL, UK, SK, IRL)
15. **Police Cooperation (III-176, III-177):** clarification, in particular over the scope (IRL)
16. **External Relations (JHA):** clarification as to whether the possibility of Member States to maintain and conclude bilateral agreements in the area of JHA remains (NL, PT)

E. OTHER POLICIES

17. **Solidarity clause:** clarification (Art. 42) (IRL), in particular on the ECJ's jurisdiction over this provision (Art. III-282) (SW)
18. **Social security for employed and self-employed migrant workers** (Art. III-21): clarification over compatibility with specificities of certain national situations (LUX)
19. **Public health:**
 - a. health services: clarification on the relation of provisions within freedom to provide services with MS' responsibilities for the organisation and delivery of health services (Art. III-35) (FIN)
 - b. scope of competencies: bringing Art. III-179.4 in line with the Union competencies as in Art. 13.2 (CION)
20. **Consumer policy:** clarification as to whether the Treaty provides a sufficient legal basis to implement the Consumer Policy Strategy and whether paragraph 4 does not diminish the impact of the article as a base for consumer legislation (Art. III-132) (SW)
21. **Research and technological development:** clarification as regards the shared nature of competencies (Art. III-146 and Art. III-149) (CION)
22. **Energy:** clarification as to whether national sovereignty over energy resources remains granted (Art. III-157) (NL, UK)
23. **Tourism:** clarify a possible content of the legal basis (GR, ESP, LV,MT,PL,PT,LT,CY,SK)

24. **Status of overseas territories** (Arts. III-330 and III-186): possibility of a lighter procedure for change in status of Netherlands Antilles and Aruba, presently in annex II, to that of outermost regions, without having to amend the Constitution (NL). Insertion of Mayotte alongside other French overseas departments (F)

F. MISCELLANEOUS

25. **Court of Justice:**
- a. ensure that the ECJ can safeguard rights of individuals when reviewing restrictive measures (Art. III-282) (SW)
 - b. clarification, in particular over judicial co-operation in criminal matters and police co-operation and actions of MS as matter of national law (UK, PT)
26. **European Parliament:** consequences of limiting the right to vote in EP elections to EU citizens only (UK problem)
27. **Declaration on the representation of citizens in the EP and weighting of votes in the Council of Ministers and Signature of the Constitutional Treaty** by the observers (BG, RO)
28. **P.M.** Legal/technical aspects of articles on which reservations remain pending, following the proceedings of the Legal Experts group.

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CONFERENCE
OF THE REPRESENTATIVES
OF THE GOVERNMENTS
OF THE MEMBER STATES

Brussels, 25 November 2003 (26.11)
(OR. fr)

CIG 50/03

Subject : **2003 IGC**
 – **Draft Treaty establishing a Constitution for Europe**
 (following editorial and legal adjustments by the Working Party of IGC Legal
 *Experts)*¹

Editorial and legal adjustments appear in bold and deletions in strikethrough².

Addendum 1 to this document contains Annex I and Annex II to the EC Treaty, the Protocols drawn up by the Convention and the Protocols annexed to the EU Treaty and to the EC and Euratom Treaties, as adjusted by the Working Party of IGC Legal Experts.

* * *

¹ For a presentation of the proceedings of the Working Party of Legal Experts, see its Chairman's report in CIG 51/03.

² Adjustments to the headings of Articles or Sections, which are already in bold, are indicated by italics. The accuracy of all cross-references between Articles or paragraphs will be checked at the end of proceedings.

The text also contains five footnotes drafted **on** the responsibility of the Chairman of the Working Party, on particular legal points. They concern the last recital of the Preamble to the Charter (page 68), Article III-88(1) (page 125), Article III-209 (page 182) and Article III-305(1) (page 224).

TITLE II

FUNDAMENTAL RIGHTS AND CITIZENSHIP OF THE UNION

Article I-7: Fundamental rights

1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes Part II ~~of this Constitution~~.
2. The Union shall seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Constitution.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Article I-8: Citizenship of the Union

1. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship; it shall not replace it.
2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Constitution. They shall have:
 - (a) the right to move and reside freely within the territory of the Member States;
 - (b) the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;

PART II

THE CHARTER OF FUNDAMENTAL RIGHTS OF THE UNION

PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, ~~goods~~, services, **goods** and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter ¹.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

¹ The Legal Adviser to the IGC ~~is of the opinion that~~, suggests adding at the end of this sentence, for reasons of legal certainty and transparency, a phrase to point out that the explanations mentioned here have been updated on the responsibility of the Praesidium of the European Convention; if this were not done, the existing text would be inaccurate. The following addition is supported by the great majority of delegations (with the German, Austrian, Belgian, Luxembourg and French delegations opposing it, because they feel that it raises issues of political desirability): "(...) *the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter and updated on the responsibility of the Praesidium of the European Convention*".

Also, since the text explicitly states that the Charter will be interpreted by the courts of the Union and of the Member States *"with due regard to"* those explanations, it would be legally inconceivable that the text of the explanations should not be available to those courts and to the Union's citizens. The Legal Adviser therefore suggests that they be made universally accessible, by ensuring that they are published in the "C" series of the Official Journal of the European Union.

TITLE I

DIGNITY

Article II-1: Human dignity

Human dignity is inviolable. It must be respected and protected.

Article II-2: Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Article II-3: Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - (a) the free and informed consent of the person concerned, according to the procedures laid down by law,
 - (b) the prohibition of eugenic practices, in particular those aiming at the selection of persons,
 - (c) the prohibition on making the human body and its parts as such a source of financial gain,
 - (d) the prohibition of the reproductive cloning of human beings.

Article II-4: Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article II-5: Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

TITLE II

FREEDOMS

Article II-6: Right to liberty and security

Everyone has the right to liberty and security of person.

Article II-7: Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article II-8: Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Article II-9: Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article II-10: Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Article II-11: Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Article II-12: Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article II-13: Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article II-14: Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article II-15: Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article II-16: Freedom to conduct a business

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

Article II-17: Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

Article II-18: Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Constitution.

Article II-19: Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

TITLE III

EQUALITY

Article II-20: Equality before the law

Everyone is equal before the law.

Article II-21: Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

Article II-22: Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article II-23: Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article II-24: The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article II-25: The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article II-26: Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

TITLE IV

SOLIDARITY

Article II-27: Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

Article II-28: Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Article II-29: Right of access to placement services

Everyone has the right of access to a free placement service.

Article II-30: Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

Article II-31: Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article II-32: Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article II-33: Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article II-34: Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

Article II-35: Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Article II-36: Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Constitution, in order to promote the social and territorial cohesion of the Union.

Article II-37: Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article II-38: Consumer protection

Union policies shall ensure a high level of consumer protection.

TITLE V

CITIZENS' RIGHTS

Article II-39: Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Article II-40: Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article II-41: Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the Institutions, bodies, **offices** and agencies of the Union.

2. This right includes:
 - (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - (c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its Institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every ~~citizen~~~~person~~ may write to the Institutions of the Union in one of the languages of the Constitution and must have an answer in the same language.

Article II-42: Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the Institutions, bodies, **offices** and agencies of the Union, ~~in whatever~~ **their medium**~~form they are produced.~~

Article II-43: European Ombudsman

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 refer to the European Ombudsman cases of maladministration in the activities of the Institutions, bodies, **offices** or agencies of the Union, with the exception of the ~~European Court of Justice~~ **of the European Union** and the ~~High Court~~ acting in ~~its~~~~their~~ judicial role.

Article II-44: Right to petition

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.

Article II-45: Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Constitution, to nationals of third countries legally resident in the territory of a Member State.

Article II-46: Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

TITLE VI

JUSTICE

Article II-47: Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Article II-48: Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Article II-49: Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

Article II-50: Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

TITLE VII

GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

Article II-51: Field of application

1. The provisions of this Charter are addressed to the Institutions, bodies, **offices** and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the other Parts of the Constitution.
2. This Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks defined in the other Parts of the Constitution.

Article II-52: Scope and interpretation of rights and principles

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter for which provision is made in other Parts of the Constitution shall be exercised under the conditions and within the limits defined by these relevant Parts

3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by Institutions, bodies, ~~offices and agencies~~ of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.
6. Full account shall be taken of national laws and practices as specified in this Charter.

Article II-53: Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, ~~the Community~~ or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article II-54: Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

**CONFERENCE
OF THE REPRESENTATIVES
OF THE GOVERNMENTS
OF THE MEMBER STATES**

**Brussels, 25 November 2003 (26.11)
(OR. fr)**

CIG 51/03

REPORT

from : Chairman of the Working Party of IGC Legal Experts
 dated : 25 November 2003
 to : Intergovernmental Conference

Subject : ***2003 IGC: editorial and legal adjustments to the draft Treaty establishing a Constitution for Europe and to the Protocols***
- Presentation of the outcome of proceedings of the Working Party – CIG 50/03

1. As instructed by the Presidency of the IGC ¹, a Working Party of Legal Experts has carried out a "legal verification" of the draft Treaty establishing a Constitution for Europe, drawn up by the European Convention ². The Working Party was chaired by Mr Jean-Claude Piris, Director-General of the Council Legal Service and Legal Adviser to the IGC, and in his absence by Mr Giorgio Maganza, Director in the Council Legal Service.
2. The Working Party worked on the basis of a document prepared by the IGC Secretariat with the assistance of the Council Legal Service (CIG 4/03), in which legal improvements to the draft were suggested. It also discussed suggestions made by members of the Working Party. The Working Party went on to examine the Protocols annexed to the existing Treaties, on the basis of documents prepared by the IGC Secretariat, with the assistance of the Commission (CIG 41/03, CIG 48/03 and CIG 49/03).

¹ Letter of 29 September 2003 from Mr Frattini to the Ministers for Foreign Affairs of the Member States of the European Union and to the acceding States, the candidate countries, the European Parliament and the Commission.

² Text submitted to the President of the European Council by the Chairman of the Convention in Rome on 18 July 2003, at the end of the Convention's proceedings (CONV 850/03).

3. The Working Party held 15 meetings (on 9, 10, 15, 20, 21, 24, 29 and 31 October and on 5, 6, 10, 14, 18, 19 and 25 November 2003).

The outcome of proceedings is set out in CIG 50/03, which contains the draft Treaty establishing a Constitution for Europe, and in Addendum 1 thereto, which contains the Protocols to be annexed to the Constitution.

In view of the political sensitivity of the provisions on Council formations (Article I-23), the Commission and the Union Minister for Foreign Affairs (Articles I-25 to I-27 and III-250 to III-253), the common foreign and security policy (Article I-39 and Articles III-193 to III-209 and III-215) and the common security and defence policy (Article I-40 and Articles III-210 to III-214), the Working Party of Legal Experts confined itself to minimal, horizontal adjustments, basically following the drafting conventions which it had agreed on elsewhere.

The overall result merely reflects the legal drafting approach taken by the Working Party of Legal Experts and in no way affects the option available to delegations of raising any political issues.

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4. In the course of its discussions, the Working Party agreed to suggest legal and drafting improvements, including the following:

- achieving legal and editorial consistency between the different parts of the draft Constitution through greater legal consistency in provisions (e.g. deletion of needless cross-references or repetition, insertion of necessary cross-references, repositioning of some articles or paragraphs ¹, etc.) and more consistency in the wording used (e.g. a standard method for drafting legal bases, use of the same term to express the same idea, etc.);
- making good some omissions (e.g. through the addition of other cases in which an Institution may submit a proposed act to the legislator, the insertion of a fuller definition of the scope of a challenge to the legality of an act, the addition of a reference to laws or framework laws as instruments in the legal basis on the association of the overseas countries and territories and in that on the outermost regions, or the addition of a reference to the applicable voting rule in all cases in which the European Council adopts a binding legal act, etc.);
- the correction of legal inaccuracies (e.g. those relating to the composition of the Council, the principle of representative democracy, review of the legality of acts suspending certain of the rights deriving from membership of the Union, etc.).

¹ The following provisions have been repositioned:

- Article I-10(1) is moved to Article I-5a;
- Article I-10(2) is moved to Article I-5(2);
- Article I-16(3) is moved to Article I-11(5);
- Article I-24(4), first subparagraph, is moved to Article I-33(4);
- Article I-24(4), second subparagraph, is moved to Article I-22(4);
- Article III-64 is moved to Article III-65a;
- Article III-84 is moved to Article III-289a;
- Article III-85 is moved to Article III-289b;
- Article III-192 is moved to Article III-186(1);
- Article III-242 is moved to Article III-239(3);
- Article III-280 is moved to Article III-281(3);
- Article III-284 is moved to Article III-281(2);
- Article IV-1 is moved to Article I-6a;
- Article IV-9 is moved to Article IV-7a.

5. The Working Party also agreed to suggest total recasting of most of the final provisions contained in Part IV, more specifically the provisions entailed by the repeal of the existing Treaties. It accordingly suggests:
- the addition, in the preamble, of a reference to succession between Treaties and to legal continuity of the "acquis communautaire";
 - the combining, in a single Protocol, of the various transitional provisions scattered throughout the draft Constitution (e.g. the date of effect of a number of rules relating to a new composition or a new voting procedure for certain Institutions and bodies, and their composition or other rules applicable in the period between the entry into force of the new Treaty and that date, etc.);
 - the addition of transitional provisions not drawn up by the Convention, with a view to ensuring succession between the existing Treaties and the future Treaty establishing the Constitution and, in particular, legal continuity of existing Institutions, bodies, offices and agencies, the "acquis communautaire", ongoing proceedings, etc.
6. These improvements were approved by mutual agreement, in accordance with the rule established at the beginning of the Working Party's discussions.

However, the Spanish and Polish delegations stated that the transfer of the various transitional provisions scattered throughout the draft Constitution to the "*Protocol on the transitional provisions relating to the Institutions and bodies of the Union*" raised issues of political expediency for them. They could therefore go along with the legal drafting approach taken by the Working Party only if those issues of political expediency were resolved.

The position of the above two delegations is reflected in footnotes in CIG 50/03, as well as in a special presentation of the Protocol on transitional provisions in Addendum 1 to that document (in which the version of the Protocol drawn up under the supervision of the Legal Adviser to the IGC, which reflects the Working Party's legal drafting approach, is preceded by the version of the Protocol proposed by the Convention, without any drafting adjustment).

7. The Convention text has been left unchanged, without any comments, in a number of areas in which the IGC Secretariat had suggested legal improvements but mutual agreement could not be reached, because of opposition by one delegation or a very small number of delegations.

The Conference's attention is, however, drawn to four such areas, where the draft Constitution as it currently stands is legally incorrect ¹:

- (a) final recital of the preamble to the Charter of Fundamental Rights (Part Two of the draft Constitution). For reasons of legal certainty and transparency, it is suggested that a phrase be added at the end of the recital to point out that the explanations concerning the Charter which were prepared by the Praesidium of the Convention that drafted the Charter have been updated on the responsibility of the Praesidium of the European Convention; otherwise, the current text would be inaccurate. The following addition is supported by the great majority of delegations (the German, Austrian, Belgian, Luxembourg and French delegations opposed it, as they considered that it raised issues of political expediency): "*(...) the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter **and updated under the responsibility of the Praesidium of the European Convention***".

In addition, since the text explicitly states that "*the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter*", it would be legally inconceivable for the text of such explanations not to be available to those courts and to Union citizens; it is therefore suggested that the explanations be made universally accessible by ensuring that they are published in the "C" series of the Official Journal of the European Union;

¹ These areas are mentioned in footnotes to CIG 50/03 (see pages 68, 125, 182 and 224).

- (b) Article III-88(1) (legal basis allowing the adoption of specific measures for the euro area): It would seem legally incorrect not to specify the Institution which is to adopt the measures, i.e. the Council, or the procedures to be applied by it, as appropriate, according to the content of the decision to be adopted. The addition shown below is supported by the vast majority of delegations: "*1. In order to ensure that economic and monetary union works properly, and in accordance with the relevant provisions of the Constitution, the Council shall adopt, in accordance with whichever of the procedures referred to in Articles III-71 and III-76 is appropriate, measures specific to those Member States ~~which are members of the euro area~~ whose currency is the euro shall be adopted: (...)*". Only the United Kingdom and Sweden delegations were opposed and suggested different wording.
- (c) Article III-209 (rule on non-interference between CFSP procedures and procedures for other policies): This paragraph, which does not pose any substantive problems for delegations, should be reworded in such a way as to make it more precise and legally secure. Its aim is to spell out a rule designed to prevent the Council, in the context of its powers under the CFSP, from adopting acts affecting other areas of Union activity. With the abolition of the pillars, the competences enabling the Council to act are all, without distinction, Union competences. The idea is therefore to protect not competences but the procedures and powers of the Institutions which continue to differ between the CFSP and other policies (broader powers for the European Parliament, the Commission and the Court of Justice). The following draft is endorsed by virtually all delegations (only the Spanish delegation is opposed to it). "*The implementation of the common foreign and security policy shall not affect the **application of the procedures and the extent of the powers of the Institutions laid down by the Constitution for the exercise of the Union** competences listed in Articles I-12 to I-14 and I-16. Similarly, the implementation of the policies listed in those Articles shall not affect ~~the competence referred to in Article I-15~~ **the application of the procedures and the extent of the powers of the Institutions laid down by the Constitution for the exercise of the Union competences under this Chapter.***";

(d) Article III-305(1) (access to EIB documents): Since the draft Constitution drawn up by the Convention provides that, in the case of the ECB, public access to documents shall be granted only for its administrative activities, but not for its banking activities, the same provisions should apply to the European Investment Bank. An addition of this kind is supported by almost all delegations (only the Swedish delegation is opposed to it).

8. Finally, it has been suggested that the Conference should consider the question of how the articles in the draft should be numbered. The system adopted by the Convention (whereby the Arabic numeral of each Article is preceded by the Roman numeral of the Part to which it belongs, reverting to 1 again for each Part) gives rise to a great deal of confusion, particularly when numbers are read out aloud and then interpreted into a number of different languages (e.g. "I-10" and "110" or "III-142" and "342"). From the point of view of legal certainty, transparency, simplicity and ease of use, it would thus be preferable to use continuous numbering in Arabic numerals throughout the text of the Constitution (from 1 to 465).

A large majority of delegations endorsed the proposal for renumbering continuously throughout, provided this was accompanied by the Roman numeral of the relevant Part, so that the distinction between the four separate Parts of the Constitution could be maintained.

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**CONFERENCE
OF THE REPRESENTATIVES
OF THE GOVERNMENTS
OF THE MEMBER STATES**

Brussels, 25 November 2003

**CIG 52/1/03
REV 1 (en)**

PRESID 10

NOTE

from: Presidency
dated: 25 November 2003
to: Delegations

*Subject: IGC 2003
– Naples Ministerial Conclave: Presidency proposal*

1. In line with the conclusions of the European Council meeting in Thessaloniki, the work of the InterGovernmental Conference has been carried out at political level. The IGC meetings so far, together with a series of bilateral contacts, have enabled the Presidency to identify a number of issues in the draft Constitutional Treaty which delegations consider need either clarifying or amending, and in some cases to draw up proposals for a possible way forward.

LEGAL/TECHNICAL ISSUES

2. In parallel with discussions at political level the Presidency, with the agreement of all delegations, set up a group of legal experts in order to undertake a legal review of the draft Treaty establishing the Constitution drawn up by the Convention. The legal experts group met in October and November under the Chair of the Legal Counsel of the IGC. The outcome of the group's proceedings has been circulated in document CIG 51/03.

3. The revised texts contained in doc. CIG 50/03 and ADD 1 incorporate all the improvements of a legal or technical nature which are suggested by common accord of the legal experts of the Member States and of the acceding States, without prejudging any amendments which delegations might wish to put forward at the political level. The Presidency considers that the texts resulting from the legal experts group should not be reopened and should serve as a reference point for ministers and Heads in their discussions on the political issues.

OTHER ISSUES

4. As a complement to this consolidated text, the Presidency submits to delegations the current document which is intended to help make progress on the political issues in order to pave the way for an overall agreement in December. **This document is based on the work of the IGC to date. It contains a number of issues identified by the Presidency on the basis of clarifications, modifications and improvements requested by delegations or suggested by the Presidency. Addendum 1 contains proposals for texts.**¹ On some issues on which it is not yet possible to draw conclusions, the Presidency describes the current situation and limits itself to setting out the outlines of a possible way forward.
5. The current document, which constitutes the basis for the discussions in Naples, is intended to evolve in the light of subsequent discussions. It could be revised to take account of the discussions up to the moment when there is a final and overall agreement. In the absence of an issue being raised in this document, the Presidency considers that the text of the draft Constitutional Treaty (as set out in CIG 50/03) remains the basis for future work. This is without prejudice to the right of delegations at any stage to ask to discuss any additional issue on which they maintain that there is a need for clarification or amendment.
6. This document is not binding on any delegation, nor does it prejudice any position taken by delegations to date. It is being circulated on the basis that none of the proposals contained in it can be considered final until agreement is reached on the draft Constitutional Treaty as a whole.

¹ In this Addendum, the basic text to which the amendments have been added is that circulated by the Convention on 18 July 2003 (CONV 850/03).

I. PREAMBLE / DEFINITION AND OBJECTIVES OF THE UNION

a) Christian inheritance

The Presidency has noted that this is an important issue for a number of delegations, but does not at this stage put forward suggestions for amending the Convention text. A proposal will be presented on this issue at a later stage referring not only to Europe's Christian inheritance, but also to the secular nature of the institutions of EU Member States (principe de laïcité).

b) Union's values

- Rights of minorities
- Equality between men and women

The Presidency proposes to respond to the request for a treaty reference to the rights of minorities and to equality between men and women by means of an amendment to the existing Article 2 on the values of the Union [see text in Annex 1 to Addendum 1].

c) Primacy of EU law

The Presidency proposes to address the issue of the primacy of EU law, as requested by several delegations, by means of a declaration [see text in Annex 2 to Addendum 1].

II. CHARTER OF FUNDAMENTAL RIGHTS

The Presidency proposes that, for reasons of transparency and legal certainty, the last preambular provision be amended to refer also to the updating of the official explanations on the Charter and that these explanations be incorporated into a declaration to the Final Act of the IGC which, together with the other declarations, will be published in the Official Journal [see text in Annex 3 to Addendum 1].

III. INSTITUTIONAL ISSUES

a) Definition of QMV

The Presidency has noted that a large number of delegations support the draft Convention text on this issue. The Presidency is nevertheless aware that for a few delegations, the Convention proposal is not acceptable as it now stands. Given these differing views and the overall objective of maintaining the institutional balance established by the Convention, the Presidency does not propose changes to the Convention's proposals on the definition of qualified majority. It is however of the opinion that it is necessary to continue to reflect on possible ways to respond to these concerns, bearing in mind the shared overall objective of having simple, efficient and transparent decision making procedures.

b) Composition of the Commission

In an enlarged Union, the Commission needs to function effectively. The Presidency considers that the Convention text provides a good basis for meeting this objective. Nevertheless the Presidency is also aware that a significant number of delegations would prefer, for reasons of legitimacy, that the Commission be composed of one national from each Member State. The Commission itself has expressed the same opinion in its communication to the InterGovernmental Conference.

The Presidency proposes, at this stage, to address delegations' concerns by clarifying the provisions of the Convention text on the precise role and responsibilities of the "non-voting" Commissioners. These clarifications could cover the following points:

- full participation by "non-voting" Commissioners in the work of the Commission, including in meetings of the College;
- the assignment to "non-voting" Commissioners by the President of the Commission of substantive dossiers with real responsibilities.

The Presidency does not exclude the possibility of a discussion on other aspects relating to the composition of the Commission during the meeting in Naples.

c) Council of Ministers – formations and Presidency

On the basis of the broad support for its earlier proposals on this issue, the Presidency maintains its approach and submits a draft text [see texts in Annexes 4 and 5 to Addendum 1]. The Presidency has taken note that a large majority of Member States are opposed to the creation of a legislative Council, but recalls that this could be done subsequently by means of a decision of the European Council.

d) Foreign Minister

The Presidency maintains its earlier proposals for clarifying the provisions on the Foreign Minister, and suggests additional adjustments in order to meet some concerns from some delegations on this issue while fully maintaining the concept of double hatting [see text in Annex 6 to Addendum 1].

e) European Council – Judicial control of its legal acts

The Presidency proposes, as agreed by a majority of delegations, that the legal acts which are intended to produce legal effects vis-à-vis third parties adopted by the European Council (which is formally becoming an institution) be subject to judicial control by the Court of Justice [see text in Annex 7 to Addendum 1].

f) European Parliament

The Presidency has noted that a large number of delegations support the draft Convention text on this issue, although some have proposed that the minimum threshold of four members per Member State should be raised.

IV. FINANCES / BUDGET / ECONOMIC AND MONETARY POLICY

The Presidency has taken into account the various views of delegations on the full range of issues covered under this heading. It submits proposals for clarification or modification on some of those points, taking into account the degree of support which they have received as well as the necessity of not calling into question the general balance achieved in the Convention, especially as far as institutional issues are concerned.

a) Financial Perspective

The Presidency has taken note of concerns expressed by some delegations over the procedures for adopting the Financial Perspective after 2013, and suggests that the Conference might discuss the idea of a "rendez-vous" clause as a possible way of meeting these concerns.

b) Budget

The Presidency has noted that a very significant number of delegations have strong objections to the provisions on the budget in the draft Constitutional Treaty as they stand now. However at this stage the Presidency considers it appropriate to maintain the provisions in the Convention text, given that the various alternative approaches put forward so far would have the effect of calling into question the overall institutional balance within the budget procedures.

c) Multilateral surveillance

The Presidency has noted that some delegations have proposed amendments to the Convention text, in particular on the procedures for establishing detailed rules for the multilateral surveillance procedure. However the Presidency proposes not to introduce changes to the text in order to maintain the balanced approach of the Convention.

d) European Central Bank

The Presidency proposes to:

- i) amend the procedures for conferring on the ECB specific tasks concerning policies relating to prudential supervision [see text in Annex 8 to Addendum 1];
- ii) enlarge the scope of provisions covered by the existing enabling clause for amending the ECSB/ECB statute [see text in Annex 9 to Addendum 1];
- iii) provide for the introduction of QMV for appointment of members of the ECB [see text in Annex 10 to Addendum 1].

e) Lamfalussy procedures

The Presidency proposes to address the concerns of some delegations on this issue by means of a declaration [see text in Annex 11 to Addendum 1].

f) EIB enabling clause

The Presidency proposes modifying the procedures for amending the statute of the EIB [see text in Annex 12 to Addendum 1].

g) EMU – decision-making process concerning the euro

The Presidency proposes two amendments to the provisions on decision-making concerning the euro [see text in Annex 13 to Addendum 1].

V. AREA OF FREEDOM, SECURITY AND JUSTICE

The Presidency has noted the concerns from a number of delegations on provisions under this chapter, and specifically on judicial cooperation in criminal law. It proposes to address these concerns (in particular those related to the existence of different legal systems) in the following ways:

- a) Criminal law
 - i) The Presidency proposes to address these particular concerns by means of amendments to the Convention text which, while not changing its substance nor the voting procedure, will *inter alia* give assurances to the delegations concerned that they can specifically raise their particular concerns through adequate procedures before an act is adopted [see text in Annex 14 to Addendum 1].
 - ii) The Presidency proposes to clarify that the scope of the remit of the public prosecutor concerns the fight against fraud affecting the Union's financial interests [see text in Annex 15 to Addendum 1].

- b) Civil law

The Presidency proposes to clarify some aspects of the provision on judicial cooperation in civil matters [see text in Annex 16 to Addendum 1].

VI. DEFENCE

As far as structured cooperation is concerned, taking account of the concerns expressed by a number of delegations, the Presidency submits proposals which, with a view to making such cooperation inclusive, align *mutatis mutandis* the structured cooperation provisions more closely with the more general provisions on enhanced cooperation in CFSP. As far as "mutual defence" is concerned, the text proposed clarifies that the clause shall not prejudice existing commitments under NATO [see text in Annex 17 to Addendum 1].

VII. CFSP

The Presidency proposes that, in order to achieve an overall balanced outcome on decision-making procedures, as well as to ensure an effective CFSP, qualified majority voting within the CFSP should be extended [see text in Annex 18 to Addendum 1].

VIII. OTHER POLICIES OF THE EU

The Presidency has taken note of the various proposals from delegations for amending or clarifying some of the provisions on policies in Part III of the draft Constitutional Treaty. In the light of reactions from all delegations, the Presidency submits proposals for changes to the Convention text or declarations on the following issues:

- a) social clause [see text in Annex 19 to Addendum 1];
- b) social security [see text in Annex 20 to Addendum 1];
- c) taxation [see text in Annex 21 to Addendum 1];
- d) social policy [see text in Annex 22 to Addendum 1];
- e) economic, social and territorial cohesion [see text in Annex 23 to Addendum 1];
- f) transport [see text in Annex 24 to Addendum 1];
- g) research and development [see text in Annex 25 to Addendum 1];
- h) energy [see text in Annex 26 to Addendum 1];
- i) public health [see text in Annex 27 to Addendum 1];
- j) sport [see text in Annex 28 to Addendum 1];
- k) tourism [see text in Annex 29 to Addendum 1];

IX. REVISION PROCEDURE

In the light of the discussions on simplified procedures for revising the Constitutional Treaty, the Presidency proposes to address the issue in two ways:

- a) as to the decision to move from unanimity to qualified majority, or from a special legislative procedure to the ordinary legislative procedure (general bridging clause), it is proposed that the text be amended to include a provision whereby that decision would not come into effect if [X] national parliaments raise an objection ("nihil obstat" procedure) [text in Annex 30 to Addendum 1];
- b) as to the decision to amend the Constitution provisions on internal policies (Title III of Part III (special revision procedure), the Presidency maintains its approach as proposed to ministers at the last IGC meeting: no increase of competencies conferred on the Union in the Constitution, decision of the European Council by qualified majority and approval by all Member States in accordance with their respective constitutional requirements. Such an approach would have the advantage of removing the requirement for an InterGovernmental Conference [text in Annex 31 to Addendum 1].

X. OTHER ISSUES

- a) Outermost regions

The Presidency proposes to include a possibility to adapt the list of outermost regions through a simpler procedure [text in Annex 32 to Addendum 1].

- b) Protocol on Denmark

In the light of the discussion in the ministerial meeting on 18 November, the Presidency proposes the amended protocol No 5 on the position of Denmark as presented in Annex 33 to Addendum 1.

- c) Services of general interest

The Presidency proposes to amend the Convention text so as to recall the competence of Member States to provide, commission and fund such services [text in Annex 34 to Addendum 1].

d) EU neighbouring small States

The Presidency has noted the request for the inclusion of a specific reference to the EU neighbouring small States, and proposes to address this by means of a declaration [text in Annex 35 to Addendum 1].

e) EU accession to the European Convention on Human Rights

In the light of discussions on this issue, the Presidency puts forward a minor amendment to the Convention text. It also suggests that this would be an appropriate issue on which qualified majority voting in the Council could apply [text in Annex 36 to Addendum 1].

f) Protection and welfare of animals

The Presidency proposes to convert the existing protocol on protection and welfare of animal into a provision to be put at the beginning of Part III of the draft Constitution [text in Annex 37 to Addendum 1].

g) Signature of Constitutional Treaty by acceding states

The three candidate countries (Bulgaria, Romania and Turkey) have requested that they be signatories to the text resulting from the InterGovernmental Conference. The Presidency proposes that these countries be invited to sign the Final Act as observers.

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MISCELLANEOUS

In a final Annex, on items which were discussed but not solved in the Group of legal experts and were supported by a large majority of delegations, the Presidency proposes some adaptations to the Convention text either to make the text legally more correct or to address some of these items [see texts in Annex 38 to Addendum 1].

- a) On the delimitation between CFSP procedures and other policies' procedures, the Presidency proposes to amend the text of that rule in order to make it legally more sound.
- b) On access to documents of the European Investment Bank, the Presidency proposes to align the treatment of these documents with the treatment of the documents of the European Central Bank.
- c) On the right to vote in European Parliament elections and the fact that the Convention text deprives about 1 million people from the right to vote in such elections, the Presidency proposes to amend the text so as to correct this effect.
- d) On the role of national parliaments under the subsidiarity protocol and the protocol on national parliaments, the Presidency proposes to clarify the drafting to address the particularities of federal structures.
- e) On the fluctuation margins which must be observed in order to become member of the euro zone, the Presidency proposes to refer to the European Monetary System in the relevant provision.
- f) On the power of the Court of Justice to impose fines on Member States, the Presidency proposes amending the Convention text to clarify the power of the Court.
- g) On the legal basis to adopt European laws in common commercial policy, the Presidency proposes to clarify that urgent unilateral trade protection measures be adopted under a lighter procedure than the legislative one.

- h) On enhanced cooperation, the Presidency proposes to remove the bridging clause, and on the specific provisions concerning enhanced cooperation in CFSP, it suggests making it clearer that these follow normal CFSP procedures.
 - i) On the solidarity clause, the Presidency proposes amending the text to make it clear that any decision with defence implications will be taken by unanimity, and that the defence aspects of any such decision would be excluded from the competence of the Court of Justice.
 - j) In Article 5, the Presidency proposes to replace the term "internal" security with "national" security.
 - k) On the question as to who negotiates an agreement on the withdrawal of a Member State from the Union, the Presidency proposes amending the text to refer to the relevant aspects of the general provision on the negotiation of agreements in Part III.
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**CONFERENCE
OF THE REPRESENTATIVES
OF THE GOVERNMENTS
OF THE MEMBER STATES**

**Brussels, 25 November 2003 (26.11)
(OR. en,fr)**

**CIG 52/03
ADD 1**

PRESID 10

ADDENDUM TO THE PRESIDENCY NOTE

from: Presidency

dated: 25 November 2003

to: Delegations

Subject: IGC 2003

– Naples Ministerial Conclave: Presidency proposal

Delegations will find attached the different texts referred to by the Presidency in its note in CIG 52/03.

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ANNEX 1

<p style="text-align: center;">THE UNION'S VALUES</p> <p style="text-align: center;">RIGHTS OF PERSONS BELONGING TO MINORITY GROUPS</p> <p style="text-align: center;">EQUALITY BETWEEN WOMEN AND MEN</p>
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Article I-2

The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights, **including the rights of persons belonging to minority groups**. These values are common to the Member States in a society **in which** pluralism, **non-discrimination**, tolerance, justice, solidarity and **the principle of equality between women and men prevail**.

* * *

ANNEX 3

EXPLANATIONS RELATING TO THE CHARTER OF FUNDAMENTAL RIGHTS

5th paragraph of the Preamble

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter **and updated under the responsibility of the Praesidium of the European Convention.**

**Declaration for incorporation in the Final Act
concerning the explanations relating to the Charter of Fundamental Rights**

The Conference takes note of the explanations relating to the Charter of Fundamental Rights prepared at the instigation of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention, as set out below.

*(...)[reproduction of the explanations contained in CONV 828/1/03 REV 1
of 31 July 2003]*

ANNEX 36

ACCESSION OF THE UNION TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS
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Article I-7

1. [unchanged]
2. The Union **shall accede** to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Constitution.
3. [unchanged]

Article III-227(9)

9. The Council of Ministers shall act by a qualified majority throughout the procedure.

It shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act as well as for association agreements ~~and for Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms.~~

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**CONFERENCE
OF THE REPRESENTATIVES
OF THE GOVERNMENTS
OF THE MEMBER STATES**

Brussels, 9 December 2003

CIG 60/03

PRESID 14

NOTE

from: Presidency
dated: 9 December 2003
to: Delegations

Subject: IGC 2003
– InterGovernmental Conference (12-13 December 2003):
Presidency proposal

1. In line with the conclusions of the European Council meeting in Thessaloniki, the work of the InterGovernmental Conference has been conducted at political level. The meetings so far, in particular the ministerial conclave in Naples on 28-29 November, have enabled the Presidency to identify issues in the draft Constitutional Treaty which delegations consider need either clarifying or amending, and in some cases to make suggestions by way of response. The Presidency now submits a consolidated set of proposals designed to help the Conference reach an overall agreement at its meeting on 12-13 December.

LEGAL/TECHNICAL ISSUES

2. In parallel with discussions at political level the Presidency, with the agreement of all delegations, set up a group of legal experts in order to undertake a legal review of the draft Treaty establishing the Constitution drawn up by the Convention. The legal experts group met several times in October and November under the Chair of the Legal Counsel of the IGC. The outcome of the group's proceedings has been circulated in document CIG 51/03.

3. The revised texts contained in doc. CIG 50/03 + COR 1, REV 1 (fr) and ADD 1, ADD 1 COR 1 (en), and ADD 1 COR 2 incorporate all the improvements of a legal or technical nature which were introduced by common accord of the legal experts of the Member States and of the acceding States. These texts shall serve as a reference point for the discussions on the remaining political issues on 12-13 December.

OTHER ISSUES

4. Separately from the texts which constitute the outcome of the legal experts group, and in order to facilitate an overall agreement at the 12-13 December meeting, the Presidency submits proposals covering the outstanding political issues. These are set out in two separate documents.
 - A **The first document (CIG 60/03 ADD 1) addresses those issues on which the discussions so far, in particular the Naples ministerial conclave, have given the Presidency sufficient guidance to be able to put forward concrete proposals. These proposals take the form of draft treaty texts. The Presidency considers that since it has taken into account the different views of delegations, this document constitutes a balanced package.**
 - B **The second document (CIG 60/03 ADD 2), which will be available shortly, addresses the more sensitive political issues which the Presidency intends should constitute the focus of the discussions on 12-13 December. The proposals set out in this document have been drawn up by the Presidency in the light of its consultations with delegations.**

5. The proposals, tabled by the Presidency, might be revised in the light of the discussions on 12-13 December, and texts will be made available during the meeting up to the moment when there is a final and overall agreement. Where an issue is covered in neither document, nor subsequently raised by any delegation, the Presidency considers that the text of the draft Constitutional Treaty, as set out in CIG 50/03, remains unchanged.
6. The Presidency proposal is not binding on any delegation, nor does it prejudice any position taken by delegations to date. It is being circulated on the basis that none of the proposals contained in it can be considered final until agreement is reached on the draft Constitutional Treaty as a whole.
7. **The final result of the IGC should therefore consist of two documents:**
 - **the consolidated text of the treaty, as revised by the legal experts group (CIG 50/03 + COR 1, REV 1 (fr) and ADD 1, ADD 1 COR 1 (en), and ADD 1 COR 2);**
 - **a single package containing amendments to this consolidated text, based on the Presidency proposals as modified in the light of the discussions.**

Only afterwards will a single consolidated text be established.

**CONFERENCE
OF THE REPRESENTATIVES
OF THE GOVERNMENTS
OF THE MEMBER STATES**

**Brussels, 9 December 2003
(OR. en,fr)**

**CIG 60/03
ADD 1**

PRESID 14

ADDENDUM TO THE PRESIDENCY NOTE

from : Presidency

dated : 9 December 2003

to : Delegations

Subject : ***IGC 2003***

– ***Intergovernmental Conference (12–13 December 2003)***

ADDENDUM 1 to the Presidency proposal

ADDENDUM 1

Delegations will find attached Addendum 1 to the Presidency note contained in document CIG 60/03.

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ANNEX 1

THE UNION'S VALUES
RIGHTS OF PERSONS BELONGING TO
MINORITY GROUPS
EQUALITY BETWEEN WOMEN AND MEN

Article I-2

The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights, **including the rights of persons belonging to minority groups**. These values are common to the Member States in a society **in which** pluralism, **non-discrimination**, tolerance, justice, solidarity and **the principle of equality between women and men prevail**.

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ANNEX 4**EXPLANATIONS RELATING TO THE
CHARTER OF FUNDAMENTAL RIGHTS****5th paragraph of the Preamble**

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter **and updated under the responsibility of the Praesidium of the European Convention.**

**Declaration for incorporation in the Final Act
concerning the explanations relating to the Charter of Fundamental Rights**

The Conference takes note of the explanations relating to the Charter of Fundamental Rights prepared at the instigation of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention, as set out below.

(...) [reproduction of the explanations contained in CONV 828/1/03 REV 1 of 31 July 2003, which will be published in the "C" series of the Official Journal of the European Union.]

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ANNEX 41**ACCESSION OF THE UNION TO THE EUROPEAN
CONVENTION ON HUMAN RIGHTS****Article I-7**

1. [unchanged]
2. The Union **shall accede** to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Constitution.
3. [unchanged]

Article III-227(8)

8. The Council of Ministers shall act by a qualified majority throughout the procedure.

It shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act as well as for association agreements and the agreements referred to in Article III-221 with the States which are candidates for accession.

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**CONFERENCE
OF THE REPRESENTATIVES
OF THE GOVERNMENTS
OF THE MEMBER STATES**

**Brussels, 11 December 2003
(OR. fr)**

**CIG 60/03
ADD 2**

PRESID 14

ADDENDUM 2 TO THE PRESIDENCY NOTE

from : Presidency
dated : 11 December 2003
to : Delegations

Subject : ***IGC 2003***
 – ***Intergovernmental Conference (12–13 December 2003)***
 ADDENDUM 2

ADDENDUM 2

Delegations will find attached Addendum 2 to the Presidency note contained in document CIG 60/03.

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1. As stated in CIG 60/03, the Presidency submits to delegations the following ways forward on the more sensitive political issues which it intends should constitute the focus of discussions at the meeting of the Intergovernmental Conference on 12-13 December.

Preamble

2. The preamble, and in particular the question of whether or not to include a reference to Europe's Christian roots, was the subject of detailed discussion at the Naples ministerial meeting. While some delegations stressed the importance of a reference to Christian values in the preamble, others felt that the text proposed by the Convention made an even-handed response to the various concerns that had been raised. They therefore propose that it remain unchanged.

Composition of the Commission

3. It is generally acknowledged by all delegations that the Commission has both to satisfy the requirement for legitimacy and to function effectively.

4. A number of Member States, in particular the new ones, consider that, immediately following the most recent and extensive round of enlargement, the composition of the Commission should reflect the greater diversity of the enlarged European Union. This view, which reflects public opinion, leads these Member States to support the idea that there should be one national from each Member State in the Commission. Taking this into account, the Presidency considers that it is desirable that the composition of the Commission should respond adequately to the concerns of these delegations, while avoiding the risk that these arrangements might in the long run undermine another key requirement, for a Commission which functions effectively. The Presidency is therefore of the view that a clause could be envisaged which would provide for a reduced Commission with effect from a given date. Once there was agreement on this principle, the details of how it would operate would be decided in the light of the experience acquired by the enlarged Union as regards the functioning of the new Commission.

Qualified Majority Voting

5. The Presidency notes that a very large number of delegations continue to support the Convention text on the definition of Qualified Majority Voting, in particular because it meets the overall objective of decision-making procedures which are simple, efficient and transparent. Nevertheless the Presidency is aware that for a few delegations, the Convention proposal is not acceptable as it currently stands. The Presidency is continuing to reflect on how best to respond to the specific concerns expressed by some delegations, without losing the advantages of the Convention proposal and taking into account also the balance of the overall institutional framework.
6. On the issue of the scope of Qualified Majority Voting, a number of delegations support a further extension into other areas. At the same time, there are others who consider that, in a number of sensitive areas, unanimity should be maintained. Taking into account these different views, the Presidency is of the opinion that the Convention text in general represents a balanced compromise. However the overall issue of the scope of QMV will have to be seen in the context of the final agreement covering all the outstanding issues.

European Parliament

7. The Presidency has taken note of the concerns expressed by a number of delegations that the minimum threshold of four seats in the European Parliament creates problems of democratic legitimacy for the smallest Member States. The Presidency does not rule out the possibility of a limited increase in this threshold in order to meet these concerns, whilst maintaining the overall approach on the composition of the European Parliament.
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**CONFERENCE
OF THE REPRESENTATIVES
OF THE GOVERNMENTS OF THE
MEMBER STATES**

**Brussels, 14 January 2004 (16.01)
(OR. fr)**

CIG 64/04

COVER NOTE

from : Mr Julian PRIESTLEY, Secretary-General of the European Parliament
date : 7 January 2004
to : Mr Javier SOLANA, Secretary-General/High Representative

Subject : ***IGC 2004***
– ***European Parliament Resolution on the progress report on the
Intergovernmental Conference***

At its part-session on 3 and 4 December 2003 the European Parliament adopted the following in accordance with Article 37 of its Rules of Procedure:

- a Resolution on the Council and Commission statements on the preparation of the European Council in Brussels on 12 and 13 December 2003 ¹,

and decided to forward the text thereof to the Council, and

- a Resolution on the progress report on the Intergovernmental Conference,

and decided to forward the text thereof to the Italian Presidency and to the Intergovernmental Conference.

On behalf of the President of the European Parliament, I enclose the abovementioned Resolutions, and would be very grateful if you would forward the documents to those concerned.

(complimentary close)

¹ See 5263/04.

P5_TA-PROV(2003)0549**Progress report on the Intergovernmental Conference****European Parliament resolution on the progress report on the Intergovernmental Conference**

The European Parliament,

- having regard to the draft Treaty establishing a Constitution for Europe of 18 July 2003, prepared by the European Convention,
 - having regard to its resolution of 24 September 2003 on the draft Treaty establishing a Constitution for Europe and the European Parliament's opinion on the convening of the Intergovernmental Conference (IGC)¹,
 - having regard to its resolution of 20 November 2003 on the financial provisions in the draft Treaty establishing a Constitution for Europe²,
 - having regard to the Italian Presidency proposals (CIG 52/1/03),
 - having regard to Rule 37 of its Rules of Procedure,
- A. recalling that the Convention was composed of representatives of parliaments, European institutions and governments, which together achieved with difficulty compromises on many fine points of balance in the constitutional structure, and that substantial changes by the governments acting alone would be unacceptable,
- B. whereas the text of the draft Treaty establishing a Constitution for Europe should remain the basis for the final and overall IGC agreement,
- C. whereas certain sectoral Council formations are bringing forward their own suggestions, thereby undermining the basis for stable negotiations,
1. Calls on the Heads of State and Government to continue their efforts and overcome their differences in order to arrive at a balanced and positive result on 13 December 2003;
 2. Expresses its concern at the calling into question by certain Member States of the Convention's proposals for institutional reform; recalls that any solution found to the reform of the three institutions must respect the balance between representation and efficiency;
 3. Recalls its support for the proposals in the draft Constitution regarding the definition of 'qualified majority'; perceives nonetheless a margin for compromise on the proposed figures provided that such a compromise respects the principle of the double majority and the lowering of the threshold fixed at Nice;
 4. Welcomes the Italian Presidency's proposal to extend qualified-majority voting within

¹ P5_TA(2003)0407.

² P5_TA(2003)0517.

the CFSP in order to achieve a balanced overall outcome on decision-making procedures;

5. Welcomes the Presidency proposals, in particular with regard to introducing a horizontal clause on social policy (Article III-2a), recognising the competences of Member States in relation to services of general interest (Article III-6) and introducing in Article I-2 equality between women and men, which must, however, be recognised as a value and not merely as a principle;
6. Insists that there be no retreat from the Convention proposals for a measured extension of qualified-majority voting; stresses the importance of the Convention text on simplified procedures to move from unanimity to qualified-majority voting or from a special legislative procedure to the ordinary legislative procedure (general bridging clause);
7. Deplores the apparent decision to do away with the Legislative Council, which was intended to effect a clearer separation between the Council's law-making and executive functions, and to guarantee full transparency of the legislative process, and hopes that at least the option of introducing the Legislative Council at a later stage will be maintained;
8. Warns the IGC not to call into question the general balance achieved in the Convention on the financial and budgetary provisions; rejects any attempt to weaken Parliament's current budgetary rights as this would be a major attack on Parliament's core principles;
9. Reiterates its support for the proposals in the draft Constitution concerning the composition of the Commission; considers there to be a danger that appointing one Commissioner per Member State would impart an intergovernmental character to it;
10. Calls on the IGC to uphold the compromise reached in the Convention whereby the Union's Foreign Minister, as a full Vice-President of the Commission, presides over a joint administration comprising Commission, Council and national officials within the Commission and chairs the Foreign Affairs Council;
11. Believes that a proposal to limit the remit of the public prosecutor to the fight against fraud affecting the Union's financial interests must be accompanied by the application of the ordinary legislative procedure;
12. Insists on the importance of incorporating a light and flexible procedure to revise Part III of the Constitution;
13. Firmly backs the intention to convene a Euratom Treaty Revision Conference in order to repeal the obsolete and outdated provisions of the Treaty, notably concerning the lack of democratic decision-making procedures;
14. Instructs its President to forward this resolution to the Italian Presidency, the Council, the Commission, the parliaments of the Member States and the Intergovernmental Conference.

**CONFERENCE
OF THE REPRESENTATIVES
OF THE GOVERNMENTS
OF THE MEMBER STATES**

Brussels, 29 April 2004

CIG 73/04

PRESID 16

NOTE

from: Presidency

dated: 29 April 2004

to: Delegations

*Subject: IGC 2003
– Meeting of Focal Points (Dublin, 4 May 2004)
working document*

1. Delegations will find attached a working document for the meeting of Focal Points on Tuesday 4 May 2004. For ease of reference, it is based on document CIG 60/03 ADD1, with which delegations are familiar.
2. The Presidency wishes to stress that this is purely a working document. It is not intended to be seen in any way as a fresh overall Presidency proposal.
3. In particular, the Presidency does not believe that the time is ripe for discussion at this meeting of a number of issues connected with the scope of Qualified Majority Voting. Therefore, as will be seen from the document, no new proposals are made on these issues at this time. This is without prejudice to future proposals the Presidency may bring forward.
4. The Presidency recalls that the President of the European Council, in writing to his colleagues on 8 April, made clear that he assumed and expected that no concerns not already signalled will be raised.

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ANNEX 1

<p style="text-align: center;">THE UNION'S VALUES</p> <p style="text-align: center;">RIGHTS OF PERSONS BELONGING TO MINORITIES</p> <p style="text-align: center;">EQUALITY BETWEEN WOMEN AND MEN</p>

Article I-2

The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights, **including the rights of persons belonging to minorities**. These values are common to the Member States in a society **in which** pluralism, **non-discrimination**, tolerance, justice, solidarity and **the principle of equality between women and men prevail**.

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ANNEX 4**EXPLANATIONS RELATING TO THE
CHARTER OF FUNDAMENTAL RIGHTS****5th paragraph of the Preamble**

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter **and updated under the responsibility of the Praesidium of the European Convention.**

**Declaration for incorporation in the Final Act
concerning the explanations relating to the Charter of Fundamental Rights**

The Conference takes note of the explanations relating to the Charter of Fundamental Rights prepared at the instigation of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention, as set out below.

(...) [reproduction of the explanations contained in CONV 828/1/03 REV 1 of 31 July 2003, which will be published in the "C" series of the Official Journal of the European Union.]

* * *

The post-Naples text is maintained.

**ACCESSION OF THE UNION TO THE EUROPEAN
CONVENTION ON HUMAN RIGHTS**

Article I-7

3) 1. [unchanged]

2. The Union **shall accede** to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competencies as defined in the Constitution.

4) 3. [unchanged]

Article III-227, paragraph 8

8. The Council of Ministers shall act by a qualified majority throughout the procedure.

It shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act as well as for association agreements and the agreements referred to in Article III-221 with the States which are candidates for accession.

**Protocol relating to Article I-7, paragraph 2,
on the accession of the Union to the European Convention on Human Rights**

1. The agreement relating to the accession of the Union to the European Convention on Human Rights provided for in Article I-7, paragraph 2 of the Constitution shall take into account the following:

the specific characteristics of the Union and Union law, in particular with regard to:

- the specific arrangements for the Union's possible participation in the control bodies of the European Convention on Human Rights,
- the mechanisms necessary to ensure that proceedings by non-Member States and individual applications are correctly addressed to Member States and/or the Union as appropriate;

2. The agreement referred to in paragraph 1 shall ensure that nothing therein shall affect the situation of Member States in relation to the European Convention on Human Rights, in particular in relation to the Protocols to the Convention, measures taken by Member States derogating from the Convention in accordance with Article 15 thereof and reservations to the Convention made by Member States in accordance with Article 57 thereof.

3. Nothing in the agreement referred to in paragraph 1 shall affect Article III-281, paragraph 2 of the Constitution.

* * *

The post-Naples text is maintained with the addition of a Protocol which is designed to meet the concerns of some delegations.

CONFERENCE
OF THE REPRESENTATIVES
OF THE GOVERNMENTS
OF THE MEMBER STATES

Brussels, 13 May 2004

CIG 75/04

PRESID 17

NOTE

from: Presidency

dated: 13 May 2004

to: Delegations

Subject: IGC 2003

– Discussion at Ministerial Meeting, 17/18 May 2004

1. The Presidency has circulated to delegations a series of draft texts on which there seems to be a likelihood of broad consensus in the context of overall agreement (CIG 76/04). The principle of nothing is agreed until everything is agreed applies. However, the Presidency does not believe that further discussion of these points at Ministerial level is necessary at this stage.
2. The Presidency would intend the Ministerial meeting on 17/18 May to focus on a number of other areas where it considers that further discussion would now be useful.
3. These include a small number of issues which were discussed by Focal Points at their meeting on 4 May on which further adjustments to the texts were considered necessary by some:
Formations of the Council of Ministers and Exercise of the Presidency of the Council of Ministers; Multiannual Financial Framework; Budget Procedure; Explanations relating to the Charter of Fundamental Rights; European Court of Justice control over procedural stipulations relating to Excessive Deficit; and the Common Commercial Policy. Texts in these areas are set out in Part I of the present document.

4. Outstanding issues also include the **scope of qualified majority voting**. While the Presidency is not yet making new proposals, relevant texts in this area produced by the Italian Presidency are included in Part II of this document for ease of reference.
5. The Presidency notes that the issue of **the future composition of the Commission** can only be finally resolved as part of a balanced outcome on the major institutional questions. However, the Presidency also considers that it would be useful for Ministers to address the future composition of the Commission and, to this end, presents some ideas set out in Part III of this document.
6. To facilitate the most efficient and productive discussion, the Presidency would ask delegations to intervene only on those issues of particular concern to them or where there is a particular point they wish to raise.

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The Presidency is considering an approach which would be designed strongly to encourage and facilitate the achievement of agreement in the Conciliation Committee. It would be important in this context that both Council and Parliament be able as a general rule to endorse the outcome of the conciliation process. The Presidency sees that this could be more complex in the case of the Parliament and how it might be guaranteed could require further reflection. In the event of a failure to reach agreement in the Conciliation Committee, the Commission might be required to table a new draft budget. The situation which would apply if either or both institutions rejected or failed to adopt the Conciliation Committee's proposal would also need to be addressed. Should a new budget not be adopted in time, Article III-311 (provisional twelfths) would in any event apply.

Charter of Fundamental Rights (see Annex 4)

4. The texts as they stand appear to be broadly acceptable. However a small number of delegations wish to transfer the reference to the explanations concerning the Charter from the preamble to the body of the text. Those delegations also wish to clarify in the explanations that Article II-21 contains both rights and principles. The Presidency would welcome Ministers' views.

European Court of Justice control over procedural stipulations relating to Excessive Deficit (see Annex 5)

5. The Presidency notes that this issue will require further consideration. The text proposed by the Italian Presidency is included for ease of reference.

ANNEX 5**EXPLANATIONS RELATING TO THE
CHARTER OF FUNDAMENTAL RIGHTS****5th paragraph of the Preamble**

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter **and updated under the responsibility of the Praesidium of the European Convention.**

**Declaration for incorporation in the Final Act
concerning the explanations relating to the Charter of Fundamental Rights**

The Conference takes note of the explanations relating to the Charter of Fundamental Rights prepared at the instigation of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention, as set out below.

(...) [reproduction of the explanations contained in CONV 828/1/03 REV 1 of 31 July 2003, which will be published in the "C" series of the Official Journal of the European Union.]

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**CONFERENCE
OF THE REPRESENTATIVES
OF THE GOVERNMENTS
OF THE MEMBER STATES**

Brussels, 13 May 2004

CIG 76/04

PRESID 18

NOTE

from: Presidency
dated: 13 May 2004
to: Delegations

*Subject: IGC 2003
– Presidency proposals following the meeting of "focal points" on 4 May 2004*

Following the meeting of "focal points" on 4 May 2004, delegations will find attached a series of draft texts on which there seems to be a likelihood of broad consensus in the context of an overall agreement.

While the Presidency continues to operate on the basis of the principle that nothing is agreed until everything is agreed, it does not believe that further discussion at Ministerial level is necessary at this stage.

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ANNEX 1

THE UNION'S VALUES
RIGHTS OF PERSONS BELONGING TO
MINORITIES
EQUALITY BETWEEN WOMEN AND MEN

Article I-2

The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights, **including the rights of persons belonging to minorities**. These values are common to the Member States in a society **in which** pluralism, **non-discrimination**, tolerance, justice, solidarity and **the principle of equality between women and men prevail**.

Article III-2

In all the activities referred to in this Part, the Union shall aim to eliminate inequalities, and to promote equality, between men and women.

Declaration re Article III-2

The Conference agrees that, in its general efforts to eliminate inequalities between men and women, the Union shall aim in its different policies to combat all kinds of domestic violence. The Member States should take all necessary measures to prevent and punish these criminal acts and to support and protect the victims.

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<p style="text-align: center;">ACCESSION OF THE UNION TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS</p>

Article I-7

1. [unchanged]
2. The Union **shall accede** to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competencies as defined in the Constitution.
3. [unchanged]

Article III-227 (8)

8. The Council of Ministers shall act by a qualified majority throughout the procedure.

It shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act as well as for association agreements and the agreements referred to in Article III-221 with the States which are candidates for accession.

Protocol relating to Article I-7 (2)
on the accession of the Union to the European Convention on Human Rights

1. The agreement relating to the accession of the Union to the European Convention on Human Rights provided for in Article I-7, paragraph 2 of the Constitution shall take into account the following:

the specific characteristics of the Union and Union law, in particular with regard to:

- the specific arrangements for the Union's possible participation in the control bodies of the European Convention on Human Rights,
- the mechanisms necessary to ensure that proceedings by non-Member States and individual applications are correctly addressed to Member States and/or the Union as appropriate;

2. The agreement referred to in paragraph 1 shall ensure that nothing therein shall affect the situation of Member States in relation to the European Convention on Human Rights, in particular in relation to the Protocols to the Convention, measures taken by Member States derogating from the Convention in accordance with Article 15 thereof and reservations to the Convention made by Member States in accordance with Article 57 thereof.

3. Nothing in the agreement referred to in paragraph 1 shall affect Article III-281, paragraph 2 of the Constitution.

Draft declaration relating to Article I-7(2)

The Conference agrees that the Union's accession to the European Convention on Human Rights should be arranged in such a way as to preserve the specific features of Community law. A system should be introduced for liaison between the Court of Justice and the European Court of Human Rights in order to avoid, as far as possible, any discrepancies in case law.

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**CONFERENCE
OF THE REPRESENTATIVES
OF THE GOVERNMENTS
OF THE MEMBER STATES**

Brussels, 10 June 2004

CIG 79/04

PRESID 21

NOTE

from: Presidency

dated: 10 June 2004

to: Delegations

Subject: IGC 2003

– Presidency proposal following the Ministerial meeting on 24 May 2004

1. Delegations will find attached a revised set of draft texts which were previously submitted to Ministers as document CIG 76/04. The Presidency has as far as possible taken into account the further comments made by Ministers at their meetings on 17-18 May and 24 May, and has added in this document some additional points on which there now appears to be broad consensus. These texts also include a series of purely technical/legal adjustments which appear in shaded characters. In addition, all modifications of texts compared to texts in doc. CIG 50/03 are in bold.
2. The Presidency considers that this document represents a fair balance between the different views of delegations. However, it submits the document in advance of the Ministerial meeting on 14 June in order to ensure that no fundamental problems remain, and to avoid further discussion on these issues at the meeting of the IGC at the level of Heads of State or Government on 17/18 June.
3. Delegations' attention is drawn to the fact that in certain cases, such as the Part III articles on the Commission, further adjustments might be required as a direct consequence of the outcome of the discussions on the remaining issues.

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ANNEX 1

THE UNION'S VALUES
RIGHTS OF PERSONS BELONGING TO
MINORITIES
EQUALITY BETWEEN WOMEN AND MEN

Article I-2

The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights, **including the rights of persons belonging to minorities**. These values are common to the Member States in a society **in which** pluralism, **non-discrimination**, tolerance, justice, solidarity and **equality between women and men prevail**.

Article III-2

In all the activities referred to in this Part, the Union shall aim to eliminate inequalities, and to promote equality, between men and women.

Declaration for incorporation in the Final Act
re Article III-2

The Conference agrees that, in its general efforts to eliminate inequalities between men and women, the Union shall will aim in its different policies to combat all kinds of domestic violence. The Member States should take all necessary measures to prevent and punish these criminal acts and to support and protect the victims.

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ANNEX 39**ACCESSION OF THE UNION TO THE EUROPEAN
CONVENTION ON HUMAN RIGHTS****Article I-7**

1. [unchanged]
2. The Union **shall accede** to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competencies as defined in the Constitution.
3. [unchanged]

Article III-227 (8)

8. The Council ~~of Ministers~~ shall act by a qualified majority throughout the procedure.

It shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act as well as for association agreements and the agreements referred to in Article III-221 with the States which are candidates for accession.

Protocol relating to Article I-7 (2)
on the accession of the Union to the European Convention on Human Rights

1. The agreement relating to the accession of the Union to the European Convention on Human Rights provided for in Article I-7(2), paragraph 2 of the Constitution shall ~~take into account~~ make provision for preserving the following the specific characteristics of the Union and Union law, in particular with regard to:

- the specific arrangements for the Union's possible participation in the control bodies of the European Convention on Human Rights,
- the mechanisms necessary to ensure that proceedings by non-Member States and individual applications are correctly addressed to Member States and/or the Union as appropriate;

2. The agreement referred to in paragraph 1 shall ensure that accession shall not affect the competences of the Union and the powers of its institutions. It shall ensure that nothing therein shall affect the situation of Member States in relation to the European Convention on Human Rights, in particular in relation to the Protocols to the Convention, measures taken by Member States derogating from the Convention in accordance with Article 15 thereof and reservations to the Convention made by Member States in accordance with Article 57 thereof.

3. Nothing in the agreement referred to in paragraph 1 shall affect Article III-281(2), paragraph 2 of the Constitution.

Declaration for incorporation in the Final Act
re Article I-7 (2)

The Conference agrees that the Union's accession to the European Convention on Human Rights should be arranged in such a way as to preserve the specific features of Community Union law. In this connection, the Conference notes the existence of a regular dialogue between the Court of Justice of the European Union and the European Court of Human Rights; such dialogue could be reinforced when the European Union accedes to the European Convention on Human Rights.

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**CONFERENCE
OF THE REPRESENTATIVES
OF THE GOVERNMENTS
OF THE MEMBER STATES**

Brussels, 12 June 2004

CIG 80/04

PRESID 22

NOTE

from: Presidency

dated: 12 June 2004

to: Delegations

Subject: IGC 2003

– Ministerial meeting, Luxembourg, 14 June 2004

1. Delegations will find attached proposals from the Presidency on a number of outstanding issues to be addressed by the IGC. Ministers are invited to discuss these issues at their meeting on 14 June with a view to reaching an overall agreement at the meeting of Heads of State or Government on 17/18 June. The Presidency does not submit at this stage any proposal on institutional issues, which will be discussed by Heads of State or Government on 17/18 June.
2. In putting forward its proposals, in particular in the field of scope of QMV, the Presidency has taken into account the different views expressed by delegations both in the IGC meetings themselves and during the many bilateral contacts which have taken place. The aim has been to introduce a fair overall balance between different delegations' views.
3. Delegations will note that in the case of the explanations relating to the Charter of Fundamental Rights, the Presidency submits options on which it would welcome Ministers' views.
4. The Presidency also wishes to draw the attention of delegations to a number of outstanding issues in the area of economic policy, and invites Ministers to offer their views, given that each of these points raise difficulties for some delegations.

- Eurozone provisions: One delegation has asked that the articles related to the eurozone should include a specific provision requiring the agreement of eurozone members (by QMV) before a decision is taken by the full Council on admitting new members to the eurozone (Annex 20 of doc. CIG 79/04).
 - Economic policy coordination: Article I-11.3 of the Convention text provides that the Union has competence to promote and co-ordinate the economic and employment policies of the Member States. Some delegations have sought to revert to language based on that in the current Treaty. A possible compromise formula is set out in Annex 10.
 - Declaration on the Stability and Growth Pact: The Presidency submits for the attention of delegations a draft declaration (see Annex 11). As a result the earlier text on ECJ jurisdiction over procedural stipulations relating to excessive deficit has been removed. In addition, some delegations have also advised the Presidency that they attach particular importance to amending Article III-76.6 (excessive deficit procedure) so that decisions on the existence of an excessive deficit are taken on the basis of a Commission recommendation (as currently provided for in the Treaty) rather than a proposal (as provided for in the Convention's text).
5. As regards the Preamble, the Presidency notes that, despite the strong support of several delegations for the inclusion of a specific reference to Europe's Christian or Judeo-Christian heritage, there is no sign of consensus on this matter. It has, however, proposed a limited number of drafting changes to the text, which it hopes can be agreed by Ministers.
6. As in doc. CIG 79/04, technical/legal adjustments appear in shaded characters.

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ANNEX 13**EXPLANATIONS RELATING TO THE
CHARTER OF FUNDAMENTAL RIGHTS**

The Presidency invites the views of Ministers on the three options set out below. If agreement were reached on either option 2 or 3, the necessity to retain the preambular reference to the Explanations could be considered.

Option 1**5th paragraph of the Preamble**

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared **under the authority at the instigation** of the Praesidium of the Convention which drafted the Charter **and updated under the responsibility of the Praesidium of the European Convention.**

**Declaration for incorporation in the Final Act
concerning the explanations relating to the Charter of Fundamental Rights**

The Conference takes note of the explanations relating to the Charter of Fundamental Rights prepared **under the authority at the instigation of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention, as set out below.**

[reproduction of the explanations contained in CONV 828/1/03 REV 1 of 31 July 2003, which will be published in the "C" series of the Official Journal of the European Union.]

Option 2

As Option 1, plus

Article II-52: Scope and interpretation of rights and principles
(New paragraph 7)

7. The explanations drawn up as a way of providing guidance in the interpretation of the Charter of Fundamental Rights should be given due regard by the courts of the Union and of the Member States.

Option 3

As Option 1, plus

Article II-52: Scope and interpretation of rights and principles
(New paragraph 7)

7. This Charter shall be interpreted with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention.

**CONFERENCE
OF THE REPRESENTATIVES
OF THE GOVERNMENTS
OF THE MEMBER STATES**

Brussels, 16 June 2004

CIG 81/04

PRESID 23

NOTE

from: Presidency

dated: 16 June 2004

to: Delegations

Subject: IGC 2003

– Meeting of Heads of State or Government, Brussels, 17/18 June 2004

1. Delegations will find attached a set of texts which the Presidency believes will find consensus in the framework of the final overall agreement. These include texts submitted to Ministers in document CIG 79/04 as well as some additional texts previously included in document CIG 80/04. Where appropriate these have been amended to take into account the Ministerial discussions on 14 June.¹
2. The Presidency is submitting a separate document containing proposals on outstanding issues for discussion by Heads of State or Government.

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¹ The Presidency recalls that the basis on which this document is drafted is doc. CIG 50/03 plus its addendums and corrigendums.

ANNEX 2

<p style="text-align:center">THE UNION'S VALUES</p> <p style="text-align:center">RIGHTS OF PERSONS BELONGING TO MINORITIES</p> <p style="text-align:center">EQUALITY BETWEEN WOMEN AND MEN</p>

Article I-2

The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights, **including the rights of persons belonging to minorities**. These values are common to the Member States in a society **in which** pluralism, **non-discrimination**, tolerance, justice, solidarity and **equality between women and men prevail**.

Article III-2

In all the activities referred to in this Part, the Union shall aim to eliminate inequalities, and to promote equality, between men and women.

Declaration for incorporation in the Final Act
re Article III-2

The Conference agrees that, in its general efforts to eliminate inequalities between men and women, the Union will aim in its different policies to combat all kinds of domestic violence. The Member States should take all necessary measures to prevent and punish these criminal acts and to support and protect the victims.

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<p style="text-align: center;">ACCESSION OF THE UNION TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS</p>

Article I-7

1. [unchanged]
2. The Union **shall accede** to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Constitution.
3. [unchanged]

Article III-227 (8)

8. The Council shall act by a qualified majority throughout the procedure.

It shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act as well as for association agreements and the agreements referred to in Article III-221 with the States which are candidates for accession.

Protocol relating to Article I-7 (2)
on the accession of the Union to the European Convention on Human Rights

1. The agreement relating to the accession of the Union to the European Convention on Human Rights provided for in Article I-7(2) of the Constitution shall make provision for preserving the specific characteristics of the Union and Union law, in particular with regard to:
 - the specific arrangements for the Union's possible participation in the control bodies of the European Convention on Human Rights,
 - the mechanisms necessary to ensure that proceedings by non-Member States and individual applications are correctly addressed to Member States and/or the Union as appropriate;
2. The agreement referred to in paragraph 1 shall ensure that accession shall not affect the competences of the Union and the powers of its institutions. It shall ensure that nothing therein affects the situation of Member States in relation to the European Convention on Human Rights, in particular in relation to the Protocols to the Convention, measures taken by Member States derogating from the Convention in accordance with Article 15 thereof and reservations to the Convention made by Member States in accordance with Article 57 thereof.
3. Nothing in the agreement referred to in paragraph 1 shall affect Article III-281(2) of the Constitution.

Declaration for incorporation in the Final Act
re Article I-7 (2)

The Conference agrees that the Union's accession to the European Convention on Human Rights should be arranged in such a way as to preserve the specific features of Union law. In this connection, the Conference notes the existence of a regular dialogue between the Court of Justice of the European Union and the European Court of Human Rights; such dialogue could be reinforced when the European Union accedes to the European Convention on Human Rights.

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**CONFERENCE
OF THE REPRESENTATIVES
OF THE GOVERNMENTS
OF THE MEMBER STATES**

Brussels, 16 June 2004

CIG 82/04

PRESID 24

NOTE

from: Presidency

dated: 16 June 2004

to: Delegations

Subject: IGC 2003

– Meeting of Heads of State or Government, Brussels, 17/18 June 2004

1. In paper CIG 81/04, delegations have received a set of texts which the Presidency believes will find consensus in the framework of the final overall agreement.
2. This paper contains suggested approaches on outstanding issues, both on the institutions and on other matters, for discussion by Heads of State or Government.

Institutions

3. The Presidency has always acknowledged that delegations will view arrangements on institutional questions in the round, and that any package on them must strike an overall balance. It believes that the approach it is now proposing achieves such a balance.

Voting in the Council

4. In its report to the European Council in March, the Presidency stated its belief that, to secure consensus, a solution on the question of voting must be based on the principle of double majority, must allow for greater efficiency, and must have due regard to balance among all Member States and to their specific concerns.

21. Specifically in regard to the role of the Commission in the excessive deficit procedure (Annex 5), some delegations have suggested that both references to Commission "proposals" in Article III-76(6) be changed to "recommendations". However, with a view to seeking a compromise, the Presidency has suggested only one such change, which it notes is in line with what ECOFIN Ministers broadly agreed during the Italian Presidency.
22. The Presidency also attaches a proposal in Annex 6 on the multiannual financial framework, under which unanimity would be maintained pending the application of a simple passerelle to qualified majority voting, and believes that this should be agreed in an overall package.
23. Finally, in a context where there is consensus on the content of the Charter of Fundamental Rights, on its legal status as part of the Constitution, and on the need for the Courts when interpreting the Charter to give due regard to the Explanations, the Presidency believes that its compromise proposal on the placement of a reference to the Explanations, set out in Annex 7, should be acceptable to all.

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ANNEX 7**EXPLANATIONS RELATING TO THE
CHARTER OF FUNDAMENTAL RIGHTS****5th paragraph of the Preamble**

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter **and updated under the responsibility of the Praesidium of the European Convention.**

**Article II-52: Scope and interpretation of rights and principles
(New (7))**

7. The explanations drawn up as a way of providing guidance in the interpretation of the Charter of Fundamental Rights shall be given due regard by the courts of the Union and of the Member States.

**Declaration for incorporation in the Final Act
concerning the explanations relating to the Charter of Fundamental Rights**

The Conference takes note of the explanations relating to the Charter of Fundamental Rights prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention, as set out below.

**CONFERENCE
OF THE REPRESENTATIVES
OF THE GOVERNMENTS
OF THE MEMBER STATES**

Brussels, 18 June 2004

CIG 83/04

PRESID 25

NOTE

from: Presidency

dated: 18 June 2004

to: Delegations

Subject: IGC 2003

– Meeting of Heads of State or Government, Brussels, 17/18 June 2004

In the light of the discussions on Thursday 17 June on the draft Constitution, the Presidency invites Heads of State or Government to give their agreement to the texts set out in document CIG 81/04, as amended and complemented by the texts annexed to the present document. These documents contain modifications to the basic text of the Constitution as contained in document CIG 50/03 together with its addendums and corrigendums.

On the issue of qualified majority voting, the Presidency's proposals contain a number of elements which will require further discussion.

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<p style="text-align: center;">EXPLANATIONS RELATING TO THE CHARTER OF FUNDAMENTAL RIGHTS</p>
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5th paragraph of the Preamble

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter **and updated under the responsibility of the Praesidium of the European Convention.**

Article II-52: Scope and interpretation of rights and principles
(New (7))

7. The explanations drawn up as a way of providing guidance in the interpretation of the Charter of Fundamental Rights shall be given due regard by the courts of the Union and of the Member States.

Declaration for incorporation in the Final Act
concerning the explanations relating to the Charter of Fundamental Rights

The Conference takes note of the explanations relating to the Charter of Fundamental Rights prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention, as set out below.

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**CONFERENCE
OF THE REPRESENTATIVES
OF THE GOVERNMENTS
OF THE MEMBER STATES**

Brussels, 18 June 2004

CIG 84/04

PRESID 26

NOTE

from: Presidency

dated: 18 June 2004

to: Delegations

Subject: IGC 2003

– Meeting of Heads of State or Government, Brussels, 17/18 June 2004

In the light of the discussions on Thursday 17 June and Friday 18 June on the draft Constitution, the Presidency invites Heads of State or Government to give their agreement to the texts set out in document CIG 81/04, as amended and complemented by the texts annexed to the present document. These documents contain modifications to the basic text of the Constitution as contained in document CIG 50/03 together with its addendums and corrigendums.

The Presidency considers that these documents together constitute the basis for an overall and balanced agreement which should allow for the adoption of the draft Treaty establishing a Constitution for Europe.

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ANNEX 10**EXPLANATIONS RELATING TO THE
CHARTER OF FUNDAMENTAL RIGHTS****5th paragraph of the Preamble**

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter **and updated under the responsibility of the Praesidium of the European Convention.**

Article II-52: Scope and interpretation of rights and principles
(New (7))

7. The explanations drawn up as a way of providing guidance in the interpretation of the Charter of Fundamental Rights shall be given due regard by the courts of the Union and of the Member States.

Declaration for incorporation in the Final Act
concerning the explanations relating to the Charter of Fundamental Rights

The Conference takes note of the explanations relating to the Charter of Fundamental Rights prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention, as set out below.

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**CONFERENCE
OF THE REPRESENTATIVES
OF THE GOVERNMENTS
OF THE MEMBER STATES**

Brussels, 18 June 2004

CIG 85/04

PRESID 27

NOTE

from: Presidency

dated: 18 June 2004

to: Delegations

Subject: IGC 2003

– Meeting of Heads of State or Government, Brussels, 17/18 June 2004

At their meeting on 18 June 2004 Heads of State or Government gave their agreement to the texts set out in document CIG 81/04, as amended and complemented by the texts annexed to the present document. These documents contain modifications to the text of the Constitution as contained in document CIG 50/03 together with its addendums and corrigendums. They constitute the outcome of the Intergovernmental Conference.

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ANNEX 10**EXPLANATIONS RELATING TO THE
CHARTER OF FUNDAMENTAL RIGHTS****5th paragraph of the Preamble**

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter **and updated under the responsibility of the Praesidium of the European Convention.**

**Article II-52: Scope and interpretation of rights and principles
(New (7))**

7. The explanations drawn up as a way of providing guidance in the interpretation of the Charter of Fundamental Rights shall be given due regard by the courts of the Union and of the Member States.

**Declaration for incorporation in the Final Act
concerning the explanations relating to the Charter of Fundamental Rights**

The Conference takes note of the explanations relating to the Charter of Fundamental Rights prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention, as set out below.

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IV.2. Selected travaux préparatoires from the Treaty of Lisbon and beyond

IV.2.a. Council and IGC Documents, 2005-2007

Brussels, 18 June 2005

SN 117/05

**DECLARATION BY THE HEADS OF STATE OR GOVERNMENT
OF THE MEMBER STATES OF THE EUROPEAN UNION
ON THE RATIFICATION OF THE TREATY
ESTABLISHING A CONSTITUTION FOR EUROPE
(European Council, 16 and 17 June 2005)**

We have held a wide-ranging review of the process of ratification of the Treaty establishing a Constitution for Europe. This Treaty is the fruit of a collective process, designed to provide the appropriate response to ensure that an enlarged European Union functions more democratically, more transparently and more effectively.

Our European ambition, which has served us so well for over 50 years and which has allowed Europe to unite around the same vision, remains more relevant than ever. It has enabled us to ensure the well-being of citizens, the defence of our values and our interests, and to assume our responsibilities as a leading international player. In order to fight unemployment and social exclusion more effectively, to promote sustainable economic growth, to respond to the challenges of globalisation, to safeguard internal and external security, and to protect the environment, we need Europe, a more united Europe presenting greater solidarity.

To date, 10 Member States have successfully concluded ratification procedures, thereby expressing their commitment to the Constitutional Treaty. We have noted the outcome of the referendums in France and the Netherlands. We consider that these results do not call into question citizens' attachment to the construction of Europe. Citizens have nevertheless expressed concerns and worries which need to be taken into account. Hence the need for us to reflect together on this situation.

This period of reflection will be used to enable a broad debate to take place in each of our countries, involving citizens, civil society, social partners, national parliaments and political parties. This debate, designed to generate interest, which is already under way in many Member States, must be intensified and broadened. The European institutions will also have to make their contribution, with the Commission playing a special role in this regard.

The recent developments do not call into question the validity of continuing with the ratification processes. We are agreed that the timetable for the ratification in different Member States will be altered if necessary in response to these developments and according to the circumstances in these Member States.

We have agreed to come back to this matter in the first half of 2006 to make an overall assessment of the national debates and agree on how to proceed.



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 17 July 2006

**10633/1/06
REV 1**

CONCL 2

COVER NOTE

from : Presidency
to : Delegations
Subject : **BRUSSELS EUROPEAN COUNCIL**
 15/16 JUNE 2006

PRESIDENCY CONCLUSIONS

Delegations will find attached the revised version of the Presidency Conclusions of the Brussels European Council (15/16 June 2006).

Presidency Conclusions – 15/16 June 2006

1. The meeting was preceded by an exposé by Mr Josep Borrell, President of the European Parliament, followed by an exchange of views.

I. EUROPE LISTENS

2. In June 2005 the Heads of State or Government called for a period of reflection during which a broad debate should take place in all Member States, involving citizens, civil society, social partners, national parliaments and political parties, with the contribution of European institutions. The European Council welcomes the various initiatives taken in the Member States in the framework of national debates, as well as a series of events organised by the Austrian Presidency, in particular the Conference "The Sound of Europe" in Salzburg on 27/28 January 2006. The European Council expresses its gratitude to the Commission for having contributed to the reflection period in the context of its Plan D and to the European Parliament for having organised together with the Austrian Parliament the joint parliamentary meeting on the "Future of Europe" on 8/9 May 2006. The European Council welcomes the intention of institutions and Member States to carry on their activities aimed at involving citizens in the debate about what Europe should stand for in the 21st century. It also welcomes the Commission's contribution "A Citizen's Agenda for Europe".
3. The European Council carried out a first assessment of the reflection period. This took place on the basis of the written report prepared by the Presidency and Council Secretariat drawing on information provided by Member States on their national debates (9701/1/06 REV 1), the "Plan D" initiative and the White Paper on a European Communication Policy. While worries and concerns have been voiced during all public debates, citizens remain committed to the European project. Reinforced dialogue with the citizens requires adequate means and commitment. Citizens expect the Union to prove its added value by taking action in response to the challenges and opportunities facing it: ensuring peace, prosperity and solidarity, enhancing security, furthering sustainable development and promoting European values in a rapidly globalising world.

Presidency Conclusions – 15/16 June 2006

4. The Union's commitment to becoming more democratic, transparent and effective goes beyond the reflection period. The European Council reaffirms its commitment to a Union that delivers the concrete results citizens expect, in order to strengthen confidence and trust, as set out in Part II.

II. EUROPE AT WORK

(a) Promoting freedom, security and justice

5. Progress on measures agreed in the Hague Programme aimed at addressing problems such as illegal immigration, trafficking of human beings, terrorism and organised crime while guaranteeing respect for fundamental freedoms and rights will be assessed in December 2006.
6. In the meantime further efforts are required, particularly as concerns:
- following the progress made on the Schengen Information System (SIS II) and implementation of the **Schengen acquis** in the new Member States, rapid finalisation of the legislative measures on **border control** and **police cooperation** and completion of the technical preparations at EU and national levels, making operational the **Schengen Information System** by April 2007 and the **Visa Information System** in 2007, thus paving the way for the enlargement of the Schengen area in 2007 provided all requirements to apply the Schengen acquis have been fulfilled, in accordance with the Hague Programme;
 - taking work forward rapidly on the Commission's proposal concerning the establishment of **Common Application Centres** and the collection of biometrics for the purpose of visas and initiation of a pilot project, as well as taking work forward on a Community code on visas;
 - taking work forward on **visa facilitation** and **readmission agreements** based on the process and considerations laid down in the common approach on facilitation starting with the countries with a European Perspective as referred to in the European Council conclusions of June 2003 and June 2005;

III. LOOKING TO THE FUTURE*(a) Pursuing reform: the Constitutional Treaty*

42. At the meeting of the European Council on 16/17 June 2005, Heads of State or Government agreed to come back to the issue of the ratification of the Constitutional Treaty in the first half of 2006 in order to make an overall assessment of the national debates launched as part of the period of reflection and to agree on how to proceed.
43. Since last June a further five Member States have ratified the Constitutional Treaty, bringing the total number of ratifications to fifteen. Two Member States have been unable to ratify, and eight have still to complete the ratification process, one of which has recently launched the procedure to that effect. It is hoped that this process will be completed in line with the conclusions of June 2005.
44. Recalling its conclusions of June 2005, the European Council welcomes the various initiatives taken within the framework of the national debates as well as the contributions of the Commission and Parliament to the reflection period. The significant efforts made to increase and expand the dialogue with Europe's citizens, including the Commission's plan D initiative, should be continued.
45. The reflection period has overall been useful in enabling the Union to assess the concerns and worries expressed in the course of the ratification process. It considers that, in parallel with the ongoing ratification process, further work, building on what has been achieved since last June, is needed before decisions on the future of the Constitutional Treaty can be taken.
46. After last year's period of reflection work should now focus on delivery of concrete results and implementation of projects. The European Council agrees a two-track approach. On the one hand, best use should be made of the possibilities offered by the existing treaties in order to deliver the concrete results that citizens expect.

Presidency Conclusions – 15/16 June 2006

47. On the other hand, the Presidency will present a report to the European Council during the first semester of 2007, based on extensive consultations with the Member States. This report should contain an assessment of the state of discussion with regard to the Constitutional Treaty and explore possible future developments.
48. The report will subsequently be examined by the European Council. The outcome of this examination will serve as the basis for further decisions on how to continue the reform process, it being understood that the necessary steps to that effect will have been taken during the second semester of 2008 at the latest. Each Presidency in office since the start of the reflection period has a particular responsibility to ensure the continuity of this process.
49. The European Council calls for the adoption, on 25 March 2007 in Berlin, of a political declaration by EU leaders, setting out Europe's values and ambitions and confirming their shared commitment to deliver them, commemorating 50 years of the Treaties of Rome.

(b) Enlargement

50. The European Council takes note of the initial discussions on enlargement held at the informal Foreign Ministers meeting in Salzburg on 11 March and in Klosterneuburg on 27/28 May 2006. It agreed to continue and deepen this general discussion during the second half of 2006.
51. Enlargement has proved a historic opportunity contributing to ensure peace, security, stability, democracy, the rule of law as well as growth and prosperity in the European Union as a whole. Enlargement is equally helping the EU to become a more competitive and dynamic economy and be better prepared to meet the challenges of a globalised and changing world. The European Council welcomes in this context the Commission's report on the economic success of the Union's historic fifth enlargement, of which the accession of Bulgaria and Romania is an integral part.



DECLARATION

on the occasion of the 50th anniversary of the signature of the Treaties of Rome

FOR CENTURIES EUROPE has been an idea, holding out hope of peace and understanding. That hope has been fulfilled. European unification has made peace and prosperity possible. It has brought about a sense of community and overcome differences. Each Member State has helped to unite Europe and to strengthen democracy and the rule of law. Thanks to the yearning for freedom of the peoples of central and eastern Europe the unnatural division of Europe is now consigned to the past. European integration shows that we have learnt the painful lessons of a history marked by bloody conflict. Today we live together as was never possible before.

WE, THE CITIZENS OF THE EUROPEAN UNION,
HAVE UNITED FOR THE BETTER.

I.

IN THE EUROPEAN UNION, we are turning our common ideals into reality: for us, the individual is paramount. His dignity is inviolable. His rights are inalienable. Women and men enjoy equal rights.



WE ARE STRIVING for peace and freedom, for democracy and the rule of law, for mutual respect and shared responsibility, for prosperity and security, for tolerance and participation, for justice and solidarity.

WE HAVE A UNIQUE way of living and working together in the European Union. This is expressed through the democratic interaction of the Member States and the European institutions. The European Union is founded on equal rights and mutually supportive cooperation. This enables us to strike a fair balance between Member States' interests.

WE PRESERVE in the European Union the identities and diverse traditions of its Member States. We are enriched by open borders and a lively variety of languages, cultures and regions. There are many goals which we cannot achieve on our own, but only in concert. Tasks are shared between the European Union, the Member States and their regions and local authorities.

II.

WE ARE FACING major challenges which do not stop at national borders. The European Union is our response to these challenges. Only together can we continue to preserve our ideal of European society in future for the good of all European Union citizens. This European model combines economic success and social responsibility. The common market and the euro make us strong. We can thus shape the increasing interdependence of the global economy and ever-growing competition on international markets according to our values. Europe's wealth lies in the knowledge and ability of its people; that is the key to growth, employment and social cohesion.



III.

WE WILL FIGHT terrorism, organised crime and illegal immigration together. We stand up for liberties and civil rights also in the struggle against those who oppose them. Racism and xenophobia must never again be given any rein.

WE ARE COMMITTED to the peaceful resolution of conflicts in the world and to ensuring that people do not become victims of war, terrorism and violence. The European Union wants to promote freedom and development in the world. We want to drive back poverty, hunger and disease. We want to continue to take a leading role in that fight.

WE INTEND JOINTLY to lead the way in energy policy and climate protection and make our contribution to averting the global threat of climate change.

THE EUROPEAN UNION will continue to thrive both on openness and on the will of its Member States to consolidate the Union's internal development. The European Union will continue to promote democracy, stability and prosperity beyond its borders.

WITH EUROPEAN UNIFICATION a dream of earlier generations has become a reality. Our history reminds us that we must protect this for the good of future generations. For that reason we must always renew the political shape of Europe in keeping with the times. That is why today, 50 years after the signing of the Treaties of Rome, we are united in our aim of placing the European Union on a renewed common basis before the European Parliament elections in 2009.

FOR WE KNOW, EUROPE IS OUR COMMON FUTURE.

Done at Berlin on the twenty-fifth day of March in the year two thousand and seven.

For the European Parliament
The President

For the Council of the European Union
The President

For the Commission of the European Communities
The President

Hans-Gert Pötering

Angela Merkel

José Manuel Barroso



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 14 June 2007

10659/07

POLGEN 67

REPORT

from : Presidency

to : Council/European Council

Subject : Pursuing the treaty reform process

Delegations will find attached a report from the Presidency on pursuing the treaty reform process, as requested by the European Council at its meeting in June 2006.

REPORT FROM THE PRESIDENCY TO THE EUROPEAN COUNCIL**PURSUING THE TREATY REFORM PROCESS****Introduction**

This report from the German Presidency is a response to the mandate which it was given by the European Council at its meeting in June 2006. As requested at the time, the Presidency, in the light of very extensive consultations held over the last six months, provides an assessment of the state of discussion with regard to the treaty reform process and explores possible ways forward.

After two years of uncertainty following the problems encountered in the process of ratification of the Constitutional Treaty, it is clear that there is now a general desire to settle this issue and move on. All Member States recognise that further uncertainty about the treaty reform process would jeopardise the Union's ability to deliver.

Settling this issue quickly is therefore a priority. This was agreed when Heads of State or Government, together with the President of the European Parliament and the President of the Commission, met in Berlin on 25 March to celebrate the fiftieth anniversary of the signature of the Treaties of Rome. All were united in the aim of placing the European Union on a renewed common basis before the European Parliament elections in 2009.

The way forward clearly needs to take into account the concerns expressed by citizens during the ratification process on the future direction of the European Union and the effects of globalisation on its core values and policies. At the same time, there is a very strong demand for the Union to increase its efficiency, to enhance its democratic functioning and to improve the coherence of its external action.

Overall Assessment

In line with the mandate given to it in June 2006, the Presidency has conducted extensive bilateral consultations with the Member States as well as the European Parliament and the European Commission, both at the level of designated "focal points", and between the President of the European Council and her opposite numbers. In addition to these bilateral contacts, the Presidency organised a meeting of "focal points" in Berlin on 15 May, and a further meeting is due to take place on 19 June. Foreign Ministers have also had the opportunity to take stock of developments at meetings of the General Affairs and External Relations Council.

These consultations have proved very useful in giving the Presidency a clear idea of the various concerns of individual Member States.

The issues raised during the consultations can be grouped around a number of themes:

A different approach on structure

A certain number of Member States underlined the importance of avoiding the impression which might be given by the symbolism and the title "Constitution" that the nature of the Union is undergoing radical change. For them this also implies a return to the traditional method of treaty change through an amending treaty, as well a number of changes of terminology, not least the dropping of the title "Constitution".

Such an approach is not incompatible with the demand from those Member States which have already ratified that as much of the substance of the Constitutional Treaty as possible should be preserved. They are ready to consider the alternative method of treaty change if it helps to reach a result acceptable to everyone and thus to overcome the present stalemate. They have made it very clear however that this would represent a major concession. They insist on the need to preserve the substance of the innovations agreed upon in the 2004 IGC and to ensure as far as possible the readability and simplicity of the new Treaty.

Reinforcing the capacity of the Union to act, whilst preserving the identity of Member States

It is generally recognised that a strengthening of the institutions will help reinforce the capacity of the Union to act, and that the Union therefore has every interest in ensuring that the current Treaties are adapted in order to introduce the set of institutional reforms agreed in the 2004 IGC.

At the same time, there is concern to underline the respect for the identity of the Member States and to introduce greater clarity over the delimitation and definition of the competences of the Union and of the Member States. Furthermore, there is a clear demand from some delegations to further enhance the role of national parliaments.

Some delegations have requested that the text of the Charter of Fundamental Rights be removed from the Treaty. Others strongly oppose this move. Most of the latter could however accept it, provided that the legally binding character of the Charter is preserved by means of a cross-reference in the body of the Treaty.

Addressing other concerns

A few delegations have suggested that in several cases the text of the Treaties should be amended in order to reflect more recent developments. Many delegations would be ready to examine such amendments if considered helpful by others and provided that no new competences are conferred upon the Union. Specific suggestions include the need to address energy security and climate change. It has also been proposed that greater prominence be given to the "Copenhagen criteria" on enlargement.

The Way Forward

On the basis of its assessment of the positions of different delegations, the Presidency recommends that the June European Council agree to the rapid convening of an IGC. It suggests that the European Council give a precise and comprehensive mandate (on structure and content) to the IGC, thus allowing it to finalise its work on a new Treaty before the end of this year.

The Presidency proposes a return to the classical method of treaty change. The IGC would therefore be asked to adopt a Reform Treaty amending the existing Treaties rather than repealing them. The Treaty on the European Union as modified would keep its present name, while the Treaty establishing the European Community would become the "Treaty on the functioning of the Union", containing all the detailed implementing provisions, including the legal bases. Both Treaties would have the same legal value. The Union would have a single legal personality.

The mandate for the IGC should set out how the measures agreed upon in the 2004 IGC with a view to a more capable and democratic Union should be inserted into the Treaty on the European Union and the Treaty on the Functioning of the Union. The consultations of the past 6 months show that a number of changes will be needed to reach an overall agreement. To that end there should be further discussions with regard to the following issues:

- The question of the symbols and of the primacy of EU law
- Possible terminological changes
- The treatment of the Charter in Fundamental Rights
- The specificity of the CFSP
- The delimitation of competences between the EU and the Member States
- The role of national parliaments

Conclusion

The Presidency submits this report to delegations as a basis for reaching agreement on the way forward at the European Council on 21-22 June 2007.



Editors' note to 11177/1/07 REV 1,
**Presidency Conclusions – Brussels European Council,
21/22 June 2007 [Extracts]:**

The IGC Mandate also exists as the separate document SN 172/07, dated 22 June 2007; and was circulated as a proposed amendment to the Treaties on 26 June 2007 (Council document 11222/07).



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 20 July 2007

**11177/1/07
REV 1**

CONCL 2

COVER NOTE

from : Presidency
to : Delegations

Subject : **BRUSSELS EUROPEAN COUNCIL**
 21/22 JUNE 2007

PRESIDENCY CONCLUSIONS

Delegations will find attached the revised version of the Presidency Conclusions of the Brussels European Council (21/22 June 2007).

Presidency Conclusions – Brussels, 21/22 June 2007

The meeting of the European Council was preceded by an exposé by the President of the European Parliament, Mr Hans-Gert Pöttering, followed by an exchange of views.

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1. Europe is united in its resolve that only by working together can we represent our interests and goals in the world of tomorrow. The European Union is determined to contribute its ideas of a sustainable, efficient and just economic and social order to the global process.
2. The European Union faces a twofold responsibility. In order to secure our future as an active player in a rapidly changing world and in the face of ever-growing challenges, we have to maintain and develop the European Union's capacity to act and its accountability to the citizen. That is why we have to focus our efforts on the necessary internal reform process. At the same time, the European Union is called upon to shape European policy here and now for the benefit of Europe's citizens.
3. The most recent positive results include the Roaming Regulation which reduces the cost of modern communication in Europe, the creation of the European payment area which makes travelling and living together easier in the EU and the constant improvement of consumer rights which guarantee citizens the same high standards across the entire European Union.
4. With its decisions on an integrated climate and energy policy the European Council in Spring 2007 underlined the synergies between these two key areas and paved the way for improved climate protection and dealing responsibly with energy.
5. Closer crossborder police and judicial cooperation means more security for everyone. At the same time the EU is working to protect and strengthen civil liberties at European level.
6. Contributing to the day-to-day life of its citizens and securing the European Union's ability to act in the future: with this twofold goal in mind, the European Council today adopted the following conclusions.

Presidency Conclusions – Brussels, 21/22 June 2007

7. The European Council emphasises the crucial importance of reinforcing communication with the European citizens, providing full and comprehensive information on the European Union and involving them in a permanent dialogue. This will be particularly important during the upcoming IGC and ratification process.

I. TREATY REFORM PROCESS

8. The European Council agrees that, after two years of uncertainty over the Union's treaty reform process, the time has come to resolve the issue and for the Union to move on. The period of reflection has provided the opportunity in the meantime for wide public debate and helped prepare the ground for a solution.
9. Against this background, the European Council welcomes the report drawn up by the Presidency (10659/07) following the mandate given to it in June 2006, and agrees that settling this issue quickly is a priority.
10. To this end the European Council agrees to convene an Intergovernmental Conference and invites the Presidency without delay to take the necessary steps in accordance with Article 48 of the TUE, with the objective of opening the IGC before the end of July as soon as the legal requirements have been met.
11. The IGC will carry out its work in accordance with the mandate set out in Annex I to these conclusions. The European Council invites the incoming Presidency to draw up a draft Treaty text in line with the terms of the mandate and to submit this to the IGC as soon as it opens. The IGC will complete its work as quickly as possible, and in any case before the end of 2007, so as to allow for sufficient time to ratify the resulting Treaty before the European Parliament elections in June 2009.

Presidency Conclusions – Brussels, 21/22 June 2007

12. The IGC will be conducted under the overall responsibility of the Heads of State or Government, assisted by the members of the General Affairs and External Relations Council. The Representative of the Commission will participate in the Conference. The European Parliament will be closely associated with and involved in the work of the Conference with 3 representatives. The General Secretariat of the Council will provide the secretariat support for the Conference.
13. Having consulted the President of the European Parliament, the European Council invites the European Parliament, in order to pave the way for settling the issue of the future composition of the European Parliament in good time before the 2009 elections, to put forward by October 2007 a draft of the initiative foreseen in Protocol 34 as agreed in the 2004 IGC.
14. The incoming presidency is invited to ensure that the candidate countries are kept fully and regularly briefed throughout the Intergovernmental Conference.

II. JUSTICE AND HOME AFFAIRS

15. On the basis of the Tampere and Hague Programmes significant progress has been made in developing the Union as an area of freedom, security and justice. The European Council stresses the need to continue the implementation of those programmes and to work on the succession to them in order to further strengthen Europe's internal security as well as the fundamental freedoms and rights of citizens.

IGC MANDATE

The present mandate will provide the exclusive basis and framework for the work of the IGC that will be convened according to paragraph 10 of the European Council conclusions.

I. GENERAL OBSERVATIONS

1. The IGC is asked to draw up a Treaty (hereinafter called the "*Reform Treaty*") amending the existing Treaties with a view to enhancing the efficiency and democratic legitimacy of the enlarged Union, as well as the coherence of its external action. The constitutional concept, which consisted in repealing all existing Treaties and replacing them by a single text called "Constitution", is abandoned. The *Reform Treaty* will introduce into the existing Treaties, which remain in force, the innovations resulting from the 2004 IGC, as set out below in a detailed fashion.

2. The *Reform Treaty* will contain two substantive clauses amending respectively the *Treaty on the European Union (TEU)* and the *Treaty establishing the European Community (TEC)*. The *TEU* will keep its present name and the *TEC* will be called *Treaty on the Functioning of the Union*, the Union having a single legal personality. The word "Community" will throughout be replaced by the word "Union"; it will be stated that the two Treaties constitute the Treaties on which the Union is founded and that the Union replaces and succeeds the Community. Further clauses will contain the usual provisions on ratification and entry into force as well as transitional arrangements. Technical amendments to the *Euratom Treaty* and to the existing *Protocols*, as agreed in the 2004 IGC, will be done via *Protocols* annexed to the *Reform Treaty*.

Presidency Conclusions – Brussels, 21/22 June 2007

3. The *TEU* and the *Treaty on the Functioning of the Union* will not have a constitutional character. The terminology used throughout the Treaties will reflect this change: the term "Constitution" will not be used, the "Union Minister for Foreign Affairs" will be called High Representative of the Union for Foreign Affairs and Security Policy and the denominations "law" and "framework law" will be abandoned, the existing denominations "regulations", "directives" and "decisions" being retained. Likewise, there will be no article in the amended Treaties mentioning the symbols of the EU such as the flag, the anthem or the motto. Concerning the primacy of EU law, the IGC will adopt a Declaration recalling the existing case law of the EU Court of Justice¹.

4. As far as the content of the amendments to the existing Treaties is concerned, the innovations resulting from the 2004 IGC will be integrated into the *TEU* and the *Treaty on the Functioning of the Union*, as specified in this mandate. Modifications to these innovations introduced as a result of the consultations held with the Member States over the past six months are clearly indicated below. They concern in particular the respective competences of the EU and the Member States and their delimitation, the specific nature of the Common Foreign and Security Policy, the enhanced role of national parliaments, the treatment of the Charter of Fundamental Rights and a mechanism, in the area of police and judicial cooperation in criminal matters, enabling Member States to go forward on a given act while allowing others not to participate.

II. AMENDMENTS TO THE EU TREATY

5. Clause 1 of the *Reform Treaty* will contain the amendments to the present *TEU*.

In the absence of indications to the contrary in this mandate, the text of the existing Treaty remains unchanged.

6. The text of the first recital as agreed in the 2004 IGC will be inserted as a second recital into the Preamble.

7. The *TEU* will be divided into 6 Titles: *Common Provisions (I)*, *Provisions on democratic principles (II)*, *Provisions on institutions (III)*, *Provisions on enhanced cooperation (IV)*, *General Provisions on the Union's External Action and specific Provisions on the Common Foreign and Security Policy (V)*, and *Final Provisions (VI)*. Titles I, IV (present VII), V and VI (present VIII) follow the structure of the existing *TEU*, with amendments as agreed in the 2004 IGC.² The two other titles (II and III) are new and introduce innovations agreed in the 2004 IGC.

Common Provisions (I)

8. Title I of the existing *TEU*, containing *inter alia* Articles on the Union's values and objectives, on relations between the Union and the Member States, and on the suspension of rights of Member States, will be amended in line with the innovations agreed in the 2004 IGC (see Annex 1, Title I).

¹ Whilst the Article on primacy of Union law will not be reproduced in the *TEU*, the IGC will agree on the following Declaration: "The Conference recalls that, in accordance with well settled case-law of the EU Court of Justice, the Treaties and the law adopted by the Union on the basis of the Treaties have primacy over the law of Member States, under the conditions laid down by the said case-law." In addition, the opinion of the Legal Service of the Council (doc. 11197/07) will be annexed to the Final Act of the Conference.

² The content of Title VI on police and judicial cooperation in criminal matters will be put into the Title on the Area of freedom, security and justice in the Treaty on the Functioning of the European Union (*TFEU*), see below under "Amendments to the EC Treaty".

Presidency Conclusions – Brussels, 21/22 June 2007

9. The Article on fundamental rights will contain a cross reference³ to the *Charter of fundamental rights*, as agreed in the 2004 IGC, giving it legally binding value and setting out the scope of its application.

10. In the Article on fundamental principles concerning competences it will be specified that the Union shall act only within the limits of competences conferred upon it by the Member States in the Treaties.

Provisions on democratic principles (II)

11. This new Title II will contain the provisions agreed in the 2004 IGC on democratic equality, representative democracy, participatory democracy and the citizens' initiative. Concerning national parliaments, their role will be further enhanced compared to the provisions agreed in the 2004 IGC (see Annex 1, Title II):

- The period given to national parliaments to examine draft legislative texts and to give a reasoned opinion on subsidiarity will be extended from 6 to 8 weeks (the *Protocols on national Parliaments and on subsidiarity and proportionality* will be modified accordingly).
- There will be a reinforced control mechanism of subsidiarity in the sense that if a draft legislative act is contested by a simple majority of the votes allocated to national parliaments, the Commission will re-examine the draft act, which it may decide to maintain, amend or withdraw. If it chooses to maintain the draft, the Commission will have, in a reasoned opinion, to justify why it considers that the draft complies with the principle of subsidiarity. This reasoned opinion, as well as the reasoned opinions of the national parliaments, will have to be transmitted to the EU legislator, for consideration in the legislative procedure. This will trigger a specific procedure:
 - before concluding the first reading under the ordinary legislative procedure, the legislator (Council and Parliament) shall consider the compatibility of the legislative proposal with the principle of subsidiarity, taking particular account of the reasons expressed and shared by the majority of national parliaments as well as the reasoned opinion of the Commission;
 - If, by a majority of 55 % of the members of the Council or a majority of the votes cast in the European Parliament, the legislator is of the opinion that the proposal is not compatible with the principle of subsidiarity, the legislative proposal shall not be given further consideration (the *Protocol on subsidiarity and proportionality* will be modified accordingly).

A new general Article will reflect the role of the national parliaments.

³ Therefore, the text of the Charter of fundamental rights will not be included in the Treaties.

*Presidency Conclusions – Brussels, 21/22 June 2007***Amendments to the EU Treaty****Annex 1*****Title I - Common provisions***

The purpose of this Annex is to clarify the exact drafting where necessary

1) *Insertion in the Preamble of the EU Treaty of the following second whereas clause^{*15}:*

"DRAWING INSPIRATION from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law,"

2) *In Article 1, insertion of the following sentences:*

At the end of the first subparagraph: "... on which the Member States confer competences to attain objectives they have in common."

To replace the last subparagraph: "The Union shall be founded on the present Treaty and on the Treaty on the Functioning of the European Union. It shall replace and succeed the European Community."

2bis *Insertion of an Article 2 on the values of the Union.**

3) *Replacement of Article 2 on the Union's objectives, renumbered 3, with the following text:¹⁶*

1. The Union's aim is to promote peace, its values and the well-being of its peoples.

2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.

3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

3 a. The Union shall establish an economic and monetary union whose currency is the euro.

4. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.

5. The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties."

¹⁵ Throughout this Annex, this sign (*) indicates that the innovations to be inserted are the same as those agreed by the 2004 IGC.

¹⁶ The following Protocol will be annexed to the Treaties:

"Protocol on internal market and competition

The High Contracting Parties, considering that the internal market as set out in Article 3 of the Treaty on European Union includes a system ensuring that competition is not distorted

Have agreed that,

to this end, the Union shall, if necessary, take action under the provisions of the Treaties, including under Article 308 of the Treaty on the Functioning of the European Union."

Presidency Conclusions – Brussels, 21/22 June 2007

- 4) *Replacement of Article 3 by an Article 4 on the relations between the Union and the Member States**, with the addition of the following at the beginning, and of a sentence at the end of the present paragraph 1, renumbered 2:
- "1. In accordance with Article [I-11], competences not conferred upon the Union in the Treaties remain with the Member States.
2. The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.
- (present paragraph 2 renumbered 3)"*.
- 5) *Replacement of Article 6 on fundamental rights with a text reading as follows:*¹⁷⁻¹⁸⁻¹⁹⁻²⁰
- "1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of 7 December 2000, as adapted on [... 2007²¹], which shall have the same legal value as the Treaties.

¹⁷ The IGC will agree the following Declaration: *"The Conference declares that:*

1. *The Charter of Fundamental Rights, which has legally binding force, confirms the fundamental rights guaranteed by the European Convention on Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States.*

2. *The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined by the Treaties."*

¹⁸ Unilateral Declaration by Poland:

"The Charter does not affect in any way the right of Member States to legislate in the sphere of public morality, family law, as well as the protection of human dignity and respect for human physical and moral integrity."

¹⁹ The following Protocol will be annexed to the Treaties:

"The High Contracting Parties

Whereas in Article [xx] of the Treaty on European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights;

Whereas the Charter is to be applied in strict accordance with the provisions of the aforementioned Article [xx] and Title VII of the Charter itself;

Whereas the aforementioned Article [xx] requires the Charter to be applied and interpreted by the courts of the United Kingdom strictly in accordance with the Explanations referred to in that Article;

Whereas the Charter contains both rights and principles;

Whereas the Charter contains both provisions which are civil and political in character and those which are economic and social in character;

Whereas the Charter reaffirms the rights, freedoms and principles recognised in the Union and makes those rights more visible, but does not create new rights or principles;

Recalling the United Kingdom's obligations under the Treaty on European Union, the Treaty on the Functioning of the European Union, and Union law generally;

Noting the wish of the United Kingdom to clarify certain aspects of the application of the Charter;

Desirous therefore of clarifying the application of the Charter in relation to the laws and administrative action of the United Kingdom and of its justiciability within the United Kingdom;

Reaffirming that references in this Protocol to the operation of specific provisions of the Charter are strictly without prejudice to the operation of other provisions of the Charter;

Reaffirming that this Protocol is without prejudice to the application of the Charter to other Member States;

Reaffirming that this Protocol is without prejudice to other obligations of the United Kingdom under the Treaty on European Union, the Treaty on the Functioning of the European Union, and Union law generally;

Have agreed upon the following provisions which shall be annexed to the Treaty on European Union:

Article 1

1. *The Charter does not extend the ability of the Court of Justice, or any court or tribunal of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms.*

2. *In particular, and for the avoidance of doubt, nothing in [Title IV] of the Charter creates justiciable rights applicable to the United Kingdom except in so far as the United Kingdom has provided for such rights in its national law.*

Article 2

To the extent that a provision of the Charter refers to national laws and practices, it shall only apply in the United Kingdom to the extent that the rights or principles that it contains are recognised in the law or practices of the United Kingdom."

²⁰ Two delegations reserved their right to join in the Protocol referred to in footnote 19.

²¹ I.e. the version of the Charter as agreed in the 2004 IGC which will be re-enacted by the three Institutions in [2007]. It will be published in the *Official Journal of the European Union*.

Presidency Conclusions – Brussels, 21/22 June 2007

The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions."

2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

6) *Insertion of an Article 7bis on the Union and its neighbours*.*

Title II - Provisions on democratic principles

7) *Insertion of a new Article on the role of national parliaments in the Union reading as follows:*

"National parliaments shall contribute actively to the good functioning of the Union:

- a) through being informed by the institutions of the Union and having draft European legislative acts forwarded to them in accordance with the Protocol on the role of national parliaments in the European Union;
- b) by seeing to it that the principle of subsidiarity is respected in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality;
- c) by taking part, within the framework of the area of freedom, security and justice, in the evaluation mechanisms for the implementation of the Union policies in that area, in accordance with Article [III-260], and through being involved in the political monitoring of Europol and the evaluation of Eurojust's activities in accordance with Articles [III-276 and III-273];
- d) by taking part in the revision procedures of the Treaties, in accordance with Article [IV-443 and IV-444];
- e) by being notified of applications for accession to the Union, in accordance with Article [I-58];
- f) by taking part in the inter-parliamentary cooperation between national parliaments and with the European Parliament, in accordance with the Protocol on the role of national parliaments in the European Union."

Title V - General provisions on the Union's external action and specific provisions on the Common Foreign and Security Policy

8) *In Article 11, insertion of a paragraph 1 reading as follows (the current text of paragraph 1 being deleted).²²*

1. The Union's competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union's security, including the progressive framing of a common defence policy that might lead to a common defence.

²² The IGC will agree the following Declaration: "In addition to the specific procedures referred to in [paragraph 1 of Article 11], the Conference underlines that the provisions covering the Common Foreign and Security Policy including in relation to the High Representative of the Union for Foreign Affairs and Security Policy and the External Action Service will not affect the existing legal basis, responsibilities, and powers of each Member State in relation to the formulation and conduct of its foreign policy, its national diplomatic service, relations with third countries and participation in international organisations, including a Member State's membership of the Security Council of the UN.

The Conference also notes that the provisions covering the Common Foreign and Security Policy do not give new powers to the Commission to initiate decisions or increase the role of the European Parliament.

The Conference also recalls that the provisions governing the Common Security and Defence Policy do not prejudice the specific character of the security and defence policy of the Member States."

PROTOCOL (No 3)
ON THE EURO GROUP

THE HIGH CONTRACTING PARTIES,

DESIRING to promote conditions for stronger economic growth in the European Union and, to that end, to develop ever-closer coordination of economic policies within the euro area,

CONSCIOUS of the need to lay down special provisions for enhanced dialogue between the Member States whose currency is the euro, pending the euro becoming the currency of all Member States of the Union,

HAVE AGREED UPON the following provisions, which are annexed to the Treaty on European Union and to the Treaty on the Functioning of the Union:

Article 1

The Ministers of the Member States whose currency is the euro shall meet informally. Such meetings shall take place, when necessary, to discuss questions related to the specific responsibilities they share with regard to the single currency. The Commission shall take part in the meetings. The European Central Bank shall be invited to take part in such meetings, which shall be prepared by the representatives of the Ministers with responsibility for finance of the Member States whose currency is the euro and of the Commission.

Article 2

The Ministers of the Member States whose currency is the euro shall elect a president for two and a half years, by a majority of those Member States.

PROTOCOL (No 5)
RELATING TO ARTICLE [I-9(2)]
OF THE TREATY ON EUROPEAN UNION
ON THE ACCESSION OF THE UNION TO THE EUROPEAN CONVENTION
ON THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

THE HIGH CONTRACTING PARTIES

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the Union:

Article 1

The agreement relating to the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the "European Convention") provided for in Article [I-9(2)] of the Treaty on European Union shall make provision for preserving the specific characteristics of the Union and Union law, in particular with regard to:

- (a) the specific arrangements for the Union's possible participation in the control bodies of the European Convention;
- (b) the mechanisms necessary to ensure that proceedings by non-Member States and individual applications are correctly addressed to Member States and/or the Union as appropriate.

Article 2

The agreement referred to in Article 1 shall ensure that accession of the Union shall not affect the competences of the Union or the powers of its institutions. It shall ensure that nothing therein affects the situation of Member States in relation to the European Convention, in particular in relation to the Protocols thereto, measures taken by Member States derogating from the European Convention in accordance with Article 15 thereof and reservations to the European Convention made by Member States in accordance with Article 57 thereof.

Article 3

Nothing in the agreement referred to in Article 1 shall affect Article [III-375(2)] of the Treaty on the Functioning of the Union.

PROTOCOL (No 7)**ON THE APPLICATION OF THE CHARTER OF FUNDAMENTAL RIGHTS
TO THE UNITED KINGDOM**

THE HIGH CONTRACTING PARTIES,

WHEREAS in Article [I-9] of the Treaty on European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights;

WHEREAS the Charter is to be applied in strict accordance with the provisions of the aforementioned Article [I-9] and Title VII of the Charter itself;

Whereas the aforementioned Article [I-9] requires the Charter to be applied and interpreted by the courts of the United Kingdom strictly in accordance with the explanations referred to in that Article;

WHEREAS the Charter contains both rights and principles;

WHEREAS the Charter contains both provisions which are civil and political in character and those which are economic and social in character;

WHEREAS the Charter reaffirms the rights, freedoms and principles recognised in the Union and makes those rights more visible, but does not create new rights or principles;

RECALLING the United Kingdom's obligations under the Treaty on European Union, the Treaty on the Functioning of the Union, and Union law generally;

NOTING the wish of the United Kingdom to clarify certain aspects of the application of the Charter;

DESIROUS therefore of clarifying the application of the Charter in relation to the laws and administrative action of the United Kingdom and of its justiciability within the United Kingdom;

REAFFIRMING that references in this Protocol to the operation of specific provisions of the Charter are strictly without prejudice to the operation of other provisions of the Charter;

REAFFIRMING that this Protocol is without prejudice to the application of the Charter to other Member States;

REAFFIRMING that this Protocol is without prejudice to other obligations of the United Kingdom under the Treaty on European Union, the Treaty on the Functioning of the Union, and Union law generally,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union:

Article 1

1. The Charter does not extend the ability of the Court of Justice, or any court or tribunal of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms.
2. In particular, and for the avoidance of doubt, nothing in Title IV of the Charter creates justiciable rights applicable to the United Kingdom except in so far as the United Kingdom has provided for such rights in its national law.

Article 2

To the extent that a provision of the Charter refers to national laws and practices, it shall only apply to the United Kingdom to the extent that the rights or principles that it contains are recognised in the law or practices of the United Kingdom.

**CONFERENCE
OF THE REPRESENTATIVES OF THE GOVERNMENTS
OF THE MEMBER STATES**

**Brussels, 23 July 2007 (26.07)
(OR. fr)**

CIG 3/07

NOTE

from: Presidency of the IGC
dated: 23 July 2007
to: Intergovernmental Conference (IGC)

Subject: **IGC 2007**
Draft declarations

**DRAFT
DECLARATIONS**

N.B.:

This document is only a working document for examination by the IGC. The cross-references between Articles which appear in square brackets will, as usual, be corrected by the Legal/Linguistic experts when they finalise the text before the Treaty is signed.

A. DECLARATIONS CONCERNING PROVISIONS OF THE TREATIES

1. Declaration on Article [I-9(2)] of the Treaty on European Union

The Conference agrees that the Union's accession to the European Convention on the Protection of Human Rights and Fundamental Freedoms should be arranged in such a way as to preserve the specific features of Union law. In this connection, the Conference notes the existence of a regular dialogue between the Court of Justice of the European Union and the European Court of Human Rights; such dialogue could be reinforced when the Union accedes to that Convention.

2. Declaration on Articles [I-22, I-27 and I-28] of the Treaty on European Union

In choosing the persons called upon to hold the offices of President of the European Council, President of the Commission and Union Minister for Foreign Affairs, due account is to be taken of the need to respect the geographical and demographic diversity of the Union and its Member States.

3. Declaration on Article [I-24(7)] of the Treaty on European Union concerning the European Council decision on the exercise of the Presidency of the Council

The Conference declares that the European Council should begin preparing the decision establishing the procedures for implementing the decision on the exercise of the Presidency of the Council as soon as the Treaty amending the Treaty on European Union and the Treaty establishing the European Community is signed, and should give its political approval within six months. The draft decision is set out below:

Draft decision of the European Council on the exercise of the Presidency of the Council

Article 1

1. The Presidency of the Council, with the exception of the Foreign Affairs configuration, shall be held by pre-established groups of three Member States for a period of 18 months. The groups shall be made up on a basis of equal rotation among the Member States, taking into account their diversity and geographical balance within the Union.

2. Each member of the group shall in turn chair for a six-month period all configurations of the Council, with the exception of the Foreign Affairs configuration. The other members of the group shall assist the Chair in all its responsibilities on the basis of a common programme. Members of the team may decide alternative arrangements among themselves.

9. Declaration on Article [I-51] of the Treaty on the Functioning of the Union

The Conference declares that, whenever rules on protection of personal data to be adopted on the basis of Article [I-51] could have direct implications for national security, due account will have to be taken of the specific characteristics of the matter. It recalls that the legislation presently applicable (see in particular Directive 95/46/EC) includes specific derogations in this regard.

10. Declaration on Article [I-57] of the Treaty on European Union

The Union will take into account the particular situation of small-sized countries which maintain specific relations of proximity with it.

11. Declaration on the proclamation of the Charter of Fundamental Rights by the European Parliament, the Council and the Commission

The Conference declares that the Charter of Fundamental Rights of the European Union will be solemnly proclaimed by the European Parliament, the Council and the Commission on the day the Treaty amending the Treaty on European Union and the Treaty establishing the European Community is signed. The text is as follows:

"The European Parliament, the Council and the Commission solemnly proclaim the following text as the Charter of Fundamental Rights of the European Union:

THE CHARTER OF FUNDAMENTAL RIGHTS OF THE UNION

Preamble

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, services, goods and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

TITLE I DIGNITY

Article [II-61] Human dignity

Human dignity is inviolable. It must be respected and protected.

Article [II-62] Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Article [II-63]
Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - (a) the free and informed consent of the person concerned, according to the procedures laid down by law;
 - (b) the prohibition of eugenic practices, in particular those aiming at the selection of persons;
 - (c) the prohibition on making the human body and its parts as such a source of financial gain;
 - (d) the prohibition of the reproductive cloning of human beings.

Article [II-64]
Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article [II-65]
Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

TITLE II
FREEDOMS

Article [II-66]
Right to liberty and security

Everyone has the right to liberty and security of person.

Article [II-67]
Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article [II-68]
Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Article [II-69]
Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article [II-70]
Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Article [II-71]
Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Article [II-72]
Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article [II-73]
Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article [II-74]
Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article [II-75]
Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article [II-76]
Freedom to conduct a business

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

Article [II-77]
Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

Article [II-78]
Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaties.

Article [II-79]
Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

TITLE III
EQUALITY

Article [II-80]
Equality before the law

Everyone is equal before the law.

Article [II-81]
Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

Article [II-82]
Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article [II-83]
Equality between women and men

Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article [II-84]
The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article [II-85]
The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

*Article [II-86]**Integration of persons with disabilities*

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

**TITLE IV
SOLIDARITY***Article [II-87]**Workers' right to information and consultation within the undertaking*

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

*Article [II-88]**Right of collective bargaining and action*

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

*Article [II-89]**Right of access to placement services*

Everyone has the right of access to a free placement service.

*Article [II-90]**Protection in the event of unjustified dismissal*

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

*Article [II-91]**Fair and just working conditions*

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

*Article [II-92]**Prohibition of child labour and protection of young people at work*

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

*Article [II-93]**Family and professional life*

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

*Article [II-94]**Social security and social assistance*

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

*Article [II-95]
Health care*

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities.

*Article [II-96]
Access to services of general economic interest*

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaties, in order to promote the social and territorial cohesion of the Union.

*Article [II-97]
Environmental protection*

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

*Article [II-98]
Consumer protection*

Union policies shall ensure a high level of consumer protection.

TITLE V
CITIZENS' RIGHTS

*Article [II-99]
Right to vote and to stand as a candidate at elections to the European Parliament*

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

*Article [II-100]
Right to vote and to stand as a candidate at municipal elections*

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article [II-101]
Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.
2. This right includes:
 - (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - (c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article [II-102]
Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.

Article [II-103]
European Ombudsman

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 refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role.

Article [II-104]
Right to petition

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.

*Article [II-105]**Freedom of movement and of residence*

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State.

*Article [II-106]**Diplomatic and consular protection*

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

TITLE VI
JUSTICE*Article [II-107]**Right to an effective remedy and to a fair trial*

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

*Article [II-108]**Presumption of innocence and right of defence*

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

*Article [II-109]**Principles of legality and proportionality of criminal offences and penalties*

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

*Article [II-110]**Right not to be tried or punished twice in criminal proceedings for the same criminal offence*

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

TITLE VII
GENERAL PROVISIONS GOVERNING THE INTERPRETATION
AND APPLICATION OF THE CHARTER

*Article [II-111]**Field of application*

1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.
2. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.

*Article [II-112]**Scope and interpretation of rights and principles*

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties.
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.
6. Full account shall be taken of national laws and practices as specified in this Charter.
7. The explanations drawn up as a way of providing guidance in the interpretation of the Charter of Fundamental Rights shall be given due regard by the courts of the Union and of the Member States.

*Article [II-113]**Level of protection*

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article [II-114]
Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein."

12. Declaration concerning the explanations relating to the Charter of Fundamental Rights

The Conference takes note of the explanations relating to the Charter of Fundamental Rights prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention, as set out below.

EXPLANATIONS RELATING TO THE
CHARTER OF FUNDAMENTAL RIGHTS

These explanations were originally prepared under the authority of the Praesidium of the Convention which drafted the Charter of Fundamental Rights of the European Union. They have been updated under the responsibility of the Praesidium of the European Convention, in the light of the drafting adjustments made to the text of the Charter by that Convention (notably to Articles [II-111 and II-112]) and of further developments of Union law. Although they do not as such have the status of law, they are a valuable tool of interpretation intended to clarify the provisions of the Charter.

TITLE I – DIGNITY

Explanation on Article [II-61] – Human dignity

The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights. The 1948 Universal Declaration of Human Rights enshrined human dignity in its preamble: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." In its judgment of 9 October 2001 in case C-377/98 *Netherlands v. European Parliament and Council*, [2001] ECR 7079, at grounds 70 – 77, the Court of Justice confirmed that a fundamental right to human dignity is part of Union law.

It results that none of the rights laid down in this Charter may be used to harm the dignity of another person, and that the dignity of the human person is part of the substance of the rights laid down in this Charter. It must therefore be respected, even where a right is restricted.

Explanation on Article [II-62] – Right to life

1. Paragraph 1 of this Article is based on the first sentence of Article 2(1) of the ECHR, which reads as follows:

"1. Everyone's right to life shall be protected by law..."

2. The second sentence of the provision, which referred to the death penalty, was superseded by the entry into force of Article 1 of Protocol No 6 to the ECHR, which reads as follows:

"The death penalty shall be abolished. No-one shall be condemned to such penalty or executed."

Article 2(2) of the Charter¹ is based on that provision.

3. The provisions of Article [2] of the Charter¹ correspond to those of the above Articles of the ECHR and its Protocol. They have the same meaning and the same scope, in accordance with Article [52(3)] of the Charter². Therefore, the "negative" definitions appearing in the ECHR must be regarded as also forming part of the Charter:

- (a) Article 2(2) of the ECHR:

"Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

- (b) Article 2 of Protocol No 6 to the ECHR:

"A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions..."

¹ Article [II-62(2)].

² Article [II-112(3)].

Explanation on Article [II-63] – Right to the integrity of the person

1. In its judgment of 9 October 2001 in case C-377/98 Netherlands v. European Parliament and Council, [2001] ECR 7079, at grounds 70, 78 to 80, the Court of Justice confirmed that a fundamental right to human integrity is part of Union law and encompasses, in the context of medicine and biology, the free and informed consent of the donor and recipient.
2. The principles of Article [3] of the Charter³ are already included in the Convention on Human Rights and Biomedicine, adopted by the Council of Europe (ETS 164 and additional protocol ETS 168). The Charter does not set out to depart from those principles, and therefore prohibits only reproductive cloning. It neither authorises nor prohibits other forms of cloning. Thus it does not in any way prevent the legislature from prohibiting other forms of cloning.
3. The reference to eugenic practices, in particular those aiming at the selection of persons, relates to possible situations in which selection programmes are organised and implemented, involving campaigns for sterilisation, forced pregnancy, compulsory ethnic marriage among others, all acts deemed to be international crimes in the Statute of the International Criminal Court adopted in Rome on 17 July 1998 (see its Article 7(1)(g)).

Explanation on Article [II-64] - Prohibition of torture and inhuman or degrading treatment or punishment

The right in Article [4] is the right guaranteed by Article 3 of the ECHR, which has the same wording: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". By virtue of Article [52(3)] of the Charter⁴, it therefore has the same meaning and the same scope as the ECHR Article.

Explanation on Article [II-65] – Prohibition of slavery and forced labour

1. The right in Article [5]⁵ (1) and (2) corresponds to Article 4(1) and (2) of the ECHR, which has the same wording. It therefore has the same meaning and scope as the ECHR Article, by virtue of Article [52(3)] of the Charter⁶. Consequently:
 - no limitation may legitimately affect the right provided for in paragraph 1;

³ Article [II-63].

⁴ Article [II-112(3)].

⁵ Article [II-65].

⁶ Article [II-112(3)].

- in paragraph 2, "forced or compulsory labour" must be understood in the light of the "negative" definitions contained in Article 4(3) of the ECHR:

"For the purpose of this article the term "forced or compulsory labour" shall not include:

- (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
- (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
- (d) any work or service which forms part of normal civic obligations."

2. Paragraph 3 stems directly from human dignity and takes account of recent developments in organised crime, such as the organisation of lucrative illegal immigration or sexual exploitation networks. The Annex to the Europol Convention contains the following definition which refers to trafficking for the purpose of sexual exploitation: "traffic in human beings: means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children". Chapter VI of the Convention implementing the Schengen Agreement, which has been integrated into the Union's acquis, in which the United Kingdom and Ireland participate, contains the following wording in Article 27(1) which refers to illegal immigration networks: "The Contracting Parties undertake to impose appropriate penalties on any person who, for financial gain, assists or tries to assist an alien to enter or reside within the territory of one of the Contracting Parties in breach of that Contracting Party's laws on the entry and residence of aliens." On 19 July 2002, the Council adopted a framework decision on combating trafficking in human beings (OJ L 203/1) whose Article 1 defines in detail the offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation, which the Member States must make punishable by virtue of that framework decision.

TITLE II – FREEDOMS

Explanation on Article [II-66] – Right to liberty and security

The rights in Article [6] are the rights guaranteed by Article 5 of the ECHR, and in accordance with Article [52(3)] of the Charter⁷, they have the same meaning and scope. Consequently, the limitations which may legitimately be imposed on them may not exceed those permitted by the ECHR, in the wording of Article 5:

- "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - (a) the lawful detention of a person after conviction by a competent court;
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
 - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
 - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
 - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

⁷ Article [II-112(3)].

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

The rights enshrined in Article [6]⁸ must be respected particularly when the European Parliament and the Council adopt legislative acts in the area of judicial cooperation in criminal matters, on the basis of Articles [III-270, III-271 and III-273] of the Treaty on the Functioning of the Union, notably to define common minimum provisions as regards the categorisation of offences and punishments and certain aspects of procedural law.

Explanation on Article [II-67] – Respect for private and family life

The rights guaranteed in Article 7 correspond to those guaranteed by Article 8 of the ECHR. To take account of developments in technology the word "correspondence" has been replaced by "communications".

In accordance with Article [52(3)]⁹, the meaning and scope of this right are the same as those of the corresponding article of the ECHR. Consequently, the limitations which may legitimately be imposed on this right are the same as those allowed by Article 8 of the ECHR:

- "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Explanation on Article [II-68] – Protection of personal data

This Article has been based on Article 286 of the Treaty establishing the European Community and Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995) as well as on Article 8 of the ECHR and on the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which has been ratified by all the Member States. Article 286 of the EC Treaty is now replaced by Article [I-51] of the Treaty on the Functioning of the Union and Article [24] of the Treaty on European Union. Reference is also made to Regulation No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001). The abovementioned Directive and Regulation contain conditions and limitations for the exercise of the right to the protection of personal data.

⁸ Article [II-66].

⁹ Article [II-112(3)].

Explanation on Article [II-69] – Right to marry and right to found a family

This Article is based on Article 12 of the ECHR, which reads as follows: "Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right." The wording of the Article has been modernised to cover cases in which national legislation recognises arrangements other than marriage for founding a family. This Article neither prohibits nor imposes the granting of the status of marriage to unions between people of the same sex. This right is thus similar to that afforded by the ECHR, but its scope may be wider when national legislation so provides.

Explanation on Article [II-70] – Freedom of thought, conscience and religion

The right guaranteed in paragraph 1 corresponds to the right guaranteed in Article 9 of the ECHR and, in accordance with Article [52(3)] of the Charter¹⁰, has the same meaning and scope. Limitations must therefore respect Article 9(2) of the Convention, which reads as follows: "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

The right guaranteed in paragraph 2 corresponds to national constitutional traditions and to the development of national legislation on this issue.

Explanation on Article [II-71] – Freedom of expression and information

1. Article [11]¹¹ corresponds to Article 10 of the European Convention on Human Rights, which reads as follows:

- "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

¹⁰ Article [II-112(3)].

¹¹ Article [II-71].

Pursuant to Article [52(3)] of the Charter¹², the meaning and scope of this right are the same as those guaranteed by the ECHR. The limitations which may be imposed on it may therefore not exceed those provided for in Article 10(2) of the Convention, without prejudice to any restrictions which competition law of the Union may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR.

2. Paragraph 2 of this Article spells out the consequences of paragraph 1 regarding freedom of the media. It is based in particular on Court of Justice case law regarding television, particularly in case C-288/89 (judgment of 25 July 1991, Stichting Collectieve Antennevoorziening Gouda and others [1991] ECR I-4007), and on the Protocol on the system of public broadcasting in the Member States annexed to the EC Treaty and now to the Treaties, and on Council Directive 89/552/EC (particularly its seventeenth recital).

Explanation on Article [II-72] – Freedom of assembly and of association

1. Paragraph 1 of this Article corresponds to Article 11 of the ECHR, which reads as follows:
 - "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

The meaning of the provisions of paragraph 1 of this Article [12]¹³ is the same as that of the ECHR, but their scope is wider since they apply at all levels including European level. In accordance with Article [52(3)] of the Charter¹⁴, limitations on that right may not exceed those considered legitimate by virtue of Article 11(2) of the ECHR.

2. This right is also based on Article 11 of the Community Charter of the Fundamental Social Rights of Workers.

¹² Article [II-112(3)].

¹³ Article [II-72].

¹⁴ Article [II-112(3)].

3. Paragraph 2 of this Article corresponds to Article [I-46(4)] of the Treaty on European Union.

Explanation on Article [II-73] – Freedom of the arts and sciences

This right is deduced primarily from the right to freedom of thought and expression. It is to be exercised having regard to Article [1]¹⁵ and may be subject to the limitations authorised by Article 10 of the ECHR.

Explanation on Article [II-74] – Right to education

1. This Article is based on the common constitutional traditions of Member States and on Article 2 of the Protocol to the ECHR, which reads as follows:

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

It was considered useful to extend this Article to access to vocational and continuing training (see point 15 of the Community Charter of the Fundamental Social Rights of Workers and Article 10 of the Social Charter) and to add the principle of free compulsory education. As it is worded, the latter principle merely implies that as regards compulsory education, each child has the possibility of attending an establishment which offers free education. It does not require all establishments which provide education or vocational and continuing training, in particular private ones, to be free of charge. Nor does it exclude certain specific forms of education having to be paid for, if the State takes measures to grant financial compensation. Insofar as the Charter applies to the Union, this means that in its training policies the Union must respect free compulsory education, but this does not, of course, create new powers. Regarding the right of parents, it must be interpreted in conjunction with the provisions of Article [24]¹⁶.

2. Freedom to found public or private educational establishments is guaranteed as one of the aspects of freedom to conduct a business but it is limited by respect for democratic principles and is exercised in accordance with the arrangements defined by national legislation.

¹⁵ Article [II-61].

¹⁶ Article [II-84].

Explanation on Article [II-75] – Freedom to choose an occupation and right to engage in work

Freedom to choose an occupation, as enshrined in Article 15(1), is recognised in Court of Justice case law (see inter alia judgment of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraphs 12 to 14 of the grounds; judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 8 October 1986, Case 234/85 Keller [1986] ECR 2897, paragraph 8 of the grounds).

This paragraph also draws upon Article 1(2) of the European Social Charter, which was signed on 18 October 1961 and has been ratified by all the Member States, and on point 4 of the Community Charter of the Fundamental Social Rights of Workers of 9 December 1989. The expression "working conditions" is to be understood in the sense of Article [III-213] of the Treaty on the Functioning of the Union.

Paragraph 2 deals with the three freedoms guaranteed by Articles [I-4 and III-133, III-137 and III-144] of the Treaty on the Functioning of the Union, namely freedom of movement for workers, freedom of establishment and freedom to provide services.

Paragraph 3 has been based on Article [137(1)(g)] of the Treaty on the Functioning of the Union, and on Article 19(4) of the European Social Charter signed on 18 October 1961 and ratified by all the Member States. Article [52(2)] of the Charter¹⁷ is therefore applicable. The question of recruitment of seamen having the nationality of third States for the crews of vessels flying the flag of a Member State of the Union is governed by Union law and national legislation and practice.

Explanation on Article [II-76] – Freedom to conduct a business

This Article is based on Court of Justice case law which has recognised freedom to exercise an economic or commercial activity (see judgments of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraph 14 of the grounds, and of 27 September 1979, Case 230-78 SPA Eridiana and others [1979] ECR 2749, paragraphs 20 and 31 of the grounds) and freedom of contract (see inter alia Sukkerfabriken Nykøbing judgment, Case 151/78 [1979] ECR 1, paragraph 19 of the grounds, and judgment of 5 October 1999, C-240/97 Spain v. Commission, [1999] ECR I-6571, paragraph 99 of the grounds) and Article [97b(1) and (3)] of the Treaty on the Functioning of the Union, which recognises free competition. Of course, this right is to be exercised with respect for Union law and national legislation. It may be subject to the limitations provided for in Article [52(1)] of the Charter¹⁸.

¹⁷ Article [II-112(2)].

¹⁸ Article [II-112(1)].

Explanation on Article [II-77] – Right to property

This Article is based on Article 1 of the Protocol to the ECHR:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

This is a fundamental right common to all national constitutions. It has been recognised on numerous occasions by the case law of the Court of Justice, initially in the Hauer judgment (13 December 1979, ECR [1979] 3727). The wording has been updated but, in accordance with Article [52(3)]¹⁹, the meaning and scope of the right are the same as those of the right guaranteed by the ECHR and the limitations may not exceed those provided for there.

Protection of intellectual property, one aspect of the right of property, is explicitly mentioned in paragraph 2 because of its growing importance and Community secondary legislation. Intellectual property covers not only literary and artistic property but also inter alia patent and trademark rights and associated rights. The guarantees laid down in paragraph 1 shall apply as appropriate to intellectual property.

Explanation on Article [II-78] – Right to asylum

The text of the Article has been based on TEC Article 63, now replaced by Article [III-266] of the Treaty on the Functioning of the Union, which requires the Union to respect the Geneva Convention on refugees. Reference should be made to the Protocols relating to the United Kingdom and Ireland annexed to the Treaties and to Denmark to determine the extent to which those Member States implement Union law in this area and the extent to which this Article is applicable to them. This Article is in line with the Protocol on Asylum annexed to the Treaties.

Explanation on Article [II-79] – Protection in the event of removal, expulsion or extradition

Paragraph 1 of this Article has the same meaning and scope as Article 4 of Protocol No 4 to the ECHR concerning collective expulsion. Its purpose is to guarantee that every decision is based on a specific examination and that no single measure can be taken to expel all persons having the nationality of a particular State (see also Article 13 of the Covenant on Civil and Political Rights).

¹⁹ Article [II-112(3)].

Paragraph 2 incorporates the relevant case law from the European Court of Human Rights regarding Article 3 of the ECHR (see *Ahmed v. Austria*, judgment of 17 December 1996, [1996] ECR VI 2206 and *Soering*, judgment of 7 July 1989).

TITLE III – EQUALITY

Explanation on Article [II-80] – Equality before the law

This Article corresponds to a general principle of law which is included in all European constitutions and has also been recognised by the Court of Justice as a basic principle of Community law (judgment of 13 November 1984, Case 283/83 *Racke* [1984] ECR 3791, judgment of 17 April 1997, Case 15/95 *EARL* [1997] ECR I-1961, and judgment of 13 April 2000, Case 292/97 *Karlsson* [2000] ECR 2737).

Explanation on Article [II-81] – Non-discrimination

Paragraph 1 draws on Article 13 of the EC Treaty, now replaced by Article [III-124] of the Treaty on the Functioning of the Union, Article 14 of the ECHR and Article 11 of the Convention on Human Rights and Biomedicine as regards genetic heritage. Insofar as this corresponds to Article 14 of the ECHR, it applies in compliance with it.

There is no contradiction or incompatibility between paragraph 1 and Article [III-124] of the Treaty on the Functioning of the Union which has a different scope and purpose: Article [III-124] confers power on the Union to adopt legislative acts, including harmonisation of the Member States' laws and regulations, to combat certain forms of discrimination, listed exhaustively in that Article. Such legislation may cover action of Member State authorities (as well as relations between private individuals) in any area within the limits of the Union's powers. In contrast, the provision in paragraph 1 of Article [21]²⁰ does not create any power to enact anti-discrimination laws in these areas of Member State or private action, nor does it lay down a sweeping ban of discrimination in such wide-ranging areas. Instead, it only addresses discriminations by the institutions and bodies of the Union themselves, when exercising powers conferred under the Treaties, and by Member States only when they are implementing Union law. Paragraph 1 therefore does not alter the extent of powers granted under Article [III-124] nor the interpretation given to that Article.

Paragraph 2 corresponds to Article [I-4(2)] of the Treaty on the Functioning of the Union and must be applied in compliance with that Article.

²⁰ Article [II-81].

Explanation on Article [II-82] – Cultural, religious and linguistic diversity

This Article has been based on Article 6 of the Treaty on European Union and on Article 151(1) and (4) of the EC Treaty, now replaced by Article [III-280(1) and (4)] of the Treaty on the Functioning of the Union, concerning culture. Respect for cultural and linguistic diversity is now also laid down in Article [I-3(3)] of the Treaty on European Union. The Article is also inspired by Declaration No 11 to the Final Act of the Amsterdam Treaty on the status of churches and non-confessional organisations, now taken over in Article [I-52] of the Treaty on the Functioning of the Union.

Explanation on Article [II-83] – Equality between women and men

The first paragraph has been based on Articles 2 and 3(2) of the EC Treaty, now replaced by Article [I-3] of the Treaty on European Union and Article [III-116] of the Treaty on the Functioning of the Union which impose the objective of promoting equality between men and women on the Union, and on Article [141(1)] of the Treaty on the Functioning of the Union. It draws on Article 20 of the revised European Social Charter of 3 May 1996 and on point 16 of the Community Charter on the rights of workers.

It is also based on Article [141(3)] of the Treaty on the Functioning of the Union and Article 2(4) of Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

The second paragraph takes over in shorter form Article [III-214(4)] of the Treaty on the Functioning of the Union which provides that the principle of equal treatment does not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers. In accordance with Article [52(2)]²¹, the present paragraph does not amend Article [III-214(4)].

Explanation on Article [II-84] – The rights of the child

This Article is based on the New York Convention on the Rights of the Child signed on 20 November 1989 and ratified by all the Member States, particularly Articles 3, 9, 12 and 13 thereof.

²¹ Article [II-112(2)].

Paragraph 3 takes account of the fact that, as part of the establishment of an area of freedom, security and justice, Union legislation on civil matters having cross-border implications, for which Article [III-269] of the Treaty on the Functioning of the Union confers power, may include notably visiting rights ensuring that children can maintain on a regular basis a personal and direct contact with both his or her parents.

Explanation on Article [II-85] – The rights of the elderly

This Article draws on Article 23 of the revised European Social Charter and Articles 24 and 25 of the Community Charter of the Fundamental Social Rights of Workers. Of course, participation in social and cultural life also covers participation in political life.

Explanation on Article [II-86] – Integration of persons with disabilities

The principle set out in this Article is based on Article 15 of the European Social Charter and also draws on point 26 of the Community Charter of the Fundamental Social Rights of Workers.

TITLE IV – SOLIDARITY

Explanation on Article [II-87] – Workers' right to information and consultation within the undertaking

This Article appears in the revised European Social Charter (Article 21) and in the Community Charter on the rights of workers (points 17 and 18). It applies under the conditions laid down by Union law and by national laws. The reference to appropriate levels refers to the levels laid down by Union law or by national laws and practices, which might include the European level when Union legislation so provides. There is a considerable Union *acquis* in this field: Articles [III-211 and III-212] of the Treaty on the Functioning of the Union, and Directives 2002/14/EC (general framework for informing and consulting employees in the European Community), 98/59/EC (collective redundancies), 2001/23/EC (transfers of undertakings) and 94/45/EC (European works councils).

Explanation on Article [II-88] – Right of collective bargaining and action

This Article is based on Article 6 of the European Social Charter and on the Community Charter of the Fundamental Social Rights of Workers (points 12 to 14). The right of collective action was recognised by the European Court of Human Rights as one of the elements of trade union rights laid down by Article 11 of the ECHR. As regards the appropriate levels at which collective negotiation might take place, see the explanation given for the above Article. The modalities and limits for the exercise of collective action, including strike action, come under national laws and practices, including the question of whether it may be carried out in parallel in several Member States.

Explanation on Article [II-89] – Right of access to placement services

This Article is based on Article 1(3) of the European Social Charter and point 13 of the Community Charter of the Fundamental Social Rights of Workers.

Explanation on Article [II-90] – Protection in the event of unjustified dismissal

This Article draws on Article 24 of the revised Social Charter. See also Directive 2001/23/EC on the safeguarding of employees' rights in the event of transfers of undertakings, and Directive 80/987/EEC on the protection of employees in the event of the insolvency of their employer, as amended by Directive 2002/74/EC.

Explanation on Article [II-91] – Fair and just working conditions

1. Paragraph 1 of this Article is based on Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work. It also draws on Article 3 of the Social Charter and point 19 of the Community Charter on the rights of workers, and, as regards dignity at work, on Article 26 of the revised Social Charter. The expression "working conditions" is to be understood in the sense of Article [III-213] of the Treaty on the Functioning of the Union.
2. Paragraph 2 is based on Directive 93/104/EC concerning certain aspects of the organisation of working time, Article 2 of the European Social Charter and point 8 of the Community Charter on the rights of workers.

Explanation on Article [II-92] – Prohibition of child labour and protection of young people at work

This Article is based on Directive 94/33/EC on the protection of young people at work, Article 7 of the European Social Charter and points 20 to 23 of the Community Charter of the Fundamental Social Rights of Workers.

Explanation on Article [II-93] – Family and professional life

Article [33(1)]²² is based on Article 16 of the European Social Charter.

The second paragraph draws on Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding and Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC. It is also based on Article 8 (protection of maternity) of the European Social Charter and draws on Article 27 (right of workers with family responsibilities to equal opportunities and equal treatment) of the revised Social Charter. "Maternity" covers the period from conception to weaning.

Explanation on Article [II-94] – Social security and social assistance

The principle set out in Article [34(1)]²³ is based on Articles 137 and 140 of the Treaty on the Functioning of the Union, Article 12 of the European Social Charter and point 10 of the Community Charter on the rights of workers. The Union must respect it when exercising the powers conferred on it by Articles [III-210 and III-213] of the Treaty on the Functioning of the Union. The reference to social services relates to cases in which such services have been introduced to provide certain advantages but does not imply that such services must be created where they do not exist. "Maternity" must be understood in the same sense as in the preceding Article.

Paragraph 2 is based on Articles 12(4) and 13(4) of the European Social Charter and point 2 of the Community Charter of the Fundamental Social Rights of Workers and reflects the rules arising from Regulation No 1408/71 and Regulation No 1612/68.

Paragraph 3 draws on Article 13 of the European Social Charter and Articles 30 and 31 of the revised Social Charter and point 10 of the Community Charter. The Union must respect it in the context of policies based on Article [III-210] of the Treaty on the Functioning of the Union.

²² Article [II-93].

²³ Article [II-94].

Explanation on Article [II-95] – Health care

The principles set out in this Article are based on Article 152 of the EC Treaty, now replaced by Article [III-278] of the Treaty on the Functioning of the Union, and on Articles 11 and 13 of the European Social Charter. The second sentence of the Article takes over Article III-278(1).

Explanation on Article [II-96] – Access to services of general economic interest

This Article is fully in line with Article [III-122] of the Treaty on the Functioning of the Union and does not create any new right. It merely sets out the principle of respect by the Union for the access to services of general economic interest as provided for by national provisions, when those provisions are compatible with Union law.

Explanation on Article [II-97] – Environmental protection

The principles set out in this Article have been based on Articles 2, 6 and 174 of the EC Treaty, which have now been replaced by Article [I-3(3)] of the Treaty on European Union and Articles [III-119 and III-233] of the Treaty on the Functioning of the Union.

It also draws on the provisions of some national constitutions.

Explanation on Article [II-98] – Consumer protection

The principles set out in this Article have been based on Article [153] of the Treaty on the Functioning of the Union.

TITLE V – CITIZENS' RIGHTS

Explanation on Article [II-99] – Right to vote and to stand as a candidate at elections to the European Parliament

Article [39]²⁴ applies under the conditions laid down in the Treaties, in accordance with Article 52(2) of the Charter²⁵. Article 39(1) corresponds to the right guaranteed in Article [I-10(2)] of the Treaty on the Functioning of the Union (cf. also the legal base in Article [III-126] of the Treaty on the Functioning of the Union for the adoption of detailed arrangements for the exercise of that right) and Article 39(2) corresponds to Article [I-20(2)] of the Treaty on European Union. Article 39(2) takes over the basic principles of the electoral system in a democratic State.

²⁴ Article [II-99].

²⁵ Article [II-112(2)].

Explanation on Article [II-100] – Right to vote and to stand as a candidate at municipal elections

This Article corresponds to the right guaranteed by Article [I-10(2)] of the Treaty on the Functioning of the Union (cf. also the legal base in Article [III-126] of the Treaty on the Functioning of the Union for the adoption of detailed arrangements for the exercise of that right). In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these Articles in the Treaties.

Explanation on Article [II-101] – Right to good administration

Article [41]²⁶ is based on the existence of the Union as subject to the rule of law whose characteristics were developed in the case law which enshrined inter alia good administration as a general principle of law (see inter alia Court of Justice judgment of 31 March 1992 in Case C-255/90 P, *Burban* [1992] ECR I-2253, and Court of First Instance judgments of 18 September 1995 in Case T-167/94 *Nölle* [1995] ECR II-2589, and 9 July 1999 in Case T-231/97 *New Europe Consulting and others* [1999] ECR II-2403). The wording for that right in the first two paragraphs results from the case law (Court of Justice judgment of 15 October 1987 in Case 222/86 *Heylens* [1987] ECR 4097, paragraph 15 of the grounds, judgment of 18 October 1989 in Case 374/87 *Orkem* [1989] ECR 3283, judgment of 21 November 1991 in Case C-269/90 *TU München* [1991] ECR I-5469, and Court of First Instance judgments of 6 December 1994 in Case T-450/93 *Lisrestal* [1994] ECR II-1177, 18 September 1995 in Case T-167/94 *Nölle* [1995] ECR II-258) and the wording regarding the obligation to give reasons comes from Article [253] of the Treaty on the Functioning of the Union (cf. also the legal base in Article [III-398] of the Treaty on the Functioning of the Union for the adoption of legislation in the interest of an open, efficient and independent European administration).

Paragraph 3 reproduces the right now guaranteed by Article [III-431] of the Treaty on the Functioning of the Union. Paragraph 4 reproduces the right now guaranteed by Articles [I-10(2)(d)] and [III-129] of the Treaty on the Functioning of the Union. In accordance with Article [52(2)] of the Charter²⁷, those rights are to be applied under the conditions and within the limits defined by the Treaties.

The right to an effective remedy, which is an important aspect of this question, is guaranteed in Article [47] of this Charter²⁸.

²⁶ Article [II-101].

²⁷ Article [II-112(2)].

²⁸ Article [II-107].

Explanation on Article [II-102] – Right of access to documents

The right guaranteed in this Article has been taken over from Article 255 of the EC Treaty, on the basis of which Regulation No 1049/2001 has subsequently been adopted. The European Convention has extended this right to documents of institutions, bodies and agencies generally, regardless of their form, see Article [I-50(3)] of the Treaty on the Functioning of the Union. In accordance with Article [52(2)] of the Charter²⁹, the right of access to documents is exercised under the conditions and within the limits for which provision is made in Articles [I-50(3) and III-399] of the Treaty on the Functioning of the Union.

Explanation on Article [II-103] – European Ombudsman

The right guaranteed in this Article is the right guaranteed by Articles [I-10 and III-335] of the Treaty on the Functioning of the Union. In accordance with Article [52(2)] of the Charter³⁰, it applies under the conditions defined in these two Articles.

Explanation on Article [II-104] – Right to petition

The right guaranteed in this Article is the right guaranteed by Articles [I-10 and III-334] of the Treaty on the Functioning of the Union. In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these two Articles.

Explanation on Article [II-105] – Freedom of movement and of residence

The right guaranteed by paragraph 1 is the right guaranteed by Article [I-10(2)(a)] of the Treaty on the Functioning of the Union (cf. also the legal base in Article III-125; and the judgment of the Court of Justice of 17 September 2002, C-413/99 Baumbast, [2002] ECR 709). In accordance with Article [52(2)] of the Charter³¹, those rights are to be applied under the conditions and within the limits defined by the Treaties.

Paragraph 2 refers to the power granted to the Union by Articles [III-265 to III-267] of the Treaty on the Functioning of the Union. Consequently, the granting of this right depends on the institutions exercising that power.

Explanation on Article [II-106] – Diplomatic and consular protection

The right guaranteed in this Article is the right guaranteed by Article [I-10] of the Treaty on the Functioning of the Union. (cf. also the legal base in Article [III-127]). In accordance with Article [52(2)] of the Charter³², it applies under the conditions defined in these two Articles.

²⁹ Article [II-112(2)].

³⁰ Article [II-112(2)].

³¹ Article [II-112(2)].

³² Article [II-112(2)].

TITLE VI – JUSTICE

Explanation on Article [II-107] – Right to an effective remedy and to a fair trial

The first paragraph is based on Article 13 of the ECHR:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

However, in Union law the protection is more extensive since it guarantees the right to an effective remedy before a court. The Court of Justice enshrined that right in its judgment of 15 May 1986 as a general principle of Union law (Case 222/84 Johnston [1986] ECR 1651; see also judgment of 15 October 1987, Case 222/86 Heylens [1987] ECR 4097 and judgment of 3 December 1992, Case C-97/91 Borelli [1992] ECR I-6313). According to the Court, that general principle of Union law also applies to the Member States when they are implementing Union law. The inclusion of this precedent in the Charter has not been intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to admissibility for direct actions before the Court of Justice of the European Union. The European Convention has considered the Union's system of judicial review including the rules on admissibility, and confirmed them while amending them as to certain aspects, as reflected in Articles [III-353 to III-381] of the Treaty on the Functioning of the Union, and in particular in Article III-365(4). Article [47]³³ applies to the institutions of the Union and of Member States when they are implementing Union law and does so for all rights guaranteed by Union law.

The second paragraph corresponds to Article 6(1) of the ECHR which reads as follows:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

In Union law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations. That is one of the consequences of the fact that the Union is a community based on the rule of law as stated by the Court in Case 294/83, "Les Verts" v. European Parliament (judgment of 23 April 1986, [1988] ECR 1339). Nevertheless, in all respects other than their scope, the guarantees afforded by the ECHR apply in a similar way to the Union.

³³ Article [II-107].

With regard to the third paragraph, it should be noted that in accordance with the case law of the European Court of Human Rights, provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy (ECHR Judgment of 9.10.1979, Airey, Series A, Volume 32, 11). There is also a system of legal assistance for cases before the Court of Justice of the European Union.

Explanation on Article [II-108] – Presumption of innocence and right of defence

Article 48 is the same as Article 6(2) and (3) of the ECHR, which reads as follows:

- "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - (b) to have adequate time and facilities for the preparation of his defence;
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

In accordance with Article 52(3)³⁴, this right has the same meaning and scope as the right guaranteed by the ECHR.

Explanation on Article [II-109] – Principles of legality and proportionality of criminal offences and penalties

This Article follows the traditional rule of the non-retroactivity of laws and criminal sanctions. There has been added the rule of the retroactivity of a more lenient penal law, which exists in a number of Member States and which features in Article 15 of the Covenant on Civil and Political Rights.

³⁴ Article [II-112(2)].

Article 7 of the ECHR is worded as follows:

- "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

In paragraph 2, the reference to "civilised" nations has been deleted; this does not change the meaning of this paragraph, which refers to crimes against humanity in particular. In accordance with Article 52(3)³⁵, the right guaranteed here therefore has the same meaning and scope as the right guaranteed by the ECHR.

Paragraph 3 states the general principle of proportionality between penalties and criminal offences which is enshrined in the common constitutional traditions of the Member States and in the case law of the Court of Justice of the Communities.

Explanation on Article [II-110] – Right not to be tried or punished twice in criminal proceedings for the same criminal offence

Article 4 of Protocol No 7 to the ECHR reads as follows:

- "1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.
2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and the penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.
3. No derogation from this Article shall be made under Article 15 of the Convention."

The "non bis in idem" rule applies in Union law (see, among the many precedents, the judgment of 5 May 1966, Cases 18/65 and 35/65, *Gutmann v. Commission* [1966] ECR 103 and a recent case, the decision of the Court of First Instance of 20 April 1999, *Joined Cases T-305/94 and others, Limburgse Vinyl Maatschappij NV v. Commission* [1999] ECR II-931). The rule prohibiting cumulation refers to cumulation of two penalties of the same kind, that is to say criminal law penalties.

³⁵ Article [II-112(2)].

In accordance with Article [50]³⁶, the "non bis in idem" rule applies not only within the jurisdiction of one State but also between the jurisdictions of several Member States. That corresponds to the *acquis* in Union law; see Articles 54 to 58 of the Schengen Convention and the judgment of the Court of Justice of 11 February 2003, C-187/01 Gözütok (not yet published), Article 7 of the Convention on the Protection of the European Communities' Financial Interests and Article 10 of the Convention on the fight against corruption. The very limited exceptions in those Conventions permitting the Member States to derogate from the "non bis in idem" rule are covered by the horizontal clause in Article 52(1)³⁷ of the Charter concerning limitations. As regards the situations referred to by Article 4 of Protocol No 7, namely the application of the principle within the same Member State, the guaranteed right has the same meaning and the same scope as the corresponding right in the ECHR.

TITLE VII – GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

Explanation on Article [II-111] – Field of application

The aim of Article [51]³⁸ is to determine the scope of the Charter. It seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union, in compliance with the principle of subsidiarity. This provision was drafted in keeping with Article [6(2)] of the Treaty on European Union, which required the Union to respect fundamental rights, and with the mandate issued by Cologne European Council. The term "institutions" is enshrined in the Treaties. The expression "bodies, offices and agencies" is commonly used in the Treaties to refer to all the authorities set up by the Treaties or by secondary legislation (see, e.g., Articles [I-50 or I-51] of the Treaty on the Functioning of the Union).

As regards the Member States, it follows unambiguously from the case law of the Court of Justice that the requirement to respect fundamental rights defined in a Union context is only binding on the Member States when they act in the scope of Union law (judgment of 13 July 1989, Case 5/88 Wachauf [1989] ECR 2609; judgment of 18 June 1991, ERT [1991] ECR I-2925; judgment of 18 December 1997, C-309/96 Annibaldi [1997] ECR I-7493). The Court of Justice confirmed this case law in the following terms: "In addition, it should be remembered that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they implement Community rules ..." (judgment of 13 April 2000, Case C-292/97, [2000] ECR 2737, paragraph 37 of the grounds). Of course this rule, as enshrined in this Charter, applies to the central authorities as well as to regional or local bodies, and to public organisations, when they are implementing Union law.

³⁶ Article [II-110].

³⁷ Article [II-112(2)].

³⁸ Article [II-111].

Paragraph 2, together with the second sentence of paragraph 1, confirms that the Charter may not have the effect of extending the competences and tasks which the Treaties confer on the Union. Explicit mention is made here of the logical consequences of the principle of subsidiarity and of the fact that the Union only has those powers which have been conferred upon it. The fundamental rights as guaranteed in the Union do not have any effect other than in the context of the powers determined by the Treaties. Consequently, an obligation, pursuant to the second sentence of paragraph 1, for the Union's institutions to promote principles laid down in the Charter may arise only within the limits of these same powers.

Paragraph 2 also confirms that the Charter may not have the effect of extending the field of application of Union law beyond the powers of the Union as established in the Treaties. The Court of Justice has already established this rule with respect to the fundamental rights recognised as part of Union law (judgment of 17 February 1998, C-249/96 Grant, 1998 ECR I-621, paragraph 45 of the grounds). In accordance with this rule, it goes without saying that the reference to the Charter in Article [I-9] of the Treaty on European Union cannot be understood as extending by itself the range of Member State action considered to be "implementation of Union law" (within the meaning of paragraph 1 and the above-mentioned case law).

Explanation on Article [II-112] – Scope and interpretation of rights and principles

The purpose of Article [52]³⁹ is to set the scope of the rights and principles of the Charter, and to lay down rules for their interpretation. Paragraph 1 deals with the arrangements for the limitation of rights. The wording is based on the case law of the Court of Justice: "... it is well established in the case law of the Court that restrictions may be imposed on the exercise of fundamental rights, in particular in the context of a common organisation of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights" (judgment of 13 April 2000, Case C-292/97, paragraph 45 of the grounds). The reference to general interests recognised by the Union covers both the objectives mentioned in Article [I-2] of the Treaty on European Union and other interests protected by specific provisions of the Treaties such as Article [I-5(1)] of the Treaty on European Union and Articles III-133(3), III-154 and III-436 of the Treaty on the Functioning of the Union.

Paragraph 2 refers to rights which were already expressly guaranteed in the Treaty establishing the European Community and have been recognised in the Charter, and which are now found in the Treaties (notably the rights derived from Union citizenship). It clarifies that such rights remain subject to the conditions and limits applicable to the Union law on which they are based, and for which provision is made in the Treaties. The Charter does not alter the system of rights conferred by the EC Treaty and taken over by the Treaties.

³⁹ Article [II-112].

Paragraph 3 is intended to ensure the necessary consistency between the Charter and the ECHR by establishing the rule that, insofar as the rights in the present Charter also correspond to rights guaranteed by the ECHR, the meaning and scope of those rights, including authorised limitations, are the same as those laid down by the ECHR. This means in particular that the legislator, in laying down limitations to those rights, must comply with the same standards as are fixed by the detailed limitation arrangements laid down in the ECHR, which are thus made applicable for the rights covered by this paragraph, without thereby adversely affecting the autonomy of Union law and of that of the Court of Justice of the European Union.

The reference to the ECHR covers both the Convention and the Protocols to it. The meaning and the scope of the guaranteed rights are determined not only by the text of those instruments, but also by the case law of the European Court of Human Rights and by the Court of Justice of the European Union. The last sentence of the paragraph is designed to allow the Union to guarantee more extensive protection. In any event, the level of protection afforded by the Charter may never be lower than that guaranteed by the ECHR.

The Charter does not affect the possibilities of Member States to avail themselves of Article 15 ECHR, allowing derogations from ECHR rights in the event of war or of other public dangers threatening the life of the nation, when they take action in the areas of national defence in the event of war and of the maintenance of law and order, in accordance with their responsibilities recognised in Article [I-5 (1)] of the Treaty on European Union and in Articles III-131 and III-262 of the Treaty on the Functioning of the Union.

The list of rights which may at the present stage, without precluding developments in the law, legislation and the Treaties, be regarded as corresponding to rights in the ECHR within the meaning of the present paragraph is given hereafter. It does not include rights additional to those in the ECHR.

1. Articles of the Charter where both the meaning and the scope are the same as the corresponding Articles of the ECHR:
 - Article [2]⁴⁰ corresponds to Article 2 of the ECHR
 - Article [4]⁴¹ corresponds to Article 3 of the ECHR
 - Article [5]⁴²(1) and (2) corresponds to Article 4 of the ECHR

⁴⁰ Article [II-62].

⁴¹ Article [II-64].

⁴² Article [II-65].

- Article [6]⁴³ corresponds to Article 5 of the ECHR
 - Article [7]⁴⁴ corresponds to Article 8 of the ECHR
 - Article [10]⁴⁵(1) corresponds to Article 9 of the ECHR
 - Article [11]⁴⁶ corresponds to Article 10 of the ECHR without prejudice to any restrictions which Union law may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR
 - Article [17]⁴⁷ corresponds to Article 1 of the Protocol to the ECHR
 - Article [19]⁴⁸ (1) corresponds to Article 4 of Protocol No 4
 - Article [19](2) corresponds to Article 3 of the ECHR as interpreted by the European Court of Human Rights
 - Article [48]⁴⁹ corresponds to Article 6(2) and(3) of the ECHR
 - Article [49]⁵⁰(1) (with the exception of the last sentence) and (2) correspond to Article 7 of the ECHR
2. Articles where the meaning is the same as the corresponding Articles of the ECHR, but where the scope is wider:
- Article [9]⁵¹ covers the same field as Article 12 of the ECHR, but its scope may be extended to other forms of marriage if these are established by national legislation
 - Article [12]⁵²(1) corresponds to Article 11 of the ECHR, but its scope is extended to European Union level

⁴³ Article [II-66].

⁴⁴ Article [II-67].

⁴⁵ Article [II-70].

⁴⁶ Article [II-71].

⁴⁷ Article [II-77].

⁴⁸ Article [II-79].

⁴⁹ Article [II-108].

⁵⁰ Article [II-109].

⁵¹ Article [II-69].

⁵² Article [II-72].

- Article [14]⁵³(1) corresponds to Article 2 of the Protocol to the ECHR, but its scope is extended to cover access to vocational and continuing training
- Article [14](3) corresponds to Article 2 of the Protocol to the ECHR as regards the rights of parents
- Article [47]⁵⁴(2) and (3) corresponds to Article 6(1) of the ECHR, but the limitation to the determination of civil rights and obligations or criminal charges does not apply as regards Union law and its implementation
- Article [50]⁵⁵ corresponds to Article 4 of Protocol No 7 to the ECHR, but its scope is extended to European Union level between the Courts of the Member States.
- Finally, citizens of the European Union may not be considered as aliens in the scope of the application of Union law, because of the prohibition of any discrimination on grounds of nationality. The limitations provided for by Article 16 of the ECHR as regards the rights of aliens therefore do not apply to them in this context.

The rule of interpretation contained in paragraph 4 has been based on the wording of Article [6(2)] [I-9(3)] of the Treaty on European Union and takes due account of the approach to common constitutional traditions followed by the Court of Justice (e.g., judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 18 May 1982, Case 155/79, AM&S, [1982] ECR 1575). Under that rule, rather than following a rigid approach of "a lowest common denominator", the Charter rights concerned should be interpreted in a way offering a high standard of protection which is adequate for the law of the Union and in harmony with the common constitutional traditions.

⁵³ Article [II-74].

⁵⁴ Article [II-107].

⁵⁵ Article [II-110].

Paragraph 5 clarifies the distinction between "rights" and "principles" set out in the Charter. According to that distinction, subjective rights shall be respected, whereas principles shall be observed (Article 51(1)⁵⁶). Principles may be implemented through legislative or executive acts (adopted by the Union in accordance with its powers, and by the Member States only when they implement Union law); accordingly, they become significant for the Courts only when such acts are interpreted or reviewed. They do not however give rise to direct claims for positive action by the Union's institutions or Member States authorities. This is consistent both with case law of the Court of Justice (cf. notably case law on the "precautionary principle" in Article [174(2)] of the Treaty on the Functioning of the Union: judgment of the CFI of 11 September 2002, T-13/99, Pfizer vs. Council, with numerous references to earlier case law; and a series of judgments on Article 33 (ex-39) on the principles of agricultural law, e.g. judgment of the Court of Justice C-265/85, Van den Berg, 1987 ECR 1155: scrutiny of the principle of market stabilisation and of reasonable expectations) and with the approach of the Member States' constitutional systems to "principles" particularly in the field of social law. For illustration, examples for principles, recognised in the Charter include e.g. Articles 25, 26 and 37⁵⁷. In some cases, an Article of the Charter may contain both elements of a right and of a principle, e.g. Articles 23, 33 and 34⁵⁸.

Paragraph 6 refers to the various Articles in the Charter which, in the spirit of subsidiarity, make reference to national laws and practices.

Explanation on Article [II-113] – Level of protection

This provision is intended to maintain the level of protection currently afforded within their respective scope by Union law, national law and international law. Owing to its importance, mention is made of the ECHR.

Explanation on Article [II-114] – Prohibition of abuse of rights

This Article corresponds to Article 17 of the ECHR:

"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

⁵⁶ Article [II-111].

⁵⁷ Articles [II-85, II-86 and II-97].

⁵⁸ Articles [II-83, II-93 and II-94].

Equally, the representatives of the governments of the Member States, meeting in an Intergovernmental Conference, in accordance with the ordinary revision procedure provided for in Article [IV-443] of the Treaty on European Union, may decide to amend the Treaties, including either to increase or to reduce the competences conferred on the Union in the said Treaties.

31. Declaration concerning the Charter of Fundamental Rights

The Charter of Fundamental Rights, which has legally binding force, confirms the fundamental rights guaranteed by the European Convention on Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States.

The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined by the Treaties.

32. Declaration concerning the common foreign and security policy

The Conference underlines that the provisions in the Treaty on European Union covering the Common Foreign and Security Policy, including the creation of the office of High Representative of the Union for Foreign Affairs and Security Policy and the establishment of an External Action Service, do not affect the responsibilities of the Member States, as they currently exist, for the formulation and conduct of their foreign policy nor of their national representation in third countries and international organisations.

The Conference also recalls that the provisions governing the Common Security and Defence Policy do not prejudice the specific character of the security and defence policy of the Member States.

It stresses that the EU and its Member States will remain bound by the provisions of the Charter of the United Nations and, in particular, by the primary responsibility of the Security Council and of its Members for the maintenance of international peace and security.

33. Declaration concerning the common foreign and security policy

In addition to the specific procedures referred to in [paragraph 1 of Article 11] of the Treaty on European Union, the Conference underlines that the provisions covering the Common Foreign and Security Policy including in relation to the High Representative of the Union for Foreign Affairs and Security Policy and the External Action Service will not affect the existing legal basis, responsibilities, and powers of each Member State in relation to the formulation and conduct of its foreign policy, its national diplomatic service, relations with third countries and participation in international organisations, including a Member State's membership of the Security Council of the UN.

50. Declaration by the Republic of Latvia and the Republic of Hungary
on the spelling of the name of the single currency
in the Treaties

Without prejudice to the unified spelling of the name of the single currency of the European Union referred to in the Treaties as displayed on the banknotes and on the coins, Latvia and Hungary declare that the spelling of the name of the single currency, including its derivatives as applied throughout the Latvian and Hungarian text of the Treaties, has no effect on the existing rules of the Latvian and the Hungarian languages.

51. Declaration by Poland on the Charter of Fundamental Rights

The Charter does not affect in any way the right of Member States to legislate in the sphere of public morality, family law, as well as the protection of human dignity and respect for human physical and moral integrity.

PROTOCOL (No 3)
ON THE EURO GROUP

THE HIGH CONTRACTING PARTIES,

DESIRING to promote conditions for stronger economic growth in the European Union and, to that end, to develop ever-closer coordination of economic policies within the euro area,

CONSCIOUS of the need to lay down special provisions for enhanced dialogue between the Member States whose currency is the euro, pending the euro becoming the currency of all Member States of the Union,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

The Ministers of the Member States whose currency is the euro shall meet informally. Such meetings shall take place, when necessary, to discuss questions related to the specific responsibilities they share with regard to the single currency. The Commission shall take part in the meetings. The European Central Bank shall be invited to take part in such meetings, which shall be prepared by the representatives of the Ministers with responsibility for finance of the Member States whose currency is the euro and of the Commission.

Article 2

The Ministers of the Member States whose currency is the euro shall elect a president for two and a half years, by a majority of those Member States.

PROTOCOL (No 5)
RELATING TO ARTICLE 6(2)
OF THE TREATY ON EUROPEAN UNION
ON THE ACCESSION OF THE UNION TO THE EUROPEAN CONVENTION
ON THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

THE HIGH CONTRACTING PARTIES,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

The agreement relating to the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the "European Convention") provided for in Article 6(2) of the Treaty on European Union shall make provision for preserving the specific characteristics of the Union and Union law, in particular with regard to:

- (a) the specific arrangements for the Union's possible participation in the control bodies of the European Convention;
- (b) the mechanisms necessary to ensure that proceedings by non-Member States and individual applications are correctly addressed to Member States and/or the Union as appropriate.

Article 2

The agreement referred to in Article 1 shall ensure that accession of the Union shall not affect the competences of the Union or the powers of its institutions. It shall ensure that nothing therein affects the situation of Member States in relation to the European Convention, in particular in relation to the Protocols thereto, measures taken by Member States derogating from the European Convention in accordance with Article 15 thereof and reservations to the European Convention made by Member States in accordance with Article 57 thereof.

Article 3

Nothing in the agreement referred to in Article 1 shall affect Article 292(2) of the Treaty on the Functioning of the European Union.

PROTOCOL (No 7)**ON THE APPLICATION OF THE CHARTER OF FUNDAMENTAL RIGHTS
TO POLAND AND TO THE UNITED KINGDOM**

THE HIGH CONTRACTING PARTIES,

WHEREAS in Article 6 of the Treaty on European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights;

WHEREAS the Charter is to be applied in strict accordance with the provisions of the aforementioned Article 6 and Title VII of the Charter itself;

WHEREAS the aforementioned Article 6 requires the Charter to be applied and interpreted by the courts of Poland and of the United Kingdom strictly in accordance with the explanations referred to in that Article;

WHEREAS the Charter contains both rights and principles;

WHEREAS the Charter contains both provisions which are civil and political in character and those which are economic and social in character;

WHEREAS the Charter reaffirms the rights, freedoms and principles recognised in the Union and makes those rights more visible, but does not create new rights or principles;

RECALLING the obligations devolving upon Poland and the United Kingdom under the Treaty on European Union, the Treaty on the Functioning of the European Union, and Union law generally;

NOTING the wish of Poland and the United Kingdom to clarify certain aspects of the application of the Charter;

DESIROUS therefore of clarifying the application of the Charter in relation to the laws and administrative action of Poland and of the United Kingdom and of its justiciability within Poland and within the United Kingdom;

REAFFIRMING that references in this Protocol to the operation of specific provisions of the Charter are strictly without prejudice to the operation of other provisions of the Charter;

REAFFIRMING that this Protocol is without prejudice to the application of the Charter to other Member States;

REAFFIRMING that this Protocol is without prejudice to other obligations devolving upon Poland and the United Kingdom under the Treaty on European Union, the Treaty on the Functioning of the European Union, and Union law generally,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

1. The Charter does not extend the ability of the Court of Justice of the European Union, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms.
2. In particular, and for the avoidance of doubt, nothing in Title IV of the Charter creates justiciable rights applicable to Poland or the United Kingdom except in so far as Poland or the United Kingdom has provided for such rights in its national law.

Article 2

To the extent that a provision of the Charter refers to national laws and practices, it shall only apply to Poland or the United Kingdom to the extent that the rights or principles that it contains are recognised in the law or practices of Poland or of the United Kingdom.

IV.2.b. The Irish Protocol, 2009-2012

Editors' note to 17271/1/08 REV 1,
**Presidency Conclusions – Brussels European Council,
11/12 December 2008 [Extracts]:**

INIT version is dated 12 December 2008.



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 13 February 2009
(OR. fr)**

**17271/1/08
REV 1**

CONCL 5

COVER NOTE

from: Presidency

to: Delegations

Subject: **BRUSSELS EUROPEAN COUNCIL
11 AND 12 DECEMBER 2008**

PRESIDENCY CONCLUSIONS

Delegations will find attached the revised version of the Presidency Conclusions of the Brussels European Council (11 and 12 December 2008).

Presidency conclusions - Brussels, 11 and 12 December 2008

The European Council on 11 and 12 December 2008 approved a European Economic Recovery Plan, equivalent to about 1,5 % of the GDP of the European Union (a figure amounting to around EUR 200 billion). The plan provides a common framework for the efforts made by Member States and by the European Union, with a view to ensuring consistency and maximising effectiveness. The European Council also reached agreement on the energy/climate change package which should enable this package to be finalised with the European Parliament by the end of the year. This decisive breakthrough will enable the European Union to honour the ambitious commitments entered into in this area in 2007 and to maintain its leading role in the search for an ambitious and comprehensive global agreement at Copenhagen next year. The European Council demonstrated its intent, through concrete decisions, to give new impetus to the European Security and Defence Policy in order to meet the new security challenges. Lastly, the European Council discussed the factors designed to respond to the concerns expressed during the Irish referendum and established an approach to enable the Treaty of Lisbon to come into force before the end of 2009.

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The meeting of the European Council was preceded by an exposé by the President of the European Parliament, Mr Hans-Gert Pöttering, followed by an exchange of views.

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I. The Treaty of Lisbon

1. The European Council re-affirms that the Treaty of Lisbon is considered necessary in order to help the enlarged Union to function more efficiently, more democratically and more effectively including in international affairs. With a view to enabling the Treaty to enter into force by the end of 2009, the European Council, while respecting the aims and objectives of the Treaties, has defined the following path.

Presidency conclusions - Brussels, 11 and 12 December 2008

2. On the composition of the Commission, the European Council recalls that the Treaties currently in force require that the number of Commissioners be reduced in 2009. The European Council agrees that provided the Treaty of Lisbon enters into force, a decision will be taken, in accordance with the necessary legal procedures, to the effect that the Commission shall continue to include one national of each Member State.

3. The European Council has carefully noted the other concerns of the Irish people presented by the Taoiseach as set out in Annex 1 relating to taxation policy, family, social and ethical issues, and Common Security and Defence Policy (CSDP) with regard to Ireland's traditional policy of neutrality. The European Council agrees that, provided Ireland makes the commitment in paragraph 4, all of the concerns set out in the said statement shall be addressed to the mutual satisfaction of Ireland and the other Member States.

The necessary legal guarantees will be given on the following three points:

- nothing in the Treaty of Lisbon makes any change of any kind, for any Member State, to the extent or operation of the Union's competences in relation to taxation;

- the Treaty of Lisbon does not prejudice the security and defence policy of Member States, including Ireland's traditional policy of neutrality, and the obligations of most other Member States;

- a guarantee that the provisions of the Irish Constitution in relation to the right to life, education and the family are not in any way affected by the fact that the Treaty of Lisbon attributes legal status to the EU Charter of Fundamental Rights or by the justice and home affairs provisions of the said Treaty.

In addition, the high importance attached to the issues, including workers' rights, set out in paragraph (d) of Annex 1 will be confirmed.

Presidency conclusions - Brussels, 11 and 12 December 2008

4. In the light of the above commitments by the European Council, and conditional on the satisfactory completion of the detailed follow-on work by mid-2009 and on presumption of their satisfactory implementation, the Irish Government is committed to seeking ratification of the Treaty of Lisbon by the end of the term of the current Commission.

II. Economic and financial questions

5. The economic and financial crisis is a global crisis. That is why the European Union is working together with its international partners. The Summit held in Washington on 15 November 2008 at the initiative of the EU drew up an ambitious programme of work with a view to coordinated recovery of the world economy, more effective regulation of financial markets, better global governance and the rejection of protectionism. It should be implemented in accordance with the schedule laid down. The Council is requested to organise the preparation of this work together with the Commission and report to the Spring 2009 European Council on progress made, with a view to the next Summit on 2 April 2009 in London.
6. The EU has determined, in a coordinated manner, the emergency measures required to restore the smooth operation of the financial system and confidence among market players. The European Council stresses the need for Member States to be able to finalise these measures without delay. It calls for their full and rapid implementation, with the assistance of all parties involved, in accordance with the framework established by the Council on 2 December 2008. The European Council urges banks and financial institutions to make full use of the facilities granted to them to maintain and support lending to the economy and pass on key interest rate reductions to borrowers. It should be ensured in this context that measures within the common framework, particularly guarantee mechanisms, are actually applied so as to help lower the cost of financing for financial institutions, for the benefit of enterprises and households.

ANNEX 1**Statement of the Concerns of the Irish People on the Treaty of Lisbon
as set out by the Taoiseach**

- a) Ensuring that Ireland's requirements regarding maintenance of its traditional policy of neutrality are met;
- b) Ensuring that the terms of the Treaty of Lisbon will not affect the continued application of the provisions of the Irish Constitution in relation to the right to life, education and the family;
- c) Ensuring that in the area of taxation the Treaty of Lisbon makes no change of any kind to the extent or operation of the Union's competences;
- d) Confirming that the Union attaches high importance to:
 - social progress and the protection of workers' rights;
 - public services, as an indispensable instrument of social and regional cohesion;
 - the responsibility of Member States for the delivery of education and health services;
 - the essential role and wide discretion of national, regional and local Governments in providing, commissioning and organising non-economic services of general interest which is not affected by any provision of the Treaty of Lisbon, including those relating to the common commercial policy.

Editors' note to 11225/2/09 REV 2,
**Presidency Conclusions – Brussels European Council,
18/19 June 2009 [Extracts]:**

INIT version is dated 19 June 2009.



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 10 July 2009

**11225/2/09
REV 2**

CONCL 2

COVER NOTE

from : Presidency
to : Delegations

Subject : **BRUSSELS EUROPEAN COUNCIL
18/19 JUNE 2009**

PRESIDENCY CONCLUSIONS

Delegations will find attached the revised version of the Presidency Conclusions of the Brussels European Council (18/19 June 2009).

Presidency Conclusions – Brussels, 18/19 June 2009

In the midst of the deepest global recession since the Second World War the European Council again demonstrated the Union's determination to rise above present difficulties and to look to the future by taking a series of decisions intended to meet, rapidly and effectively, a wide range of challenges.

Convinced that the Lisbon Treaty will provide a better framework for action by the Union in a large number of fields, Heads of State or Government agreed on legal guarantees designed to respond to concerns raised by the Irish people, thus paving the way for them to be consulted again on that Treaty. Heads also took the first steps in the process of designating the President of the next Commission.

The economic crisis remains of paramount importance to citizens. The significant measures taken so far in support of the banking sector and the wider real economy have been successful in preventing financial meltdown and in beginning to restore the prospects for real growth. The European Council took a number of decisions intended to lead to the creation of a new financial supervisory architecture with the aim of protecting the European financial system from future risks and ensuring that the mistakes of the past can never be repeated. Top priority must be given to tackling the effects of the crisis on employment by helping people stay in work or find new jobs.

Successfully combating climate change will also contribute to moving to a sustainable economy and create new jobs. The European Council took further steps towards forging the EU's position for the Copenhagen Climate Change Conference at the end of the year. It sent out a strong signal of its intention to maintain a driving role in this process and called on the rest of the international Community to play its full part in bringing about a successful and ambitious outcome at Copenhagen.

European leaders expressed great concern at the dramatic situation in the Mediterranean area and agreed on a number of measures in order to help the Member States in the frontline to respond to the influx of illegal immigrants and to prevent further human tragedies.

The EU's role in the world remains of particular interest to European leaders. The European leaders underlined the strategic importance of transatlantic relations and welcomed the launch of the Eastern Partnership. They also stressed that the Middle East Peace Process remained a top priority for the EU in 2009. The European Council reconfirmed the great importance of stability and security in Afghanistan, Pakistan and the wider region. The European Council adopted declarations on Iran and the Democratic People's Republic of Korea. In a declaration on Burma/Myanmar leaders called for the immediate and unconditional release of Aung San Suu Kyi.

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Presidency Conclusions – Brussels, 18/19 June 2009

The meeting of the European Council was preceded by an exposé by the President of the European Parliament, Mr Hans-Gert Pöttering, followed by an exchange of views. The European Council warmly thanked Mr Pöttering for the work accomplished during his tenure as President of the European Parliament.

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I. Institutional issues***Ireland and the Treaty of Lisbon***

1. The European Council recalls that the entry into force of the Treaty of Lisbon requires ratification by each of the 27 Member States in accordance with their respective constitutional requirements. It reaffirms its wish to see the Treaty enter into force by the end of 2009.
2. Having carefully noted the concerns of the Irish people as set out by the Taoiseach, the European Council, at its meeting of 11-12 December 2008, agreed that, provided the Treaty of Lisbon enters into force, a decision would be taken, in accordance with the necessary legal procedures, to the effect that the Commission shall continue to include one national of each Member State.
3. The European Council also agreed that other concerns of the Irish people, as presented by the Taoiseach, relating to taxation policy, the right to life, education and the family, and Ireland's traditional policy of military neutrality, would be addressed to the mutual satisfaction of Ireland and the other Member States, by way of the necessary legal guarantees. It was also agreed that the high importance attached to a number of social issues, including workers' rights, would be confirmed.

Presidency Conclusions – Brussels, 18/19 June 2009

4. Against this background, the European Council has agreed on the following set of arrangements, which are fully compatible with the Treaty, in order to provide reassurance and to respond to the concerns of the Irish people:
- (a) Decision of the Heads of State or Government of the 27 Member States of the European Union, meeting within the European Council, on the concerns of the Irish people on the Treaty of Lisbon (Annex 1);
 - (b) Solemn Declaration on Workers' Rights, Social Policy and other issues (Annex 2).

The European Council has also taken cognisance of the unilateral declaration of Ireland (Annex 3), which will be associated with the Irish instrument of ratification of the Treaty of Lisbon.

5. Regarding the Decision in Annex 1, the Heads of State or Government have declared that:
- (i) this Decision gives legal guarantee that certain matters of concern to the Irish people will be unaffected by the entry into force of the Treaty of Lisbon;
 - (ii) its content is fully compatible with the Treaty of Lisbon and will not necessitate any re-ratification of that Treaty;
 - (iii) the Decision is legally binding and will take effect on the date of entry into force of the Treaty of Lisbon;
 - (iv) they will, at the time of the conclusion of the next accession Treaty, set out the provisions of the annexed Decision in a Protocol to be attached, in accordance with their respective constitutional requirements, to the Treaty on European Union and the Treaty on the Functioning of the European Union;

ANNEX 1**DECISION OF THE HEADS OF STATE OR GOVERNMENT OF THE 27 MEMBER STATES OF THE EU, MEETING WITHIN THE EUROPEAN COUNCIL, ON THE CONCERNS OF THE IRISH PEOPLE ON THE TREATY OF LISBON**

The Heads of State or Government of the 27 Member States of the European Union, whose Governments are signatories of the Treaty of Lisbon,

Taking note of the outcome of the Irish referendum of 12 June 2008 on the Treaty of Lisbon and of the concerns of the Irish people identified by the Taoiseach,

Desiring to address those concerns in conformity with that Treaty,

Having regard to the Conclusions of the European Council of 11-12 December 2008,

Have agreed on the following Decision:

SECTION A**RIGHT TO LIFE, FAMILY AND EDUCATION**

Nothing in the Treaty of Lisbon attributing legal status to the Charter of Fundamental Rights of the European Union, or in the provisions of that Treaty in the area of Freedom, Security and Justice affects in any way the scope and applicability of the protection of the right to life in Article 40.3.1, 40.3.2 and 40.3.3, the protection of the family in Article 41 and the protection of the rights in respect of education in Articles 42 and 44.2.4 and 44.2.5 provided by the Constitution of Ireland.

Presidency Conclusions – Brussels, 18/19 June 2009

SECTION B**TAXATION**

Nothing in the Treaty of Lisbon makes any change of any kind, for any Member State, to the extent or operation of the competence of the European Union in relation to taxation.

SECTION C**SECURITY AND DEFENCE**

The Union's action on the international scene is guided by the principles of democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

The Union's common security and defence policy is an integral part of the common foreign and security policy and provides the Union with an operational capacity to undertake missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter.

It does not prejudice the security and defence policy of each Member State, including Ireland, or the obligations of any Member State.

The Treaty of Lisbon does not affect or prejudice Ireland's traditional policy of military neutrality.

It will be for Member States - including Ireland, acting in a spirit of solidarity and without prejudice to its traditional policy of military neutrality - to determine the nature of aid or assistance to be provided to a Member State which is the object of a terrorist attack or the victim of armed aggression on its territory.

Presidency Conclusions – Brussels, 18/19 June 2009

Any decision to move to a common defence will require a unanimous decision of the European Council. It would be a matter for the Member States, including Ireland, to decide, in accordance with the provisions of the Treaty of Lisbon and with their respective constitutional requirements, whether or not to adopt a common defence.

Nothing in this Section affects or prejudices the position or policy of any other Member State on security and defence.

It is also a matter for each Member State to decide, in accordance with the provisions of the Treaty of Lisbon and any domestic legal requirements, whether to participate in permanent structured cooperation or the European Defence Agency.

The Treaty of Lisbon does not provide for the creation of a European army or for conscription to any military formation.

It does not affect the right of Ireland or any other Member State to determine the nature and volume of its defence and security expenditure and the nature of its defence capabilities.

It will be a matter for Ireland or any other Member State, to decide, in accordance with any domestic legal requirements, whether or not to participate in any military operation.

SECTION D**FINAL PROVISIONS**

This decision shall take effect on the same date as the Treaty of Lisbon.

**SOLEMN DECLARATION ON WORKERS' RIGHTS, SOCIAL POLICY AND
OTHER ISSUES**

The European Council confirms the high importance which the Union attaches to:

- social progress and the protection of workers' rights;
- public services;
- the responsibility of Member States for the delivery of education and health services;
- the essential role and wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest.

In doing so, it underlines the importance of respecting the overall framework and provisions of the EU Treaties.

To underline this, it recalls that the Treaties as modified by the Treaty of Lisbon:

- establish an internal market and aim at working for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment;
- give expression to the Union's values;
- recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union in accordance with Article 6 of the Treaty on European Union;

Presidency Conclusions – Brussels, 18/19 June 2009

- aim to combat social exclusion and discrimination, and to promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child;
- oblige the Union, when defining and implementing its policies and activities, to take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health;
- include, as a shared value of the Union, the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users;
- do not affect in any way the competence of Member States to provide, commission and organise non-economic services of general interest;
- provide that the Council, when acting in the area of common commercial policy, must act unanimously when negotiating and concluding international agreements in the field of trade in social, education and health services, where those agreements risk seriously disturbing the national organisation of such services and prejudicing the responsibility of Member States to deliver them; and
- provide that the Union recognises and promotes the role of the social partners at the level of the European Union, and facilitates dialogue between them, taking account of the diversity of national systems and respecting the autonomy of social partners.

II

(Non-legislative acts)

DECISIONS

EUROPEAN COUNCIL DECISION

of 11 May 2012

on the examination by a conference of representatives of the governments of the Member States of the amendment to the Treaties proposed by the Irish Government in the form of a Protocol on the concerns of the Irish people on the Treaty of Lisbon, to be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and not to convene a Convention

(2013/106/EU)

THE EUROPEAN COUNCIL,

Having regard to the Treaty on European Union, and in particular Article 48(3) thereof,

Having regard to the proposal for the amendment of the Treaties submitted to the Council by the Irish Government on 20 July 2011 and submitted to the European Council by the Council on 12 October 2011,

Having regard to the consent of the European Parliament not to convene a Convention ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

After notification of the proposal to the national parliaments,

Having regard to the opinion of the European Commission ⁽³⁾,

Whereas:

(1) On 18-19 June 2009, the Heads of State or Government of the 27 Member States of the European Union, meeting within the European Council, adopted a Decision on the concerns of the Irish people on the Treaty of Lisbon and declared that, at the time of the conclusion of the next accession Treaty, they would set out the provisions of that Decision in a protocol to be annexed, in accordance with their respective constitutional requirements, to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).

(2) On 20 July 2011, the Irish Government submitted, in accordance with the first sentence of Article 48(2) TEU, a proposal for the amendment of the Treaties in the form of a Protocol on the concerns of the Irish people on the Treaty of Lisbon.

(3) On 12 October 2011, in accordance with the third sentence of Article 48(2) TEU, the proposal of the Irish Government was submitted by the Council to the European Council. It was also notified to the national parliaments.

(4) At its meeting on 23 October 2011, the European Council decided, in accordance with the first subparagraph of Article 48(3) TEU, to consult the European Parliament and the Commission on the proposed amendments. It also decided, in accordance with the second subparagraph of Article 48(3) TEU, to request the consent of the European Parliament not to convene a Convention given that, in its view, the convening of such Convention was not justified by the extent of the proposed amendments.

(5) On 18 April 2012, the European Parliament adopted a favourable opinion on the proposed amendments. It also gave its consent not to convene a Convention on account of this not being justified by the extent of the proposed amendments. On 4 May 2012, the Commission adopted a favourable opinion on the proposed amendments.

(6) Therefore, it is appropriate that, in accordance with the second subparagraph of Article 48(3) TEU, the European Council decide that a conference of representatives of the governments of the Member States should examine the amendments proposed by the Irish Government, define the terms of reference of the conference and decide not to convene a Convention,

⁽¹⁾ Consent of 18 April 2012 (not yet published in the Official Journal).

⁽²⁾ Opinion of 18 April 2012 (not yet published in the Official Journal).

⁽³⁾ Opinion of 4 May 2012 (not yet published in the Official Journal).

HAS ADOPTED THIS DECISION:

Article 1

The European Council hereby decides that a conference of representatives of the governments of the Member States shall examine the amendments proposed by the Irish Government in the form of a Protocol on the concerns of the Irish people on the Treaty of Lisbon, to be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, in the wording as attached to this Decision, which will constitute the terms of reference of the said conference. In view of the extent of the proposed amendments, a Convention under Article 48(3) of the Treaty on European Union shall not be convened.

Article 2

This Decision shall enter into force on the day of its adoption.

Done at Brussels, 11 May 2012.

For the European Council
The President
H. VAN ROMPUY

IV.2.c. The Withdrawn Proposal for a Czech Protocol



EUROPEAN COUNCIL

**Brussels, 18 June 2013
(OR. en)**

EUCO 132/13

**CO EUR 11
POLGEN 95
INST 283
OC 377**

LEGAL ACTS

Subject: EUROPEAN COUNCIL DECISION on the examination by a conference of representatives of the Governments of the Member States of the amendment to the Treaties proposed by the Czech Government in the form of a Protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic, to be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and not to convene a Convention

COMMON GUIDELINES

Consultation deadline for Croatia: 19.6.2013

EUROPEAN COUNCIL DECISION

of ...

on the examination by a conference of representatives of the Governments of the Member States of the amendment to the Treaties proposed by the Czech Government in the form of a Protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic, to be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and not to convene a Convention

THE EUROPEAN COUNCIL,

Having regard to the Treaty on European Union, and in particular Article 48(3) thereof,

Having regard to the proposal for the amendment of the Treaties submitted to the Council by the Czech Government on 5 September 2011 and submitted to the European Council by the Council on 12 October 2011,

Having regard to the consent of the European Parliament not to convene a Convention¹,Having regard to the opinion of the European Parliament²,

After notification of the proposal to the national parliaments,

Having regard to the opinion of the European Commission³,

¹ Consent of 22 May 2013 (not yet published in the Official Journal).

² Opinion of 22 May 2013 (not yet published in the Official Journal).

³ Opinion of 4 May 2012 (not yet published in the Official Journal).

Whereas:

- (1) On 29 and 30 October 2009, the Heads of State or Government of the 27 Member States of the European Union, meeting within the European Council, agreed that they would, at the time of the conclusion of the next Accession Treaty and in accordance with their respective constitutional requirements, attach the Protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic, to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).
- (2) On 5 September 2011, the Czech Government submitted, in accordance with the first sentence of Article 48(2) TEU, a proposal for the amendment of the Treaties in the form of a Protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic.
- (3) On 12 October 2011, in accordance with the third sentence of Article 48(2) TEU, the proposal of the Czech Government was submitted by the Council to the European Council. It was also notified to the national parliaments.
- (4) At its meeting on 23 October 2011, the European Council decided, in accordance with the first subparagraph of Article 48(3) TEU, to consult the European Parliament and the Commission on the proposed amendments. It also decided, in accordance with the second subparagraph of Article 48(3) TEU, to request the consent of the European Parliament not to convene a Convention given that, in its view, the convening of such Convention was not justified by the extent of the proposed amendments.

- (5) On 4 May 2012, the Commission adopted a favourable opinion on the proposed amendments. On 22 May 2013, the European Parliament adopted its opinion, calling on the European Council not to examine the proposed amendment. At the same time it gave its consent not to convene a Convention on account of this not being justified by the extent of the proposed amendments.
- (6) After the date of its accession, Croatia should be included in the list of High Contracting Parties to the proposed Protocol.
- (7) It is appropriate that, in accordance with the second subparagraph of Article 48(3) TEU, the European Council decide that a conference of representatives of the governments of the Member States should examine the amendments proposed by the Czech Government, define the terms of reference of that conference and decide not to convene a Convention,

HAS ADOPTED THIS DECISION:

Article 1

The European Council hereby decides that a conference of representatives of the governments of the Member States shall examine the amendments proposed by the Czech Government in the form of a Protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic, to be annexed to the Treaty on European Union and to the Treaty on the functioning of the European Union, in the wording as attached to this Decision, which will constitute the terms of reference of that conference. In view of the extent of the proposed amendments, a convention under Article 48(3) of the Treaty on European Union shall not be convened.

The text of the Protocol is attached to this Decision.

Article 2

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

For the European Council
The President

DRAFT PROTOCOL
ON THE APPLICATION OF THE CHARTER OF FUNDAMENTAL RIGHTS
OF THE EUROPEAN UNION
TO THE CZECH REPUBLIC

THE KINGDOM OF BELGIUM,

THE REPUBLIC OF BULGARIA,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

IRELAND,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG,

HUNGARY,

THE REPUBLIC OF MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

ROMANIA,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

hereinafter referred to as "THE HIGH CONTRACTING PARTIES",

TAKING note of the wish expressed by the Czech Republic,

RECALLING the Presidency Conclusions approved by the European Council at its meeting on 29 and 30 October 2009,

RECALLING that the Heads of State or Government meeting within the European Council on 29 and 30 October 2009 agreed that they would, at the time of the conclusion of the next Accession Treaty and in accordance with their respective constitutional requirements, attach to the Treaty on European Union and the Treaty on the Functioning of the European Union a Protocol concerning the application of the Charter of Fundamental Rights of the European Union to the Czech Republic,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

ARTICLE 1

The Protocol on the application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom shall apply to the Czech Republic.

ARTICLE 2

The title, preamble and operative part of the Protocol referred to in Article 1 shall be modified in order to refer to the Czech Republic in the same terms as they refer to Poland and to the United Kingdom.

ARTICLE 3

This Protocol shall be ratified by the High Contracting Parties, in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of the Italian Republic.

This Protocol shall enter into force on the first day of the month following the deposit of the instrument of ratification by the last signatory State to take this step.

ARTICLE 4

This Protocol, drawn up in a single original in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic, shall be deposited in the archives of the Government of the Italian Republic, which shall transmit a certified copy to each of the Governments of the other signatory States.

IN WITNESS WHEREOF the undersigned Plenipotentiaries have signed this Protocol.

Done at ... on the in the year ...



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 31 March 2014
(OR. en)**

8383/14

**CO EUR-PREP 15
POLGEN 42
INST 185**

COVER NOTE

From:	Mr. M. Povejsil, Ambassador, Permanent Representative of the Czech Republic to the European Union
date of receipt:	11 March 2014
To:	Mr. T Sotiropoulos, Ambassador, Permanent Representative of the Hellenic Republic to the European Union

Subject:	Discontinuation of the procedure for an amendment to the Treaties - Protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic
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Delegations will find attached copy of a letter from the Permanent Representative of the Czech Republic to the President of the Committee of the Permanent Representatives relating to the decision of the Czech Government to discontinue the procedure for the addition of a Protocol on the application of the Charter of Fundamental Rights of the European Union in the Treaties, pursuant to Article 48(2)-(5) of the TEU.

Encl.:



Permanent Representation of
the Czech republic to the EU

15, rue Caroly, 1050 Brussels
phone.: +32 (0) 22139111, fax: +32 (0) 22139185
www.mzv.cz/eu

FFG

Martin Povejšil
Ambassador/Permanent
Representative of the Czech
Republic to the EU

Brussels, March 7, 2014

Ref. No.: 783/2014 – SZEU/PKÚ

Dian Theo,
Your Excellency,

As you are well aware, on 5 September 2011 the Czech government submitted to the Council a proposal for the amendment of the Treaties in the form of a Protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic ("Protocol"), as agreed in October 2009 by the Heads of State or Government, meeting within the European Council.

The Government of the Czech Republic thoroughly re-examined the Protocol, *inter alia* with due regard to the latest case-law of the Court of Justice of the European Union related to the applicability of the Charter of Fundamental Rights of the EU. On 19 February 2014 the Government adopted a Resolution to discontinue the procedure for the conclusion of the Protocol.

In this regard, I would respectfully ask you to circulate this information among the Permanent Representatives of the Member States of the European Union and, given the fact that on 25 June 2013 the General Affairs Council recommended to the European Council to adopt a decision regarding the Protocol, to take the necessary steps to withdraw this recommendation.

Yours sincerely,

DPG
Martin Povejšil

Cc: *Mr Uwe Corsepius, Secretary-General, Council of the European Union*
Mr Hubert Legal, Director General, Council of the European Union

H.E. Théodoros N. Sotiropoulos
Permanent Representative of the Hellenic Republic
Rue Jacques de Lalaing 19-21

Brussels

SECRETARIAT DU CONSEIL DE L'UNION EUROPÉENNE	
SGE14/02744	
REÇU LE	11 MARS 2014
DEST. PRINC.	M. FERNANDEZ-PITA
DEST. COP.	
Service Juridique	



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 8 April 2014
(OR. en)**

8385/14

**CO EUR-PREP 16
POLGEN 43
INST 186**

"I/A" ITEM NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee/Council

Subject: Withdrawal of the Recommendation for a European Council Decision on the examination by a conference of representatives of the governments of the Member States of the amendment to the Treaties proposed by the Czech Government in the form of a Protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic, to be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and not to convene a Convention

- Follow-up to the Resolution of the Czech Republic

1. By a letter dated 7 March 2014¹, the Czech Republic indicated that after having thoroughly re-examined the Protocol, *inter alia* with due regard to the latest case-law of the Court of Justice of the European Union related to the applicability of the Charter of Fundamental Rights of the EU, the government of the Czech Republic has adopted a Resolution to discontinue the procedure for the conclusion of the Protocol and requested that steps be taken to withdraw the Recommendation of the Council to the European Council to adopt a draft Decision on the examination by a conference of representatives of the Governments of the Member States on the amendment to the Treaties proposed by the Czech Government.

¹ Doc. 8383/14.

2. The background of that process has been as follows:
- On 29 and 30 October 2009, the Heads of State or Government of the 27 Member States of the European Union, meeting within the European Council, agreed that they would, at the time of the conclusion of the next Accession Treaty and in accordance with their respective constitutional requirements, attach the Protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic, to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).
 - On 5 September 2011, the Czech government, in accordance with the first sentence of Article 48(2) TEU, submitted to the Council a proposal for the amendment of the Treaties in the form of a Protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic.
 - On 12 October 2011, in accordance with the third sentence of Article 48(2) TEU, the proposal of the Czech government was submitted by the Council to the European Council. It was also notified to the national parliaments.
 - At its meeting of 23 October 2011, the European Council decided, in accordance with the first subparagraph of Article 48(3) TEU, to consult the European Parliament and the Commission on the proposed amendments. The European Council also decided, in accordance with the second subparagraph of Article 48(3) TEU, to request the consent of the European Parliament not to convene a Convention given that, in its view, the convening of such Convention was not justified by the extent of the proposed amendments.
 - The European Commission adopted a favourable opinion on 4 May 2012.
 - On 22 May 2013 the European Parliament adopted its opinion calling on the European Council not to examine the proposed amendment. At the same time it gave its consent not to convene a Convention, as this was not justified by the extent of the proposed amendments.
 - On 25 June 2013², the Council recommended to the European Council to adopt the draft Decision on the examination by a conference of representatives of the governments of the Member States of the amendment to the Treaties proposed by the Czech government.

² Doc. EUCO 132/13

3. Against this background, the Czech government requested by the letter set out in document 8383/14 the discontinuation of the procedure. This request was examined by the ANTICI Group on 8 April 2014 and it was agreed to suggest to withdraw the recommendation to amend the Treaties.
 4. Following the request of the Czech Republic, the Council is invited to withdraw its recommendation of 25 June 2013 for a European Council Decision on the examination by a conference of representatives of the Governments of the Member States of the amendment to the Treaties proposed by the Czech Government in the form of a Protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic, thus bringing an end to the procedure which has become devoid of purpose.
-