

NOTE

from : Praesidium

to : Convention

Subject : Part Three: General and final provisions

PART THREE: GENERAL AND FINAL PROVISIONS

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THE MAIN ELEMENTS

The text submitted to the Convention contains some provisions corresponding to the general and final provisions already in the existing Treaties as well as others which are either new, to take account in particular of the fact that the Constitution replaces the existing Treaties, or which amend existing provisions.

- Article A is intended to repeal the current Treaties and mentions the main Treaties repealed by the Constitution, with a reference to an exhaustive list of treaties and acts amending the TEC and the TEU to be drawn up by the Intergovernmental Conference. The technical and exhaustive nature of such a list is a strong argument for such a reference.
- Article B is a new provision intended to organise the succession of the new "European Union" entity to the European Community and the old European Union.
- Article C is intended to determine the scope of the Constitutional Treaty. It takes over an existing provision from the TEC and applies it to the European Union.
- Article D establishes that the regional unions between Belgium, Luxembourg and the Netherlands are compatible with the Constitution.
- Article E on protocols takes over a current provision.
- Article F establishes the procedure for revising the Constitutional Treaty. The procedure proposed is that referred to in Article 48 of the TEU. However, the Convention may examine other alternatives if it wishes, in particular the procedure currently followed for drawing up the Constitution.
- Article G establishes the procedure for the ratification and entry into force of the Constitutional Treaty. The procedure proposed is that currently referred to in Article 52 of the TEU. This means that the Constitutional Treaty cannot enter into force unless it has been ratified by all the Member States which signed it. The Praesidium proposes this procedure to reflect the current situation whereby the current Treaties can only be repealed with the consent of all the Member States party to them. It is, however, proposed that a new paragraph be added to the effect that the European Council will assess the political consequences of possible failure to ratify the Treaty by one or more Member States.
- Articles H and I, on the duration of the Constitutional Treaty and the languages in which it is drawn up, take over the existing provisions of the current Treaties, with the adjustments needed to take account of the new accessions.

TABLE: PART THREE: THE PROPOSED ARTICLES FOR THE GENERAL AND FINAL PROVISIONS IN RELATION TO THE EXISTING TREATIES

	New Articles	Articles reproducing provisions found in the existing Treaties, but only partially or with substantial amendments	Articles reproduced from the existing Treaties, slightly adapted or unchanged
<u>Article A</u> : Repeal of earlier Treaties	✓		
<u>Article B</u> : Legal continuity in relation to the European Community and the European Union	✓		
<u>Article C</u> : Scope		✓	
<u>Article D</u> : Regional unions			✓
<u>Article E</u> : Protocols			✓
<u>Article F</u> : Procedure for revising the Constitutional Treaty		✓	
<u>Article G</u> : Adoption, ratification and entry into force of the Constitutional Treaty		✓	
<u>Article H</u> : Duration			✓
<u>Article I</u> : Languages			✓

N.B. The comments in section IV below describe to what extent each draft Article is based on one or more existing Articles, as well as any modifications or new elements. To get an exact view of the basis of each Article, please refer to the comments.

PART THREE: GENERAL AND FINAL PROVISIONS

THE ARTICLES

Article A: Repeal of earlier Treaties

The Treaty establishing the European Community of 25 March 1957, the Single Act of 17 February 1986, the Treaty on European Union of 7 February 1992, the Treaty of Amsterdam of 2 October 1997 and the Treaty of Nice of 26 February 2001 shall be repealed as from the date of entry into force of the Constitutional Treaty. The acts and treaties listed in the Annex shall also be repealed.

Article B: Legal continuity in relation to the European Community and the European Union

The European Union shall succeed to all the rights and obligations of the European Communities and of the Union, whether internal or resulting from international agreements, which arose before the entry into force of the Constitutional Treaty by virtue of previous treaties, protocols and acts, including all the assets and liabilities of the Communities and of the Union, and their archives.

The provisions of the acts of the Institutions of the Union, adopted by virtue of the treaties and acts mentioned in the first paragraph, shall remain in force insofar as they are compatible with the Constitution. The case-law of the Court of Justice of the European Communities shall be maintained as a preferential source of interpretation of the Constitution and acts prior to its entry into force.

Article C: Scope

1. The Constitutional Treaty shall apply to the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland, ...
2. The Constitutional Treaty shall apply to the French overseas departments, the Azores, Madeira and the Canary Islands in accordance with Article ... of Part Two.
3. The special arrangements for association set out in Part [Four of the TEC] of the Constitutional Treaty shall apply to the overseas countries and territories listed in [Annex II to the TEC].

The Constitutional Treaty shall not apply to overseas countries and territories having special relations with the United Kingdom of Great Britain and Northern Ireland which are not included in that list.

4. The Constitutional Treaty shall apply to the European territories for whose external relations a Member State is responsible.
5. The Constitutional Treaty shall apply to the Åland Islands in accordance with the provisions set out in Protocol 2 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.
6. Notwithstanding the preceding paragraphs:
 - (a) the Constitutional Treaty shall not apply to the Faeroe Islands;
 - (b) the Constitutional Treaty shall not apply to the sovereign base areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus;
 - (c) the Constitutional Treaty shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the Treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community, signed on 22 January 1972.

Article D: Regional unions

The Constitutional Treaty shall not preclude the existence or completion of regional unions between Belgium and Luxembourg, or between Belgium, Luxembourg and the Netherlands, to the extent that the objectives of these regional unions are not attained by application of the Constitutional Treaty.

Article E: Protocols

The protocols annexed to this Treaty shall form an integral part thereof.

Article F: Procedure for revising the Constitutional Treaty

The government of any Member State or the Commission may submit to the Council proposals for the amendment of the Constitutional Treaty. The national Parliaments shall be notified of these proposals.

If the Council, after consulting the European Parliament and, where appropriate, the Commission, delivers an opinion in favour of calling a conference of representatives of the governments of the Member States, the conference shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to the Constitutional Treaty. The Council of the European Central Bank shall also be consulted in the case of institutional changes in the monetary area.

The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.

Article G: Adoption, ratification and entry into force of the Constitutional Treaty

1. The Constitutional Treaty 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.
2. The Constitutional Treaty shall enter into force on ..., provided that all the instruments of ratification have been deposited, or, failing that, on the first day of the month following the deposit of the instrument of ratification by the last signatory State to take this step.
3. If, two years after the signature of the Constitutional Treaty, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter shall be referred to the European Council.

Article H: Duration

The Constitutional Treaty is concluded for an unlimited period.

Article I: Languages ¹

The Constitutional Treaty, drawn up in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish, Swedish and ... languages, the texts in each of these languages being equally authentic, shall be deposited in the archives of the Government of the Italian Republic, which will transmit a certified copy to each of the governments of the other signatory States.

¹ To be adjusted in accordance with the Act of Accession.

OVERSEAS COUNTRIES AND TERRITORIES
to which the provisions of [Part Four] of the Constitutional Treaty apply

- Greenland
- New Caledonia and Dependencies
- French Polynesia
- French Southern and Antarctic Territories
- Wallis and Futuna Islands
- Mayotte
- Saint Pierre and Miquelon
- Aruba
- Netherlands Antilles
- Bonaire
- Curaçao
- Saba
- Sint Eustatius
- Sint Maarten
- Anguilla
- Cayman Islands
- Falkland Islands
- South Georgia and the South Sandwich Islands
- Montserrat
- Pitcairn
- Saint Helena and Dependencies
- British Antarctic Territory
- British Indian Ocean Territory
- Turks and Caicos Islands
- British Virgin Islands
- Bermuda

* [Annex II to the TEC] provided for in Article C.

PART THREE: GENERAL AND FINAL PROVISIONS

The Articles with comments

Article A: Repeal of earlier Treaties

The Treaty establishing the European Community of 25 March 1957, the Single Act of 17 February 1986, the Treaty on European Union of 7 February 1992, the Treaty of Amsterdam of 2 October 1997 and the Treaty of Nice of 26 February 2001 shall be repealed as from the date of entry into force of the Constitutional Treaty. The acts and treaties listed in the Annex shall also be repealed.

Comments:

The purpose of this Article is to repeal the 1957 Treaty of Rome (TEC), the 1986 Single Act, the 1993 Treaty on European Union (TEU) and the Amsterdam and Nice Treaties, and all the other treaties which have amended them insofar as their provisions are replaced by the Constitutional Treaty.

A reference is proposed to an Annex listing other treaties and acts amending the TEC and the TEU, to be repealed following the Constitution's entry into force.

The drafting of such an Annex is no easy task, given that it will require examination of all the treaties amending the TEC and the TEU and the acts of accession, to check whether they contain provisions which remain applicable and which would either have to be reproduced somewhere in the Constitution or allowed to continue to exist separately.

It is suggested that the Convention should not draw up such a list, but that it should remind the European Council that the list needs to be drawn up before the end of the IGC's proceedings.

Article B: Legal continuity in relation to the European Community and the European Union

The European Union shall succeed to all the rights and obligations of the European Communities and of the Union, whether internal or resulting from international agreements, which arose before the entry into force of the Constitutional Treaty by virtue of previous treaties, protocols and acts, including all the assets and liabilities of the Communities and of the Union, and their archives.

The provisions of the acts of the Institutions of the Union, adopted by virtue of the treaties and acts mentioned in the first paragraph, shall remain in force insofar as they are compatible with the Constitution. The case-law of the Court of Justice of the European Communities shall be maintained as a preferential source of interpretation of the Constitution and acts prior to its entry into force.

Comments:

The purpose of this provision is to arrange for the new European Union entity to succeed to the rights and obligations of the European Community and European Union, and to maintain the existing acquis on the date when the Constitutional Treaty enters into force (international agreements, secondary law, case-law, rights and obligations of third parties), assuming that the Constitutional Treaty is ratified by all the Member States.

It is proposed that the principle of succession should be established in this Article, with a reference to a protocol listing the numbers of acts which must be taken over by the new entity.

It is suggested that the Convention should not draw up such a protocol, but that it should draw the attention of the European Council to the need for it to be drawn up before the end of the IGC.

Article C: Scope

1. The Constitutional Treaty shall apply to the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland, ...
2. The Constitutional Treaty shall apply to the French overseas departments, the Azores, Madeira and the Canary Islands in accordance with Article ... of Part Two.
3. The special arrangements for association set out in Part [Four of the TEC] of the Constitutional Treaty shall apply to the overseas countries and territories listed in [Annex II to the TEC]. The Constitutional Treaty shall not apply to those overseas countries and territories having special relations with the United Kingdom of Great Britain and Northern Ireland which are not included on the aforementioned list.
4. The Constitutional Treaty shall apply to the European territories for whose external relations a Member State is responsible.
5. The Constitutional Treaty shall apply to the Åland Islands in accordance with the provisions set out in Protocol 2 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.
6. Notwithstanding the preceding paragraphs:
 - (a) the Constitutional Treaty shall not apply to the Faeroe Islands;
 - (b) the Constitutional Treaty shall not apply to the sovereign base areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus;
 - (c) the Constitutional Treaty shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the Treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community, signed on 22 January 1972.

Comments:

This provision reproduces Article 299 TEC (with the requisite technical amendments), except for the second subparagraph of paragraph 2 of this Article. It was felt that since this subparagraph was a legal basis, it should be placed in Part Two of the Constitution together with the other legal bases.

The Convention's attention is drawn to the fact that Article 299 of the TEC does not apply to the TEU. As a result, replacement of "Treaty" by "Constitutional Treaty" in this provision raises the question of the scope of the Constitutional Treaty.

This provision will need to be adjusted following entry into force of the accession treaties.

Article D: Regional unions

The Constitutional Treaty shall not preclude the existence or completion of regional unions between Belgium and Luxembourg, or between Belgium, Luxembourg and the Netherlands, to the extent that the objectives of these regional unions are not attained by application of the Constitutional Treaty.

Comments:

This provision reproduces Article 306 TEC. In any future discussions on enhanced cooperation, the Convention may wish to examine the significance of this article and/or its relationship with provisions on enhanced cooperation. However, it is recommended that the text of the article remain unchanged for the time being.

Article E: Protocols

The protocols annexed to this Treaty shall form an integral part thereof.

Comments:

This is a provision which already exists in the TEU and the TEC.

The existing protocols, whether annexed to the TEU or TEC or to both Treaties, should continue to be annexed to the new Constitutional Treaty.

The Convention may wish to draw the IGC's attention to the fact that it needs to consider what is to happen to the protocols.

Article F : Procedure for revising the Constitutional Treaty

1. The government of any Member State, or the Commission, may submit to the Council proposals for the amendment of the Constitutional Treaty. The national Parliaments shall be notified of these proposals. If the Council, after consulting the European Parliament and, where appropriate, the Commission, delivers an opinion in favour of calling a conference of representatives of the governments of the Member States, the conference shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to the Constitutional Treaty. The Council of the European Central Bank shall also be consulted in the case of institutional changes in the monetary area.
The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.

Comments:

1. *This Article reproduces Article 48 TEU. We could, as suggested by the Working Group on National Parliaments, envisage the insertion into this provision of a second paragraph reading as follows:*

"The Conference of the Representatives of the Governments of the Member States may be preceded by a preparatory Convention convened by the President of the European Council and composed of representatives of the national Parliaments, the Heads of State or Government of the Member States, the European Parliament, the Council and the Commission. At the close of its proceedings, the Convention shall adopt by consensus a recommendation to the Conference of the Representatives of the Governments of the Member States."

2. *The Convention's attention is also drawn to the following:*

- *If the Convention wishes to consider a procedure other than that referred to in Article 48 TEU or that currently used to draft the Constitution, there would, however, be a number of procedural questions to decide beforehand:*

Could the Constitution be amended by the Council, or would there still need to be a Conference of Member States?

- (a) *Who would have the right to initiate such amendment?*
 - (b) *Amendment by unanimity or a qualified majority?*
 - (c) *What would be the arrangements for participation by the Commission and the European Parliament?*
 - (d) *What would be the arrangements for participation by national Parliaments?*
 - (e) *What would be role of the Congress, if such a body were set up?*
- *If the Convention opts for a procedure other than that referred to in Article 48 TEU, it could consider the possibility of a procedure providing for recourse to the IGC alone for very limited amendments. It could also consider the possibility that certain provisions might stipulate that they may be amended by the Council or the European Council, by unanimity or qualified majority, in line with existing practice in some cases (for example Article 213 TEC as regards the number of commissioners).*
 - *This provision raises the question of what to do if any Member State fails to ratify a revision of the Treaty.*

Article G: Adoption, ratification and entry into force of the Constitutional Treaty

1. The Constitutional Treaty 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.
2. The Constitutional Treaty shall enter into force on ..., provided that all the instruments of ratification have been deposited, or, failing that, on the first day of the month following the deposit of the instrument of ratification by the last signatory State to take this step.
3. If, two years after the signature of the Constitutional Treaty, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter shall be referred to the European Council.

Comments:

This provision is in substance the same as Articles 52 TEU and 313 TEC.

Article 48 TEU, on the procedure for revising the Treaty, states that: "The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements." The Constitutional Treaty cannot therefore enter into force unless it has been ratified by all the Member States which signed it: if at least one of the signatory States did not ratify the Constitutional Treaty, it could not enter into force and the current Treaties would continue to apply.

In that case, the Member States and the institutions of the Union would have to assess the political consequences. This article contains a provision (paragraph 3), which does not appear in the current Treaties, designed to cover the eventuality that, after two years, one or more Member States have still not completed their internal ratification procedures, for whatever reason. The European Council would then have to assess the political consequences of that situation.

Some of the contributions submitted to the Convention propose that the Constitutional Treaty should, outside the scope of the Article 48 TEU procedure, enter into force for those States which have ratified it once a threshold, to be determined in the Constitutional Treaty itself, has been reached (cf. Article x + 6(§2) of the PPE text; Article 6 § 2 and 3 of the Agreement on the entry into force of the Treaty on the European Constitution submitted by the Commission; Article 47 of the Spinelli draft).

From a legal point of view, although this possibility is provided for in Article 24 of the Vienna Convention on the Law of Treaties ("a treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree"), it would create problems as regards the former Treaties if one or more signatory States did not ratify the Constitutional Treaty. The failure of one or more signatory States to ratify the Constitutional Treaty would raise the question of what was to happen to the current Treaties. The Vienna Convention on the Law of Treaties (Art. 54) states that a treaty can be terminated only in conformity with its provisions or by consent of all the parties. The current Treaties are silent on the question of their repeal, so that repeal is possible only with the consent of all the Member States party to them (i.e. the 15 at present, the 25 after entry into force of the accession treaties). Unless repealed by agreement of all the Member States of the Union, the former Treaties would remain in force.

Article H: Duration

The Constitutional Treaty is concluded for an unlimited period.

Comments:

This provision is the same as Article 51 TEU and Article 312 TEC.

Article I: Languages¹

The Constitutional Treaty, drawn up in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish, Swedish and ... languages, the texts in each of these languages being equally authentic, shall be deposited in the archives of the Government of the Italian Republic, which will transmit a certified copy to each of the governments of the other signatory States.

Comments:

This provision comes from Article 53 of the TEU and Article 314 of the TEC. It will have to be adapted following the entry into force of the accession treaties.

¹ To be adjusted in accordance with the Act of Accession.

FINAL POINTS

The Convention's attention is drawn to three points:

- (1) Some provisions at present contained in Part Six of the TEC ("General and final provisions") should appear in a specific section in Part Two of the Constitutional Treaty, unless included in other sections of Part Two.*
- (2) Article 46 of the TEU, which is included in that Treaty's final provisions, should come in Part Two, under "Court of Justice". It would also have to be amended to reflect the merging of the Treaties and, if appropriate, the conclusions reached by the discussion circle on the Court of Justice. Some parts of that article, such as subparagraph (e), would have to be retained if it is wished to maintain the status quo.*
- (3) The retention and positioning of and any amendments to Article 47 of the TEU, which is also included in that Treaty's final provisions, would have to be considered by the Convention as well, once the precise content of the Constitution's provisions on a common foreign and security policy becomes clearer.*

OVERSEAS COUNTRIES AND TERRITORIES

to which the provisions of [Part Four] of the Constitutional Treaty apply

- Greenland
- New Caledonia and Dependencies
- French Polynesia
- French Southern and Antarctic Territories
- Wallis and Futuna Islands
- Mayotte
- Saint Pierre and Miquelon
- Aruba
- Netherlands Antilles
- Bonaire
- Curaçao
- Saba
- Sint Eustatius
- Sint Maarten
- Anguilla
- Cayman Islands
- Falkland Islands
- South Georgia and the South Sandwich Islands
- Montserrat
- Pitcairn
- Saint Helena and Dependencies
- British Antarctic Territory
- British Indian Ocean Territory
- Turks and Caicos Islands
- British Virgin Islands
- Bermuda

* [Annex II to the TEC] provided for in Article C.