

NOTE

from : Praesidium
to Convention

Subject : Draft Articles on external action in the Constitutional Treaty

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Explanatory note: main elements

1. This note is intended to present the proposed structure and content of the Articles on Union external action. The attached document includes draft texts for Articles 29 and 30 of Part I, as provided for in the Treaty structure submitted on 28 October 2002 (CONV 369/02) and the relevant Articles for Title B of Part II of the Constitution.
2. The Articles translate into Constitutional Treaty language those recommendations of Working Group VII on external action and Working Group VIII on defence, which received broad support in the subsequent Convention debates. In addition, they incorporate changes deriving from horizontal issues already addressed by the Convention: single legal personality, and the simplification of instruments and procedures. They also contain draft "solidarity clause" provisions for Part I and Part II, since the plenary debate favoured the insertion of such provisions in the Constitution.
3. Having reflected at length on the current situation and the lessons of the Iraq crisis, the Praesidium takes the view that:
 - (a) it is necessary to accept that the development of the common foreign and security policy is inevitably a process, to be achieved by encouraging convergence and mutual solidarity, but
 - (b) it is also necessary to provide in the Constitution for more effective institutional mechanisms to underpin and assist the process.

Overall Structure of Part II Articles

4. In the current Treaties, the legal bases and the specific provisions describing the various external policies and actions of the Union/Community are located in different parts of the Treaties. Following a recommendation of Working Group VII, the new text groups all these provisions in one Title of the Constitution (Title B of Part II), which is subdivided into 6 Chapters. Some Chapters are further divided into sub-sections.

This new structure aims to provide a more coherent overview of how and in what areas the Union can act on the international scene. It in no way alters the fact that different modalities apply to different policy areas. Decision-making procedures, instruments and the role of the various actors vary according to the policy area in question.

Horizontal Articles

5. The two introductory Articles of Title B are of a horizontal nature. The first contains a description of the underlying principles and overall objectives which should guide the Union's action on the international scene. The proposed text is the one recommended by the Working Group on external action. The second Article, which replaces the previous provisions on "common strategies", sets out how the European Council can enable the Union to mobilise instruments covering different policy areas to give concrete form to its strategic approach towards a country, region or theme.

The "Minister of Foreign Affairs"

6. Working Group VII recommended that greater coherence of EU action and clarity in EU representation could be found by creating a "double-hatted" position bringing together *ad personam* the functions of the High Representative and those of the Commissioner for External Relations. Though some drew attention to a risk of inter-institutional tension, this recommendation received broad support in the Plenary. The attached Articles have been drafted on the assumption that the Convention wishes to recommend this new arrangement, under which the holder of the joint responsibility, hereafter called "Minister of Foreign Affairs", would be appointed by the European Council with the agreement of the President of the Commission and would:
 - contribute to the elaboration of, and be in charge of the implementation of, CFSP/ESDP, for which he/she would receive a mandate from the Council and for which he/she would not be subject to Commission collegiality, and,
 - have specific responsibilities in external relations (former 1st pillar issues) as a member of the Commission. Decisions within the Commission on these policy areas would continue to be subject to collegiality.
7. However, in exercising his/her right of initiative in the field of CFSP, the Minister could seek the support of the Commission; he/she could therefore put forward joint proposals with the Commission in this area.
8. In addition, joint proposals by the Commission and the Minister could be presented to the Council and the European Council covering both former 1st pillar aspects of external action and CFSP.

9. As to the negotiation of international agreements, the Minister would be in charge for exclusively or mainly CFSP agreements; the Commission would retain its role for other agreements. In the case of agreements covering both areas, the Council would therefore designate the negotiator or the head of the negotiating team.

Common Foreign and Security Policy (Chapter 1.A)

10. On the basis of the approach described in point 3, two main sets of modifications are suggested:
- (a) those resulting from the creation of the post of EU Foreign Minister, who would exercise tasks now attributed to the High Representative, the Presidency and the Commission. The Minister has, alongside the Member States, the right of proposal for CFSP matters and an explicit role in the formulation and implementation of policy decisions;
 - (b) those intended to encourage enhanced advance consultation, and mutual convergence of views and solidarity. There is explicit provision for extraordinary meetings of the European Council when international developments call for a common EU approach. Another provision empowers the Minister to ensure coordination of Member States' positions in international organisations.
11. As suggested by a large number of members of the Convention, there is provision for more use of QMV. It would be applicable when the Council decides on joint proposals by the Minister and the Commission, and an enabling clause would allow the European Council to extend the use of QMV in the Council on CFSP matters.

Common security and defence policy (Chapter 1.B)

12. The Constitution states clearly, both in Article 29 of Part I and in Part II, that ESDP is an integral part of CFSP. Several of the ESDP Articles are new, translating into treaty provisions the recommendations of Working Group VIII as well as significant developments since the Cologne European Council (1999).
13. The Petersberg missions have been updated, and the provisions for crisis management provide for a more coherent use of civilian and military instruments. Another main element is the introduction of different forms of flexibility to allow groups of countries which wish to undertake closer cooperation to do so in the Union framework.
14. Another novelty is the creation of an Agency for Armaments and Strategic Research, with a mission to encourage the improvement of military capability. The Agency would also allow groups of Member States to cooperate on specific programmes, bringing within the EU framework forms of cooperation currently existing outside the Union.

Financial provisions (Chapter 1.C)

15. Chapter 1 also contains financial provisions, mainly repeating the current provisions. But there are new provisions for the rapid financing of urgent CFSP activities, in particular preparation for crisis management operations.

Commercial Policy (Chapter 2)

16. The new text aims to present a simpler version of the current Articles. In addition, the role of the European Parliament has been enhanced, both for the adoption of autonomous measures and for the conclusion of international agreements.

Cooperation with third countries (Chapter 3)

17. This Chapter brings together different types of external assistance and cooperation. It groups them under three main headings:

- I: development cooperation,
- II: economic, financial and technical cooperation with third countries,
- III: humanitarian assistance.

I. Development cooperation

18. The draft Articles highlight that the European Union and the Member States' policies complement and mutually reinforce each other.

II. Economic, financial and technical cooperation with third countries

19. The main proposed change in these Articles, the first of which was introduced in Nice, is to enhance the role of the European Parliament. A new legal basis is suggested for the adoption of urgent assistance measures by qualified majority voting.

III. Humanitarian assistance

20. The Article on humanitarian assistance is new. The existing treaties provide no specific legal base for humanitarian actions, but humanitarian assistance was mentioned in the Praesidium's draft of Article 12 of Part I of the Constitution as a shared competence. The proposed Articles acknowledge the specific character of humanitarian assistance and the principle of impartiality that it implies. They draw attention to the need for Union and Member State action to be mutually reinforcing. A proposal that the Union should organise a volunteer humanitarian aid "peace corps" is included.

Restrictive measures (Chapter 4)

21. This Chapter combines in a single Article the two Articles on sanctions in the existing treaties, and widens their scope (measures not only against States but also against physical and legal persons). It also introduces a provision on informing the European Parliament.

International agreements (Chapter 5)

22. Working Group VII recommended that the various provisions scattered throughout the existing treaties on procedures for the opening and conduct of negotiations and the conclusion of international agreements should be grouped in a single chapter. It sets out the various types of agreements that the European Union can conclude and describes the relevant procedures while retaining the specificity of those concerning agreements on exchange rate issues.

Relations with international organisations and third countries - EU delegations (Chapter 6)

23. Following Working Group VII recommendations, this chapter envisages that Commission delegations abroad should become European Union delegations, under the authority of the Minister. The specific relations of the European Union with some major international organisations are mentioned.

II. Table: the proposed Articles on the Union's external action 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
PART I - TITLE V			
<u>Article 29</u> : Common foreign and security policy		✓	
<u>Article 30</u> : Common security and defence policy		✓	
PART II, TITLE B: THE UNION'S EXTERNAL ACTION			
<u>Article 1</u> : Principles and objectives*	✓		
<u>Article 2</u>		✓	
CHAPTER 1: A. FOREIGN POLICY			
<u>Article 3</u>			✓
<u>Article 4</u>		✓	
<u>Article 5</u>		✓	
<u>Article 6</u>			✓
<u>Article 7</u>			✓
<u>Article 8</u>		✓	
<u>Article 9</u>		✓	
<u>Article 10</u>	✓		
<u>Article 11</u>		✓	
<u>Article 12</u>		✓	

* Text proposed by Working Group VII integrating the principles and objectives defined in the existing Treaties for each policy and field of action.

CHAPTER 1: A. FOREIGN POLICY <i>(continued)</i>			
<u>Article 13</u>			✓
<u>Article 14</u>		✓	
<u>Article 15</u>			✓
<u>Article 16</u>		✓	
B. COMMON SECURITY AND DEFENCE POLICY			
<u>Article 17</u>		✓	
<u>Article 18</u>	✓		
<u>Article 19</u>	✓		
<u>Article 20</u>	✓		
<u>Article 21</u>	✓		
C. FINANCIAL PROVISIONS			
<u>Article 22</u>		✓	
CHAPTER 2: COMMON COMMERCIAL POLICY			
<u>Article 23</u>		✓	
<u>Article 24</u>		✓	
CHAPTER 3: COOPERATION WITH THIRD COUNTRIES AND HUMANITARIAN ASSISTANCE			
I: DEVELOPMENT COOPERATION			
<u>Article 25</u>		✓	
<u>Article 26</u>			✓
<u>Article 27</u>		✓	
II: ECONOMIC, FINANCIAL AND TECHNICAL COOPERATION WITH THIRD COUNTRIES			
<u>Article 28</u>		✓	
<u>Article 29</u>	✓		

III: HUMANITARIAN ASSISTANCE			
<u>Article 30</u>	✓		
CHAPTER 4: RESTRICTIVE MEASURES			
<u>Article 31</u>		✓	
CHAPTER 5: INTERNATIONAL AGREEMENTS			
<u>Article 32</u>		✓	
<u>Article 33</u>		✓	
<u>Article 34</u>			✓
CHAPTER 6: RELATIONS WITH INTERNATIONAL ORGANISATIONS AND UNION DELEGATIONS			
<u>Article 35</u>		✓	
<u>Article 36</u>		✓	

PART I – TITLE V			
<u>Article X</u> : solidarity clause	✓		
PART II - CHAPTER X: SOLIDARITY			
<u>Article X</u> : implementation of the solidarity clause	✓		

TEXTS OF THE ARTICLES WITH COMMENTS

PART I – TITLE V

Article 29

The Union's common foreign and security policy

1. The European Union shall undertake to conduct a common foreign and security policy, based on the progressive development of mutual political solidarity among Member States, the progressive identification of questions of general interest and the achievement of an ever-increasing degree of convergence of Member States' actions.
2. The European Council shall identify the Union's strategic interests and determine the objectives of its common foreign and security policy. The Council of Ministers shall frame this policy in accordance with the arrangements in Part Two of the Constitution.
3. The European Council and the Council of Ministers shall adopt the necessary decisions.
4. The common foreign and security policy shall be put into effect by the Union's Minister for Foreign Affairs and by the Member States, using national and Union resources.
5. Member States shall consult one another within the Council and the European Council on any foreign and security policy issue which is of general interest in order to determine a common approach. Before undertaking any action on the international scene or any commitment which could affect the Union's interests, each Member State shall consult the others within the Council or the European Council. Member States shall ensure, through the convergence of their actions, that the Union is able to assert its interests and values on the international scene. Member States shall show mutual solidarity.

6. The European Parliament shall be consulted on the main aspects and basic choices of the common foreign and security policy, and shall be kept informed of how it develops.
7. Decisions relating to the common foreign and security policy shall be adopted by the European Council and the Council of Ministers unanimously, except in the cases referred to in Part Two of the Constitution. They shall act on a proposal from a Member State or from the Union's Minister for Foreign Affairs, alone or together with the Commission.
8. The European Council may unanimously decide that the Council should act by a qualified majority in cases other than those referred to in Part Two of the Constitution.

Comments

1. *Paragraph 1 describes the evolving nature of the CFSP, based on the growth of mutual solidarity, the convergence of positions and the political will to act together on the international scene.*
2. *Paragraph 2 describes the driving role of the European Council. The wording corresponds to recommendation 3 of Working Group VII, which states that the European Council should define "strategic objectives and interests" on the basis of the general principles and objectives for external action as set out in the Constitution (Working Group VII has proposed a text on the principles and objectives of external action, which is included in Article 1 of Title B on external action in Part Two). This paragraph then posits the central role which the Council plays in drawing up the CFSP, on the basis of guidelines adopted by the European Council. The arrangements are described in Part Two of the Constitution.*
3. *Paragraph 3 takes account of the fact that, based on recommendations made by the Working Group on Simplification, CFSP instruments (actions, positions and common strategies) have been replaced by "decisions". It further states that the European Council should adopt decisions (currently its role is to "define general guidelines" and "decide on common strategies").*
4. *The CFSP will be implemented by the Union's Minister for Foreign Affairs, whose functions will be described in Title IV on the institutions. In the framework of his CFSP functions, the Minister may be granted a mandate by the Council and the European Council to act on behalf of the Union on the international scene. He will defend the Union's positions and conduct a dialogue with third countries and international organisations. Member States*

also have to comply with and implement decisions taken under the CFSP. They will do so using national resources, for example by instructing their diplomatic missions to make démarches, to defend the Union's positions or to vote according to the agreed line in international fora. The role to be played by the special representatives will be mentioned in Part Two.

5. *Paragraph 5 highlights the importance of systematic cooperation and of solidarity between Member States. These are essential elements of CFSP activity, since they contribute to the convergence of views between Member States and to strengthening the political will needed to achieve joint positions and actions. The requirement to consult and cooperate is stronger than in the TEU, which reads as follows: "Article 16: Member States shall inform and consult one another within the Council on any matter of foreign and security policy of general interest in order to ensure that the Union's influence is exerted as effectively as possible by means of concerted and convergent action". (The principle by which CFSP activity is not limited to the proceedings of the Council in Brussels but also develops in third countries and within international organisations will be set forth in Part Two.)*
6. *The details of paragraph 6 will be set out in Part Two of the Constitution, and will include the relevant recommendations by Working Group VII. The Group recognised that the current provisions of Article 21 TEU were satisfactory, but also that they should be complemented to include the participation of the Minister for Foreign Affairs in the tasks described in Article 21 TEU – consultation on the main aspects and basic choices of the CFSP, and information about its development.*
7. *Paragraph 7 covers:*
 - (a) *the decision-making procedure (unanimity remaining the general rule, albeit with some important exceptions) and*
 - (b) *the right of initiative (shared by the Minister for Foreign Affairs – alone or together with the Commission - and the Member States).*

Part Two mentions the exceptions to the rule of unanimity, as currently laid down in the Treaty:

- (a) *the appointment of a special representative (Article 23(2) TEU),*
- (b) *the implementation of existing joint actions or common positions (Article 23(2) TEU, revised to take account of the simplification of instruments),*
- (c) *implementation of common strategies (Article 23(2) TEU, revised to take account of simplification).*

On the basis of recommendation 8 by the Working Group, this list also includes: decisions by the Council when acting on a joint proposal from the Minister for Foreign Affairs (for the CFSP) and the Commission (for the other aspects of external action).

Working Group VII pointed out that " to avoid CFSP inertia and encourage a pro-active CFSP, maximum use should be made of existing provisions for the use of qualified majority voting, and of provisions allowing for some form of flexibility, such as constructive abstention". The provision concerning constructive abstention will be mentioned in Part Two of the Constitution (see also paragraph 9 below).

8. *The Working Group recommended the inclusion in the Constitution of a provision making it possible for the European Council, acting unanimously, to extend the field of application of qualified majority voting by the Council to areas of the CFSP other than those provided for in the Constitutional Treaty.*

Reminder: The specific CFSP provisions do not affect the provisions for other policies and areas of external action. Part Two, Title B, of the Constitution lays down the decision-making procedure, the instruments, the right of initiative and the roles of the various parties for each policy or area of external action.

Reminder: The jurisdiction of the Court of Justice does not cover the CFSP. The areas in which the Court is competent will be listed in another Article of the Constitution. For this reason, there is no need to mention the absence of judicial control by the Court in an Article on the CFSP. However, the Treaty does provide for political control of the implementation of the CFSP, which is carried out by the Council. The relevant provisions are reproduced in Part Two of the Constitution.

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Article 30

Common security and defence policy

1. The common security and defence policy, which is an integral part of the common foreign and security policy, shall provide the Union with an operational capability which makes use of military and civilian means. The Union may deploy them on tasks outside the Union to preserve peace and strengthen international security in accordance with the principles of the United Nations Charter.

2. The common security and defence policy shall include the progressive framing of a common defence policy for the Union. This will lead to a common defence, when the European Council, acting unanimously, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.

The policy of the Union in accordance with this Article shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework.

3. Member States shall make military and civilian capabilities available to the common security and defence policy, to contribute to the objectives defined by the Council.

Member States shall undertake progressively to improve their military capabilities. A European Armaments and Strategic Research Agency shall be established to identify operational requirements, to put forward measures to satisfy those requirements, to contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, and to assist the Council in evaluating the improvement of its military capabilities.

Those Member States which establish multinational forces together may also make those forces available to the common security and defence policy.

4. Decisions on the implementation of the common security and defence policy, including those initiating a task as referred to in this Article, shall be adopted by the Council acting unanimously on a proposal from the Union's Minister for Foreign Affairs or from a Member State. The Minister for Foreign Affairs may propose the use of both national resources and Union instruments, together with the Commission where appropriate.
5. The Council may entrust the execution of a task, within the Union framework, to a group of Member States. The execution of such a task shall be governed by Article 18 in Part Two, Title B, of the Constitution.
6. Those Member States which fulfil higher criteria for military capabilities and which have made more binding commitments to one another in this area with a view to more demanding tasks shall establish structured cooperation within the Union framework. Such cooperation shall be governed by the provisions of Article 20 of Part Two, Title B, of the Constitution.
7. Until such time as the European Council has acted in accordance with paragraph 2 of this Article, closer cooperation shall be established, in the Union framework, as regards mutual defence. Under this cooperation, if one of the Member States participating in such cooperation is the victim of armed aggression on its territory, the other participating States shall give it aid and assistance by all the means in their power, military and other, in accordance with Article 51 of the United Nations Charter. The detailed arrangements for participation in this cooperation and its operation, and the relevant decision-making procedures, are set out in Article 21 of Part Two, Title B, of the Constitution.
8. The European Parliament shall be consulted on the main aspects and basic choices of the common security and defence policy, and shall be kept informed of how it develops.

Comments

The preliminary draft of the Constitutional Treaty provides for a separate Article within Title V "implementation of Union action", entitled "common defence policy".

The aim of this Article is to present the instruments and procedures for implementing the common security and defence policy. One of the essential characteristics of the common security and defence policy is its unique nature. It gives the Union an operational capability, but the military resources on which the Union might call to implement this policy are national resources.

The common security and defence policy is recognised as an integral part of the CFSP. The common defence policy is being framed progressively. That is why "common security and defence policy" (a term which does not currently appear in the Treaty but which has been in common use since the Cologne European Council in June 1999) has been chosen as the heading of this Article.

- 1. Paragraph 1 highlights the special nature of the common security and defence policy; namely the operational capability developed since the Cologne European Council in June 1999. The tasks mentioned in this paragraph are more precisely defined in Article 17 in Part Two of the Constitution. They cover both the Petersberg tasks as they already appear in the Treaty and the tasks recommended by Working Group VIII, which the Convention has agreed to add.*

The sentence on preserving peace and strengthening international security in accordance with the principles of the United Nations Charter comes from the third indent of Article 11(1) TEU, and is intended briefly to define those tasks.

- 2. Paragraph 2 paraphrases the first subparagraph of Article 17(1) TEU, which refers to the possibility of a common defence.*

However, the second sentence of the paragraph has been strengthened. It considers a common defence to be a logical conclusion of the common defence policy; a common defence is thus an aim of this policy, to be attained by the European Council when it decides to that effect, acting unanimously.

The third sentence of the first subparagraph is taken directly from the first subparagraph of Article 17(1) TEU .

Reminder: the first subparagraph of Article 17(1) TEU states:

"It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements."

The second subparagraph is taken directly from the third subparagraph of Article 17(1) TEU, which specifies that policy in accordance with that Article should not prejudice either the national policy of the Member States in this area nor the commitments which some States have made in the Washington Treaty framework.

Reminder: the second subparagraph of Article 17(1) TEU states:

"The policy of the Union in accordance with this Article shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework."

3. *Paragraph 3 explains the other special feature of the common security and defence policy – its implementation using national resources. The two forms of capability (civilian and military) have been developed in parallel by European Councils since 1999 and by successive conferences on improving military and civilian capabilities.*

The second subparagraph, following the recommendations of the Working Group on Defence, stipulates a commitment for Member States to improve their military capabilities. It is for the Council, assisted by the European Armaments and Strategic Research Agency, to evaluate this commitment. The Agency is established in this paragraph in accordance with the recommendations of the Working Group on Defence. A legal basis for cooperation between the Member States as regards armaments already exists in the current Treaty (third subparagraph of Article 17(1): "The progressive framing of a common defence policy will be supported, as Member States consider appropriate, by cooperation between them in the field of armaments"). This Article formally establishes the Agency and describes its main tasks. The Agency is to be governed by the provisions of Article 19 in Part Two, Title B, of the Constitution.

It should be remembered that the evaluation procedure mentioned at the end of the second subparagraph is already established in the framework of the Capability Development Mechanism (CDM) approved by the Member States. Here it is to be enshrined in the Constitution.

The third subparagraph contains provisions allowing for the possible inclusion in the Union framework of the multinational forces in existence amongst the Member States but outside the Union. These are the multinational military units which have already been created by Member States, and which have headquarters or general staff. This is the case with Eurocorps (land forces: Germany, Belgium, Spain, France, Luxembourg); Eurofor (land forces: Spain, France, Italy, Portugal); Euromafor (maritime forces: Spain, France, Italy, Portugal); European Air Group (Germany, Belgium, Spain, France, Italy, United Kingdom); Multinational Division (Central) (Germany, Belgium, Netherlands,

United Kingdom); and the headquarters of the 1 German/Netherlands Corps (Germany, Netherlands, United Kingdom). There are also other multinational forces established between Member States, but which do not have joint headquarters (for example the UK-Netherlands Landing Force and the Spanish-Italian Amphibious Force).

4. Paragraph 4 presents the decision-making procedure for the implementation of the common security and defence policy. In accordance with the recommendations of Groups VII and VIII it also states the right of initiative of the Minister for Foreign Affairs. The Commission has no right of initiative in defence matters. With regard to the use of the Union's military capabilities or instruments, the Minister, by virtue of his CFSP responsibilities, may propose the use of Member States' military, civilian and diplomatic capabilities (after consulting Member States) or, acting jointly with the Commission, the use of other instruments which the Union has available to it (e.g. technical assistance, development aid, etc.).
5. Paragraph 5 makes it possible to establish closer cooperation for the implementation of a particular mission, when not all States want to commit themselves to conducting an operation. The decision to launch an operation, and decisions on its objective, its scope, and the general arrangements for its implementation would be taken by the Council acting unanimously (in accordance with the provisions of paragraph 4 of the same Article); the operation would thus be an EU operation. However, it could be envisaged that some States, while agreeing that the operation should be launched, might not want or might not have sufficient or appropriate capabilities to carry out that operation. In such cases, other Member States would be able to conduct the operation in accordance with the provisions of this paragraph. The arrangements for the conduct of an operation by a group of Member States in accordance with this paragraph are described in Article 18 of Part Two, Title B, of the Constitution.
6. The Working Group on Defence noted that the level of willingness as regards commitment of military capabilities with a view to certain of the most demanding tasks already included in the Treaty, such as for example peacemaking, varied greatly between the Member States. Therefore, in accordance with the Group's report, paragraph 6 provides for a form of structured cooperation to be established in the Constitution between those Member States which have a high level of military capabilities and which have entered into more demanding commitments to one another as regards capabilities. A condition of participation in this structured cooperation would be to fulfil criteria as regards military capabilities. The arrangements for this cooperation are described in Article 20 in Part Two of the Constitution.

This form of flexibility would make it possible to institutionalise and include in the Union framework operations in which Member States currently engage through "coalitions of the willing", the added value being that with such a provision they could do so in the Union framework and thus with the political support of the all the Member States.

7. *In accordance with the report of Group VIII and a considerable number of contributions made at the plenary session of the Convention, paragraph 7 establishes closer cooperation enabling those Member States which so wish to take up in the Union framework the mutual assistance commitment made in Article V of the Brussels Treaty.*

When the European Council reaches a decision under paragraph 2, thus establishing a common defence, this paragraph will become obsolete.

8. *This paragraph ensures that the European Parliament is consulted and kept informed in the field of the common security and defence policy.*

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Other points, such as the role of the Political and Security Committee and of the special representatives have not been dealt with, since as the common security and defence policy is part of the CFSP, the relevant provisions of Article 29 of Part One also apply to the common security and defence policy.

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Article X

Solidarity clause

In application of the principle of solidarity, the Union shall mobilise all the instruments at its disposal, including military resources, to:

- prevent the terrorist threat;
- protect democratic institutions and the civilian population from any terrorist attack;
- assist a Member State in its territory at the request of its political authorities in the event of a terrorist attack .

The detailed rules for implementing this provision appear in Article X of Part Two, Title B, of the Constitution.

Comments

The insertion in the Constitution of a "solidarity clause" was recommended by the Working Group on Defence. In view of the fundamental and constitutional nature of the clause, it appears in Part One of the Constitution. However, it should be noted that it is of horizontal scope, enabling the various resources to be called on (both national military capabilities and the instruments of the Union). Consequently, it is covered by a separate article in Title V of Part I of the Constitution.

This clause would be activated in the case of a terrorist threat or attack. Working Group VIII specified in its recommendations that this would have to be terrorism by non-State bodies. Given firstly that an attack by a third State, even if it took the form of a "terrorist" attack, would be an act of "aggression", and secondly since the solidarity clause would have to become operational immediately when a dangerous situation arose, the Praesidium felt it appropriate to propose the wording which appears in this Article.

The Working Group on Defence recommended that this clause should also cover the case of man-made or natural disasters. Article 15(2) of the Constitution states that "protection against disasters" is one of the areas of supporting action.

Reminder, Article 15(2) of the Constitution states that:

- "2. The areas for supporting action are:*
- employment*
 - industry*
 - education, vocational training and youth*
 - culture*
 - sport*
 - protection against disasters."*

As protection against disasters has no legal basis at present, such a basis should be established in Part II of the Constitution. In that basis, it could also be specified that military capabilities could be used to support civil protection.

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PART TWO – TITLE B

THE UNION'S EXTERNAL ACTION

Article 1

Principles and objectives

1. The Union's action on the international scene shall be guided by, and designed to advance in the wider world, the principles which have inspired its own creation, development and enlargement: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, equality and solidarity, and for international law in accordance with the principles of the United Nations Charter. The Union shall seek to develop relations and build partnerships with countries, and regional or global organisations, which share these values. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.

2. The European Union shall define and pursue common policies and Union actions, and shall work for a maximum degree of cooperation in all fields of international relations, in order to:
 - (a) safeguard the common values, fundamental interests, independence and integrity of the Union;
 - (b) consolidate and support democracy, the rule of law, human rights and international law;
 - (c) preserve peace, prevent conflicts and strengthen international security, in conformity with the principles of the United Nations Charter;
 - (d) foster the sustainable economic and social development of developing countries, with the primary aim of eradicating poverty, particularly in low-income countries;

- (e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;
 - (f) develop international measures to preserve and improve the environment and global natural resources, and ensure sustainable development;
 - (g) assist populations, countries and regions confronting man-made or natural disasters;
 - (h) promote an international system based on stronger multilateral cooperation and good global governance.
3. The Union shall ensure consistency between the different areas of its external action. It shall also take into account the principles and objectives listed above in the development and implementation of external aspects of other Union policies.

Comments

1. *The draft Article on the principles and objectives of the Union's external action was drawn up by Working Group VII and appears in the recommendations contained in the Group's report (CONV 459/02, paragraph 2 of the recommendations and paragraphs 11 and 12 of the detailed report). The text of the Working Group is taken over in its entirety, with a very limited number of drafting changes (in italics, with the old text in square brackets), the first of which applies only to the French translation of the original English text of the draft Article. The original English version indicated that the Union's action on the international scene "will be guided by" and was rendered in French by the much weaker "s'inspire des". Working Group VII opted for the approach of defining the principles and objectives of all external action in a single Article, therefore deleting the lists of specific objectives of each policy area concerned in existing Articles.*
2. *The need to ensure consistency between the areas of the Union's external action, as well as between external action and internal policies when these have external effects, was emphasised in the discussions of Working Group VII (CONV 459/02, paragraph 2 of the recommendations and paragraphs 11 and 12 of the detailed report). A proposal to include a third paragraph reflecting this idea in the draft Article on the principles and objectives of the Union's external action did not receive majority support in the Working Group, but it was considered important to add a paragraph to the Article to avoid having to insert a text along these lines in an Article under each area of external action. It is worth noting that the current Article 178 TEC refers to consistency between other policy areas and the objectives of development cooperation policy, and that this reference has, as a result of paragraph 3 of the Article on principles and objectives, been deleted in the revised version of this Article.*

Article 2

1. On the basis of the principles and objectives referred to in Article 1 of this Title, the European Council shall identify the strategic interests and objectives of the Union.

European Council decisions on the strategic interests and objectives of the Union may relate to foreign policy and to other areas of the external action of the Union. Such decisions may concern the relations of the Union with a specific country or region or may be thematic in approach. They shall define their duration, and the means to be made available by the Union and the Member States.

The European Council shall act unanimously on a proposal from the Council. The Council proposal shall be adopted by the Council by a qualified majority on the basis of recommendations by the Minister for Foreign Affairs (for matters relating to the common foreign and security policy), by the Commission (for other areas of external action), or by both together. The decisions of the European Council shall be implemented by the Council in accordance with the procedures provided for in the Constitution.

2. The Minister for Foreign Affairs, for the field of common foreign and security policy, and the Commission, for other fields of external action, may submit joint proposals to the Council. The Council shall adopt decisions on such joint proposals by qualified majority.

Comments

1. *This text partly reproduces Article 13(2) TEU on common strategies, with the change in name (decisions on strategic interests and objectives), and incorporates recommendation 3 of Working Group VII regarding the European Council's role in defining strategic interests and objectives: "Once the overall principles and objectives are set in the Treaty, the EU should define strategic objectives and interests, as well as strategies to pursue them actively. The Group recommends that the European Council should define EU strategic objectives and*

interests in relation to a specific country/region, situation or theme, and should establish parameters guiding EU and Member States' action. The External Action Council would be in charge of the implementation of these strategic objectives and interests. The European Council would then proceed to periodic examination of the degree of realisation of these objectives and interests."

The second subparagraph here is new; it states explicitly that the European Council's decisions may relate to both CFSP and other areas of external action. This is in fact already the case for common strategies, although it is not stated explicitly in Title V TEU. Working Group VII came down in favour of instruments which were comprehensive in approach and covered several areas of external action.

The third subparagraph is adapted from the second subparagraph of Article 13(3) TEU (TEU: "The Council shall recommend common strategies to the European Council and shall implement them, in particular by adopting joint actions and common positions"). Amendments have been made to add that:

- (a) the Council shall act on a proposal by the Minister, the Commission or both acting jointly, and*
- (b) a European Council decision covering both CFSP and other areas of external action must be implemented in accordance with the procedures laid down for each area.*

- 2. Working Group VII recommended that the Constitution should provide for the possibility of the Minister (for CFSP matters) and the Commission (for other aspects of external action) jointly submitting to the Council proposals covering different aspects of external action. The Group also recommended that the Council should act in such cases by qualified majority.*

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CHAPTER 1: COMMON FOREIGN AND SECURITY POLICY

A. *Common foreign policy*

Article 3

1. In the context of the principles and objectives of its external action as set out in Article 1 of this Title, the Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy.
2. The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity.

The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.

The Council and the Minister for Foreign Affairs shall ensure that these principles are complied with.

3. The Union shall conduct the common foreign and security policy by:
 - defining the principles and general guidelines,
 - adopting decisions on:
 - actions of the Union,
 - positions of the Union,
 - strengthening systematic cooperation between Member States in the conduct of policy.

Comments

1. Paragraph 1 is a shortened version of Article 11 TEU adapted to reflect the fact that the principles and objectives of external action have been grouped together and now head the Title on external action.

The sentence "The Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy" comes from the current Treaty. It states the principle that there are no Treaty-imposed limits on CFSP activities and that the Union may decide on any matter within the scope of foreign and security policy.

2. Paragraph 2: Article 11(2) TEU unchanged:

"The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity.

The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations."

The sole addition is the insertion of "and the Minister for Foreign Affairs" in the sentence "The Council shall ensure that these principles are complied with."

3. Paragraph 3 is an adapted version of Article 12 TEU, in which the names of CFSP instruments have been changed in line with the recommendations on the simplification of instruments. Joint actions and common positions have become decisions on actions or positions of the Union. It should be pointed out that common strategies, which have become decisions on the strategic interests and objectives of the Union, are incorporated in Article 2 of this Title.

The provision regarding the definition of principles and general guidelines (first indent) and that on systematic cooperation between Member States (third indent) are in the current Article 12 TEU.

Article 4

The European Council shall define the principles of and general guidelines for the common foreign and security policy, including for matters with defence implications.

If international developments so require, the President of the European Council shall convene an extraordinary meeting of the European Council in order to define the strategic lines of the Union's policy in the face of such developments.

The Council shall take the decisions necessary for defining and implementing the common foreign and security policy on the basis of the strategic lines defined by the European Council.

Comments

1. *The first subparagraph reproduces verbatim Article 13(1) TEU: "The European Council shall define the principles of and general guidelines for the common foreign and security policy, including for matters with defence implications."*

The second subparagraph is new. It introduces (makes explicit) the option of convening an extraordinary meeting of the European Council when the international situation requires this. A similar provision applying to the Council is already to be found in Article 22(2) TEU.

The third subparagraph reproduces the first subparagraph of Article 13(3) TEU: "The Council shall take the decisions necessary for defining and implementing the common foreign and security policy on the basis of the general guidelines defined by the European Council."

Article 5

1. The Minister for Foreign Affairs, who shall chair the Foreign Affairs Council, shall contribute through his proposals towards the preparation of the common foreign and security policy and shall be responsible for implementing the decisions taken by the European Council and the Council.
2. For matters relating to the common foreign and security policy, the Union shall be represented by the Minister for Foreign Affairs, who shall conduct the political dialogue on the Union's behalf and shall express the Union's position in international organisations and at international conferences.

Comments

Texts adapted from Article 26 TEU on the role of the High Representative for the CFSP and from Article 18 TEU on the role of the Presidency (Troika), in order to take account of the creation of the post of Minister for Foreign Affairs.

Article 6

1. Where the international situation requires operational action by the Union, the Council shall take the necessary decisions. A decision shall lay down the objectives, scope, the means to be made available to the Union, if necessary its duration, and the conditions for implementation of the action.
2. If there is a change in circumstances having a substantial effect on a question subject to such a decision, the Council shall review the principles and objectives of the action and take the necessary decisions. As long as the Council has not acted, the decision on action by the Union shall stand.
3. Such decisions shall commit the Member States in the positions they adopt and in the conduct of their activity.
4. Whenever there is any plan to adopt a national position or take national action pursuant to such a decision, information shall be provided in time to allow, if necessary, for prior consultations within the Council. The obligation to provide prior information shall not apply to measures which are merely a national transposition of Council decisions.
5. In cases of imperative need arising from changes in the situation and failing a Council decision, Member States may take the necessary measures as a matter of urgency having regard to the general objectives of the decision on action by the Union. The Member State concerned shall inform the Council immediately of any such measures.
6. Should there be any major difficulties in implementing such a decision, a Member State shall refer them to the Council which shall discuss them and seek appropriate solutions. Such solutions shall not run counter to the objectives of the action or impair its effectiveness.

Comments

1. *This subparagraph reproduces Article 14(1) TEU on joint actions, adapted to reflect the changed name of CFSP instruments (decisions).*
2. *Article 14(2) TEU unchanged, except for the name of the instrument: "If there is a change in circumstances having a substantial effect on a question subject to joint action, the Council shall review the principles and objectives of that action and take the necessary decisions. As long as the Council has not acted, the joint action shall stand."*
3. *Article 14(3) TEU unchanged, except for the name of the instrument: "Joint actions shall commit the Member States in the positions they adopt and in the conduct of their activity."*
4. *Article 14(5) TEU unchanged, except for the name of the instrument: "Whenever there is any plan to adopt a national position or take national action pursuant to a joint action, information shall be provided in time to allow, if necessary, for prior consultations within the Council. The obligation to provide prior information shall not apply to measures which are merely a national transposition of Council decisions."*
5. *Article 14(6) TEU unchanged except for the name of the instrument: "In cases of imperative need arising from changes in the situation and failing a Council decision, Member States may take the necessary measures as a matter of urgency having regard to the general objectives of the joint action. The Member State concerned shall inform the Council immediately of any such measures."*
6. *Article 14(7) TEU unchanged, except for the name of the instrument: "Should there be any major difficulties in implementing a joint action, a Member State shall refer them to the Council which shall discuss them and seek appropriate solutions. Such solutions shall not run counter to the objectives of the joint action or impair its effectiveness."*

Article 7

The Council shall adopt decisions which shall define the approach of the Union to a particular matter of a geographical or thematic nature. Member States shall ensure that their national policies conform to the positions of the Union.

Comments

*Text of Article 15 TEU, incorporating the change in name of the common position (to "decision").
"The Council shall adopt common positions. Common positions shall define the approach of the Union to a particular matter of a geographical or thematic nature. Member States shall ensure that their national policies conform to the common positions."*

Article 8

1. Any Member State or the Minister for Foreign Affairs, acting alone or together with the Commission, may refer to the Council any question relating to the common foreign and security policy and may submit proposals to the Council.
2. In cases requiring a rapid decision, the Minister for Foreign Affairs, of the Minister's own motion, or at the request of a Member State, shall convene an extraordinary Council meeting within forty-eight hours or, in an emergency, within a shorter period.

Comments

1. *This paragraph defines the right of initiative in the CFSP field. It is modelled on Article 22 TEU. The right of initiative of Member States is provided for in the current Treaty. Such a right is also accorded to the Commission, but not to the High Representative: Article 22 TEU states that "Any Member State or the Commission may refer to the Council any question relating to the common foreign and security policy and may submit proposals to the Council". The new text proposes that the right of initiative should be accorded to Member States and to the Minister for Foreign Affairs, who may exercise that right acting either alone or together with the Commission.*
2. *Reproduces Article 22(2) TEU, which is designed to ease procedures in emergencies. "The Presidency" has been replaced by "the Minister for Foreign Affairs", to reflect the fact that the Minister will chair meetings of the External Action Council, a proposal which drew broad support in the Convention.*

Article 9

1. Decisions under this Chapter shall be taken by the Council acting unanimously. Abstentions by members present in person or represented shall not prevent the adoption of such decisions.

When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration under the present subparagraph. In that case, it shall not be obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position. If the members of the Council qualifying their abstention in this way represent more than one third of the votes weighted in accordance with Article X of the Constitution, the decision shall not be adopted.

2. By derogation from paragraph 1, the Council shall act by qualified majority:
 - when adopting decisions on Union actions and positions on the basis of a European Council decision relating to the Union's strategic interests and objectives, as defined in Article 2(1) of this Title;
 - when acting on the basis of a joint proposal by the Minister for Foreign Affairs and the Commission, as defined in Article 2(2);
 - when adopting any decision implementing a decision on Union action or position;
 - when appointing a special representative in accordance with Article 11 of this Chapter.

If a member of the Council declares that, for important and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. The Council may, acting by a qualified majority, request that the matter be referred to the European Council for decision by unanimity.

This paragraph shall not apply to decisions having military or defence implications.

3. The European Council may decide unanimously that the Council shall act by a qualified majority in cases other than those referred to in paragraph 2 above.

Comments

This article concerns the decision-making procedure in the field of CFSP. Unanimity continues to be the general rule. Working Group VII recommended that "maximum use should be made of existing provisions for the use of qualified majority voting, and of provisions allowing for some form of flexibility, such as constructive abstention." It also proposed inserting into the Constitution an enabling clause allowing the European Council to extend qualified majority voting to areas other than those provided for in the Treaty.

1. *Text of Article 23(1) TEU unchanged on constructive abstention: "Decisions under this Title shall be taken by the Council acting unanimously. Abstentions by members present in person or represented shall not prevent the adoption of such decisions.*

When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration under the present subparagraph. In that case, it shall not be obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position. If the members of the Council qualifying their abstention in this way represent more than one third of the votes weighted in accordance with Article 205(2) of the Treaty establishing the European Community, the decision shall not be adopted."

2. *Text of Article 23(2) TEU concerning derogations from the general rule of unanimity, the only changes being as follows:*
 - (a) *the names of the instruments, and*
 - (b) *the introduction of decisions on the basis of joint proposals by the Minister and the Commission.*

The section relating to the weighting of votes has not been included (the relevant provisions will appear elsewhere in the Constitution).

Article 23(2) TEU: "By derogation from the provisions of paragraph 1, the Council shall act by qualified majority:

- when adopting joint actions, common positions or taking any other decision on the basis of a common strategy;*
- when adopting any decision implementing a joint action or a common position;*
- when appointing a special representative in accordance with Article 18(5).*

If a member of the Council declares that, for important and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. The Council may, acting by a qualified majority, request that the matter be referred to the European Council for decision by unanimity.

The votes of the members of the Council shall be weighted in accordance with Article 205(2) of the Treaty establishing the European Community. For their adoption, decisions shall require at least 62 votes in favour, cast by at least 10 members.

This paragraph shall not apply to decisions having military or defence implications."

- 3. This paragraph is new and takes up Working Group VII 's recommendation: "In addition, the Working Group recommends that a new provision be inserted in the Treaty, which would provide for the possibility of the European Council agreeing by unanimity to extend the use of QMV in the field of CFSP."*

The text of Article 23(3) TEU, on procedural questions, has not been incorporated in the new Article.

Article 10

1. When the Union has defined a common approach within the meaning of Article 29(5), there shall be close coordination between the activities of the Union's Minister for Foreign Affairs and the Ministers for Foreign Affairs of the Member States.
2. The diplomatic missions of the Member States and the delegations of the Union shall cooperate in third countries and in international organisations, and shall contribute to formulating and implementing a common approach.

Comments

1. *Paragraph 1 aims to improve the efficiency, complementarity and mutual reinforcement of the activities of the various parties involved within the framework of a line approved by the Union.*
2. *Paragraph 2 is new and aims to underline that systematic cooperation is not confined to the work of the Council in Brussels but also takes place between Member States' diplomatic missions and the Union's delegations.*

Article 11

The Council shall, whenever it deems it necessary, appoint, on a proposal from the Minister for Foreign Affairs, a special representative with a mandate in relation to particular policy issues. The special representative shall carry out his mandate under the authority of the Minister for Foreign Affairs.

Comments

This Article takes over and amends the text of Article 18(5) TEU. The amendments concern the role of the Minister for Foreign Affairs:

- (a) *the Council appoints the special representative on a proposal from the Minister for Foreign Affairs, and*
- (b) *the special representative exercises his mandate under the Minister's authority. The aim of these provisions is to make deployment of special representatives more consistent and effective.*

Article 12

The Union may conclude agreements with one or more States or international organisations pursuant to this Chapter, in accordance with the procedure described in Article 33 of this Title.

Comments

This article provides a legal basis for the negotiation and conclusion of international CFSP agreements. It refers to the relevant article for the procedure to be followed.

Article 13

1. The Minister for Foreign Affairs shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and shall ensure that the views of the European Parliament are duly taken into consideration. The European Parliament shall be kept regularly informed by the Minister for Foreign Affairs of the development of the Union's foreign and security policy, including the security and defence policy.
2. The European Parliament may ask questions of the Council and of the Minister for Foreign Affairs or make recommendations to them. It shall hold an annual debate on progress in implementing the common foreign and security policy, including the security and defence policy.

Comments

This article takes over and amends the text of Article 21 TEU. The amendments have been made on the basis of the recommendations from Working Group VII and to take into account the merger of the duties of the High Representative and the Commissioner for External Relations. "The Presidency" and "the Commission" have been replaced by "the Minister for Foreign Affairs". The Working Group recognised that the current provisions of Article 21 TEU were satisfactory but that they should, however, be supplemented to include the participation of the Minister for Foreign Affairs in the tasks described in Article 21 TEU.

The phrase "including the security and defence policy" does not appear in Article 21 TEU. It was introduced in these two paragraphs to make the scope of the article more explicit. It is clear that the European Parliament should be informed and consulted as often and as early as possible, to reconcile an effective foreign policy and a desire to give the European Parliament a genuine role.

Article 14

1. Member States shall coordinate their action in international organisations and at international conferences. They shall uphold the Union's positions in such fora. The Union's Minister for Foreign Affairs shall organise this coordination.

In international organisations and at international conferences where not all the Member States participate, those which do take part shall uphold the Union's positions.

2. Without prejudice to paragraph 1 and Article 6(3) of this Title, Member States represented in international organisations or international conferences where not all the Member States participate shall keep the latter informed of any matter of common interest.

Member States which are also members of the United Nations Security Council will concert and keep the other Member States fully informed. Member States which are members of the Security Council will, in the execution of their functions, defend the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter.

When the Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member States which sit on the Security Council shall request that the Minister for Foreign Affairs be asked to present the Union's position.

Comments

1. *Paragraph 1 takes over the text of Article 19(1) TEU (replacing "common positions" by "Union positions"):*

"Member States shall coordinate their action in international organisations and at international conferences. They shall uphold the common positions in such fora.

In international organisations and at international conferences where not all the Member States participate, those which do take part shall uphold the common positions."

A sentence has been added to the end of the first subparagraph on the Minister's role in organising coordination between Member States.

- 2. The first subparagraph takes over and amends the text of Article 19(2) TEU: "Without prejudice to paragraph 1 and Article 14(3), Member States represented in international organisations or international conferences where not all the Member States participate shall keep the latter informed of any matter of common interests".*

In the second subparagraph, "defend" replaces "ensure the defence" and "permanent" is dropped before "members". These amendments are proposed to comply with the principle established by the preceding provisions: when the Union has approved a position on a specific issue, all the Member States are required to defend it in the international scene.

The third subparagraph introduces a new provision aimed at raising the Union's profile within the Security Council. This provision does not entail any consequences for the status or position of Member States in that forum.

Article 15

The diplomatic and consular missions of the Member States and the Union delegations in third countries and international conferences, and their representations to international organisations, shall cooperate in ensuring that the decisions relating to Union positions and actions adopted by the Council are complied with and implemented. They shall step up cooperation by exchanging information and carrying out joint assessments.

They shall contribute to the implementation of the provisions referred to in Article 7(2) of Part One of the Constitution on the protection of European citizens in the territory of a third country.

Member States shall establish the necessary rules among themselves and start the international negotiations required to secure this protection.

Comments

The first paragraph takes over and slightly amends Article 20 TEU: "The diplomatic and consular missions of the Member States and the Commission delegations in third countries and international conferences, and their representations to international organisations, shall cooperate in ensuring that the common positions and joint actions adopted by the Council are complied with and implemented."

They shall step up cooperation by exchanging information, carrying out joint assessments and contributing to the implementation of the provisions referred to in Article 20 of the Treaty establishing the European Community."

The changes made to the text relate (a) to the name of the Union delegations and (b) to the names of the instruments.

The second paragraph refers to Article 7(2) of the Constitution (the text of which corresponds to Article 20 TEC) and takes over the second sentence of Article 20 TEC to which Article 20 TEU refers: "Member States shall establish the necessary rules among themselves and start the international negotiations required to secure this protection."

Article 16

Without prejudice to Article XX of the Constitution [on the organisation of the Council/Permanent Representatives Committee], a Political and Security Committee shall monitor the international situation in the areas covered by the common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the request of the Council or on its own initiative. It shall also monitor the implementation of agreed policies, without prejudice to the responsibility of the Minister for Foreign Affairs.

Within the scope of this title, this Committee shall exercise, under the responsibility of the Council, and in close contact with the Minister for Foreign Affairs, political control and strategic direction of crisis management operations, as defined in Article 17 of this Title.

The Council may authorise the Committee, for the purpose and for the duration of a crisis management operation, as determined by the Council, to take the relevant decisions concerning the political control and strategic direction of the operation.

Comments

The first paragraph takes over and amends Article 25 TEU: "Without prejudice to Article 207 of the Treaty establishing the European Community, a Political and Security Committee shall monitor the international situation in the areas covered by the common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the request of the Council or on its own initiative. It shall also monitor the implementation of agreed policies, without prejudice to the responsibility of the Presidency and the Commission."

The amendments concern the last sentence, in which "the Presidency" and "the Commission" have been replaced by "the Minister for Foreign Affairs".

The second paragraph takes over the text of Article 25 TEU, adding a reference to the Minister for Foreign Affairs and a reference to Article 24 of this Title, which defines crisis management operations: "Within the scope of this Title, this Committee shall exercise, under the responsibility of the Council, political control and strategic direction of crisis management operations."

The third paragraph largely corresponds to the third paragraph of Article 25 TEU: "The Council may authorise the Committee, for the purpose and for the duration of a crisis management operation, as determined by the Council, to take the relevant decisions concerning the political control and strategic direction of the operation, without prejudice to Article 47." In view of the merger of the Treaties, the reference to Article 47 TEC has been deleted.

B. The common security and defence policy

Article 17

The tasks referred to in Article 30(1) of Part One of the Constitution, in the course of which the Union may deploy military and civilian means, shall include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peacemaking, support action in combating terrorism at the request of a third country, and post-conflict stabilisation.

1. The Council, acting unanimously, shall adopt decisions relating to the tasks referred to in this Article, defining their objectives and scope and the general conditions for their implementation. The Minister for Foreign Affairs, acting under the authority of the Council and in close and constant contact with the Political and Security Committee, shall ensure coordination of the civilian and military aspects of such tasks.

Comments

The purpose of this Article is to clarify the scope of Article 30(1) of Part One:

- *inserting the tasks already set out in the Treaty, i.e.:*
 - *humanitarian and rescue tasks*
 - *peace-keeping tasks*
 - *tasks of combat forces in crisis management, including peacemaking, and*
- *adding tasks recommended by Working Group VIII, i.e.:*
 - *joint disarmament operations*
 - *military advice and assistance tasks*
 - *conflict prevention tasks*
 - *support action in combating terrorism at the request of a third country*
 - *post-conflict stabilisation.*

Paragraph 2 describes the decision-making procedure for such tasks in detail and lists the essential elements to appear in the decision. The second sentence is in line with the recommendations from Group VIII on increasing the role of the Minister for Foreign Affairs, particularly on the coordination of civilian and military aspects of the tasks.

Article 18

1. Within the framework of the decisions adopted in accordance with Article 17 of this Title, the Council may entrust the implementation of a task to a group of Member States having the necessary capability and the desire to undertake the task. Those Member States shall agree between themselves on the management of the task.

2. The Council shall be regularly informed by the Member States participating in the task on its progress and, should the completion of the task involve major new consequences or require amendment of the objective, scope and conditions for implementation agreed by the Council under Article 17(2) of this Title, the Member States participating shall refer the matter to the Council forthwith. In such cases, the Council shall adopt the necessary decisions.

Comments

This Article describes the arrangements for cooperation on the implementation of a task decided on by the Council.

In a Union of 25 it will be difficult to envisage a task that could be carried out by all the Member States. This Article therefore sets out arrangements whereby a task decided on by all the Member States could be entrusted to some of them, either because some have no desire to be involved in it but do not wish to prevent other Member States from doing so, or because only some Member States possess the high level of capability required.

The decision initiating a task and setting out its objectives, its scope and the general implementing conditions would be adopted by the Council, acting unanimously. It would include the list of States having declared their willingness to undertake the task. Implementation would thus be managed by the group of Member States set out in the Decision. Once the operation had begun, only the Member States involved in it would take part in discussions on the action and steps taken to conduct it. Other Member States would be kept informed. Should the completion of the task involve major new consequences or require an amendment of the objective, scope and conditions for implementation initially agreed by the Council, the Member States participating would refer the matter to the Council forthwith. In such cases, the Council would adopt the necessary decisions.

Article 19

1. The European Armaments and Strategic Research Agency shall have as its task to:
 - contribute to identifying the Member States' military capability objectives and evaluating observance of the capability commitments given by the Member States;
 - promote harmonisation of operational needs and adoption of effective, compatible procurement methods;

- propose multilateral projects to fulfil the objectives in terms of military capabilities, ensure coordination of the programmes implemented by the Member States and management of specific cooperation programmes;
 - support defence technology research, and coordinate and plan joint research activities and the study of technical solutions meeting future operational needs;
 - contribute to identifying and, if necessary, implementing any useful measure for strengthening the industrial and technological base of the defence sector and for improving the effectiveness of military expenditure;
2. The Agency shall be open to all Member States wishing to be part of it. The Council, acting by qualified majority, shall adopt a decision defining the Agency's statute, seat and operational rules. Such rules should take account of the level of effective participation in the Agency's activities. Specific groups shall be set up within the Agency bringing together Member States engaged in joint projects.

Comments

This article sets out in more detail the objectives and functioning of the European Armaments and Strategic Research Agency. It follows closely the recommendations of the Defence Working Group. The article does not enter into the detail of the Agency's functioning, but refers this (in paragraph 2) to a decision of the Council.

Article 20

1. The Member States listed in Declaration X annexed to the Constitution, which fulfil high military capability criteria and wish to enter into more binding commitments in this matter with a view to more demanding tasks, hereby establish structured cooperation between themselves within the meaning of Article 30(6) of Part One of the Constitution. The military capability criteria and commitments which those Member States have defined are set out in that Declaration.

2. If a Member State wishes to participate in such cooperation at a later stage, and thus subscribe to the obligations it imposes, it shall inform the European Council of its intention. The restricted Council on structured cooperation shall decide on the Member State's request.
3. Only Member States taking part in such cooperation shall adopt decisions relating to matters covered by it. The Minister for Foreign Affairs shall attend the deliberations. Other Member States shall be duly and regularly informed by the Minister for Foreign Affairs of developments in cooperation.
4. The Council may ask the Member States participating in such cooperation to carry out at Union level a task referred to in Article 17 of this Title.

Comments

This Article describes the operational arrangements for structured cooperation as described in Article 30(6) of Part One. Member States which fulfil high military capability criteria and wish to enter into more binding commitments between themselves on such matters with a view to the most demanding tasks could do so by establishing structured cooperation within the Constitution. The criteria and the capability commitments which participating Member States would undertake to meet would be negotiated and established by those Member States between themselves and would be set out in a Declaration annexed to the Constitution. The Declaration would also list the Member States taking part in structured cooperation.

Once structured cooperation was established, only participating Member States would take part in adopting decisions on the development of such cooperation and on the launching of, and arrangements for, any operations. Participating Member States could also make use of Union structures such as the PSC and the Military Committee, and those bodies would also meet only in the presence of representatives of Member States participating in structured cooperation. However, operations undertaken by that group of Member States would not be Union operations. The Union's Minister for Foreign Affairs would attend deliberations on such cooperation and would inform other Member States of developments. He would thus act as the interface between the Member States involved in structured cooperation and the Member States which were not taking part; that would make action undertaken within that cooperation framework more visible.

The Council could, however, ask the Member States participating in structured cooperation to carry out a task decided on by the Council. That task would then be carried under structured cooperation but on behalf of the Union.

Article 21

1. The closer cooperation on mutual defence provided for in Article 30(7) of Part One shall be open to all Member States of the Union. A list of participating Member States shall be set out in a Declaration annexed to this Constitution. If a Member State wishes to take part in such cooperation at a later stage, and thus subscribe to the obligations it imposes, it shall inform the European Council of its intention and subscribe to the Declaration annexed to the Constitution.
2. A participating Member State which is the victim of armed aggression on its territory shall inform the other participating States of the situation and may request aid and assistance from them. Participating Member States shall meet at ministerial level, assisted by their representative on the Political and Security Committee and the Military Committee.
3. The United Nations Security Council shall be informed immediately of any armed aggression and the measures taken as a result.
4. These provisions shall not affect the rights and obligations resulting, for those concerned, from the North Atlantic Treaty.

Comments

Ten of the European Union's current Member States are members of the Western European Union and are therefore bound by a mutual defence commitment under Article V of the Brussels Treaty. That is undoubtedly a form of cooperation outside the framework of the Union. Given the differences in political will, it is difficult to envisage all Member States agreeing to enter into such a commitment in the Constitution. Hence the need to introduce closer cooperation enabling those wishing to do so to "repeat" the commitment already entered into under Article V of the Brussels Treaty in the Union framework. Repeating the commitment in the Constitution has a number of advantages:

- *it would allow mutual defence to be enshrined in the Constitution and would help increase the Union's credibility in the eyes of its citizens*
- *such cooperation would allow participating Member States to use the Union's structures and expertise, for example its Military Committee and its Military Staff.*

Here, as in the other forms of cooperation mentioned above, only Member States participating in cooperation would take part in the adoption of decisions on the matters covered by cooperation. When they used Union structures, they would also meet only in the presence of representatives of Member States having entered into such cooperation.

C. Financial provisions

Article 22

1. Administrative expenditure which the provisions relating to the areas referred to in this Title entail for the institutions shall be charged to the Union budget.
2. Operating expenditure to which the implementation of those provisions gives rise shall also be charged to the Union budget, except for such expenditure arising from operations having military or defence implications and cases where the Council acting unanimously decides otherwise.

In cases where expenditure is not charged to the Union's budget it shall be charged to the Member States in accordance with the gross national product scale, unless the Council acting unanimously decides otherwise. As for expenditure arising from operations having military or defence implications, Member States whose representatives in the Council have made a formal declaration under Article 9(1), second subparagraph, shall not be obliged to contribute to the financing thereof.

3. A Union budgetary heading shall be created for urgent financing of initiatives in the framework of the common foreign and security policy, in particular preparatory activities for tasks as referred to in by Article 30(1) of Part One of the Constitution. Specific procedures shall be put in place to guarantee rapid access to appropriations entered under this heading and their effective use within the deadlines imposed by the situations concerned.

Preparatory activities for tasks as referred to in Article 30(1) of Part One of the Constitution which are not charged to the Union budget shall be financed by a start-up fund made up of Member States' contributions.

The Council shall adopt by a qualified majority on a proposal from the Minister for Foreign Affairs:

- the procedures for setting up and financing the fund, in particular the amounts allocated to the fund and the procedures for reimbursement;
- the procedures for administering the fund;
- the financial control procedures.

When it is planning a task as referred to in Article 30(1) of Part One of the Constitution which cannot be charged to the Union's budget, the Council shall authorise the Minister for Foreign Affairs to use the fund. The Minister for Foreign Affairs shall report to the Council on the implementation of the remit.

Comments

1. *Taken from Article 28(2) TEU, with "budget of the European Communities" being replaced by "Union budget". Administrative expenditure which the provisions relating to the areas referred to in this Title entail for the institutions shall be charged to the budget of the European Communities".*

2. *Taken from Article 28(3) TEU, with "budget of the European Communities" being replaced by "Union budget": "Operating expenditure to which the implementation of those provisions gives rise shall also be charged to the budget of the European Communities, except for such expenditure arising from operations having military or defence implications and cases where the Council acting unanimously decides otherwise. In cases where expenditure is not charged to the budget of the European Communities, it shall be charged to the Member States in accordance with the gross national product scale, unless the Council acting unanimously decides otherwise. As for expenditure arising from operations having military or defence implications, Member States whose representatives in the Council have made a formal declaration under Article 23(1), second subparagraph, shall not be obliged to contribute to the financing thereof."*
3. *Working Group VII found that CFSP activities sometimes require urgent funding for which the usual procedures are not suitable. Moreover, Working Group VIII noted the need for a special provision relating to the preparatory phase of tasks as referred to in Article 30(1). This need arises firstly from the fact that the financing of civilian aspects from the Union budget is subject to relatively cumbersome and therefore time-consuming procedures, whereas time is of the essence when an operation is being launched, and secondly because provision must be made for rapid financing of the military aspects which cannot be financed from the budget.*

For that reason, where the intended operation involves civilian means only or both civilian and military means, the operation's preparatory activities would be financed from a special heading in the Union's budget. The administration of this heading would be subject to a specific arrangement which would guarantee rapid access to the fund (hence relaxation of the usual procedure for access to appropriations) and rapid use of the funds, derogating from the procedures usually applied (as in the case of public procurement for instance).

On the other hand, if the operation involved had military or defence implications and expenditure could not therefore be charged to the budget, a fund made up of Member States' contributions would be created to finance the preparatory phase of the operation. The decision on the contribution scale for financing the fund would be taken by the Council acting by qualified majority.

In order to set up the fund, it is necessary to establish both the initial amount of the fund and the reimbursement methods, i.e. the procedure for replenishing it once it has been fully or partly spent. This requires a decision of the Council acting by qualified majority. A separate Council decision will be necessary to establish the fund's financial regulation. Provision is made for that decision in the second subparagraph.

Finally, it is important that the fund be used efficiently and quickly; the third subparagraph proposes that the Minister for Foreign Affairs be authorised by the Council to implement and administer the fund.

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CHAPTER 2: COMMON COMMERCIAL POLICY

Article 23

By establishing a customs union between themselves Member States aim to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and to foreign direct investment, and the lowering of customs barriers.

Comments

Article 2 takes over the first paragraph of Article 131 TEC, adding a reference to foreign direct investment (as in Article 24) in recognition of the fact that financial flows supplement trade in goods and today represent a significant share of commercial exchanges. The second paragraph of Article 131 TEC has been deleted as the reference to the abolition of customs duties was obsolete. (For reference, the text of the second paragraph is as follows: "The common commercial policy shall take into account the favourable effect which the abolition of customs duties between Member States may have on the increase in the competitive strength of undertakings in those States").

Article 24

1. The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action, as set out in Article 1 of this Title.
2. The European Parliament and the Council shall adopt, in accordance with the legislative procedure, the European laws and framework laws required to implement the common commercial policy.

3. Where agreements with one or more States or international organisations need to be negotiated, the relevant provisions of Article 33 of this Title shall apply. The Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Union policies and rules.

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee on the progress of negotiations.

4. For the negotiation and conclusion of agreements in the fields of trade in services involving the movement of persons and the commercial aspects of intellectual property, the Council shall act unanimously where such agreements include provisions for which unanimity is required for the adoption of internal rules.
5. The exercise of the competences conferred by this Article in the field of commercial policy shall not affect the delimitation of internal competences between the Union and the Member States, and shall not lead to harmonisation of legislative or regulatory provisions of Member States insofar as the Constitution excludes such harmonisation.

Comments

1. *For political reasons, the Praesidium decided not to present a text wholly based on the recommendations of Working Group VII in this area but to propose maintaining a reference to the derogation on the negotiation and conclusion of agreements in the fields of trade in services involving the movement of persons and the commercial aspects of intellectual property, where such agreements include provisions for which unanimity is required for the adoption of internal rules. It will be remembered that there was majority support within Working Group VII for extending qualified-majority voting to all areas of commercial policy, including services and intellectual property (without prejudice to the current restrictions on harmonisation in certain internal policy areas). This recommendation received broad support during the discussion in the plenary session. Nevertheless, the Praesidium noted that, among the many Convention members who had reservations, some*

had expressed a desire to maintain the current derogations and others had stressed the need to avoid harmonisation in internal policy areas via international agreements concluded by qualified majority. Although the derogations laid down in the existing Article 133(5) have been retained in this draft article, the proposed text has been simplified compared with the existing text, notably to take account of the recommendations made by the Working Group on Simplification on instruments and procedures.

2. *The first paragraph takes over Article 133(1) TEC adding trade in goods and services and the commercial aspects of intellectual property as well as foreign direct investment (see also Article 23 – this reference to foreign direct investment was inserted in recognition of the fact that financial flows supplement trade in goods and today represent a significant share of commercial exchanges.) A derogation on the negotiation and conclusion of agreements in the fields of trade in services involving the movement of persons and the commercial aspects of intellectual property has been maintained in paragraph 4 (see comments on that paragraph).*
3. *Moreover, a reference to Article 1 of this Title, which sets forth the principles and objectives of external action, was added to the first paragraph, in keeping with the recommendation made by Working Group VII to group those principles and objectives in a single horizontal article covering the whole title. For reference, the text of Article 133(1) TEC is as follows: "The common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies."*
4. *With regard to paragraph 2, it is proposed that the standard legislative procedure be applied for the adoption of implementing measures. In this context, it will be remembered that the internal measures in this field have been adopted by qualified majority since the Treaty of Rome. This change also accounts for Working Group VII's recommendation that the European Parliament's role in commercial policy should be enhanced (CONV 459/02, page 8).*
5. *Paragraph 3 is based on paragraph 3 of Article 133 TEC (moving the reference to the article which is to replace Article 300 TEC to the beginning of the text). Working Group VII having recommended an enhanced role for the European Parliament in this field (CONV 459/02, page 8), the exception concerning commercial policy contained in Article 300(3) TEC has been deleted in Article 33 of this Title on the conclusion of agreements, which replaces Article 300 TEC.*
6. *Paragraph 4 incorporates the derogation contained in the second subparagraph of Article 133(3) concerning the negotiation and conclusion of agreements in the fields of trade in services and commercial aspects of intellectual property where such agreements include provisions for which unanimity is required for the adoption of internal rules, but specifies that*

in the field of services the derogation relates to services involving the movement of persons. In its Opinion 1/94 (paragraph 44), the Court found that the cross-border supply of services not involving travel by the provider to the beneficiary's country or vice versa was not unlike trade in goods, which was unquestionably covered by the common commercial policy.

7. *Paragraph 5 reflects two of Working Group VII's recommendations. Firstly, the second part of recommendation 8(c) (underlined): "There was a high degree of support in the Working Group in favour of the use of qualified-majority voting in all areas of commercial policy, without prejudice to current restrictions on harmonisation in internal policy areas (CONV 459/02, page 7). Secondly, the last part of recommendation 4 (CONV 459/02), according to which "the Treaty should indicate that the Union is competent to conclude agreements dealing with issues falling under its internal competences", that "the new provision in the Treaty should also specify that the Council should deliberate on such agreements according to the same voting procedure which would apply to internal legislative deliberations on the same issues (normally qualified-majority voting)", but that "this provision should in no way modify the delimitation of competences between the EU and Member States".*
8. *If the Convention wishes to retain exceptions to the Union's exclusive competence in accordance with the second subparagraph of Article 133(6), according to which agreements relating to trade in cultural and audiovisual services, educational services, and social and human health services, fall within shared competence, consideration should be given to introducing this exception into Article 11(2) of Part I of the Constitution (Title III, Union competences).*
9. *Articles 132 and 134 TEC are not taken over in the text. Article 132 has not been used (export policy is, moreover, covered by Article 133(1) TEC which is taken over in Article 3 of this Title). Article 134 TEC has not been used since 1993, as it is incompatible with the internal market (no more internal borders).*

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CHAPTER 3: COOPERATION WITH THIRD COUNTRIES AND HUMANITARIAN AID

I. DEVELOPMENT COOPERATION

Article 25

1. Union policy in the sphere of development cooperation shall be conducted within the framework of the principles and objectives of the Union's external action as set out in Article 1 of this Title. The Union's development cooperation policy and that of the Member States complement and reinforce each other.
2. The Union and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.

Comments

1. *Article 25 is based on Article 177 TEC, which has been shortened with the deletion of the list of objectives it contained (paragraphs 1 and 2), replaced by a reference to the Article on the principles and objectives of the Union's external action.*
2. *Article 178 TEC, according to which "the Community shall take account of the objectives referred to in Article 177 in the policies that it implements which are likely to affect developing countries", has been deleted in view of the general paragraph on consistency in Article 1 on the principles and objectives of external action.*

Article 26

1. The European Parliament and the Council shall, in accordance with the legislative procedure, adopt the European laws and European framework laws necessary for the implementation of development cooperation policy, which may relate to multiannual cooperation programmes with developing countries or programmes with a thematic approach.

2. The Union may conclude with third countries and competent international organisations any agreement helping to achieve the objectives referred to in Article 1 of this Title. Such agreements shall be negotiated and concluded in accordance with Article 33 of this Title.

The first subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

3. The European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of the measures referred to in paragraph 1.
4. This Article shall not affect cooperation with the African, Caribbean and Pacific countries in the framework of the ACP-EC Convention.

Comments

1. *Article 26 is based on current Articles 179 and 181 TEC, with an update of the references in paragraphs 1 and 2 of the draft (Article 179(1) and Article 181) following discussions in the Convention, in particular the recommendations of the Working Group on Simplification.*
2. *Paragraph 3 on the European Investment Bank takes over Article 179(2) TEC in its entirety.*
3. *Paragraph 4 takes over paragraph 3 of Article 179 TEC in its entirety. It is however emphasised that the Convention needs to state its views on whether or not to retain a provision on cooperation with the ACP countries or whether this should be deleted, considering that there is no need for a policy or separate financing (in this context it is pointed out that there is broad support within Working Party VII for incorporating the European Development Fund (EDF) into the Union's budget).*

Article 27

1. The Union and the Member States shall coordinate their policies on development cooperation and shall consult each other on their aid programmes, including in international organisations and during international conferences, in order to promote the complementarity and efficiency of their action. They may undertake joint action. Member States shall contribute if necessary to the implementation of Community aid programmes.
2. The Commission may take any useful initiative to promote the coordination referred to in paragraph 1.
3. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and the competent international organisations.

Comments

Article 27 is based on Articles 180 TEC and the first paragraph of Article 181 TEC. The text has also been strengthened with regard to "the complementarity and efficiency" of action by the Union and the Member States, a point raised in the discussions of Working Group VII (see paragraph 54 of the report).

II. ECONOMIC, FINANCIAL AND TECHNICAL COOPERATION WITH THIRD COUNTRIES

Article 28

1. Without prejudice to the other provisions of this Treaty, and in particular those of Articles 25 to 27 of this Title concerning development cooperation, the Union shall, within its spheres of competence, carry out economic, financial and technical cooperation measures with third countries. Such measures shall be consistent with the development policy of the Union. The Union's measures and those of the Member States shall complement and reinforce each other. They shall be carried out within the framework of the principles and objectives of the Union's external action as set out in Article 1 of this Title.
2. The European Parliament and the Council shall, in accordance with the legislative procedure, adopt the European laws and European framework laws necessary for the implementation of paragraph 1.
3. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and the competent international organisations. The arrangements for Union cooperation may be the subject of agreements between the Union and the third parties concerned, which shall be negotiated and concluded pursuant to Article 33 of this Title. The Council shall act unanimously for the association agreements referred to in Article 32(2) of this Title and for the agreements to be concluded with the States which are candidates for accession to the Union.

The first subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

Comments

The draft Article is based on Article 181a TEC inserted in Nice. The Convention's attention is drawn to the fact that the draft text contains a proposed change to the current text with regard to the procedure referred to in paragraph 2, as the draft follows the recommendations of the Working Group on Simplification concerning general use of the codecision procedure (text of Article 181a: "The Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, shall adopt the measures necessary...").

Article 29

When the situation in a third country requires urgent financial aid from the Union, the Council shall, on a proposal from the Commission, unanimously adopt the necessary measures.

Comments

New Article intended to create a specific legal basis for financial aid to third countries when urgent action is required. IGC Declaration No 10 annexed to the Final Act of the Treaty of Nice specifies that Article 181a TEC does not apply to balance-of-payments aid to third countries. Acts relating to such aid should therefore continue at present to be adopted on the basis of Article 308 TEC (i.e. unanimously) if a specific legal basis is not established. Taking account of the urgency of such aid, it is proposed that the necessary measures be adopted by qualified majority.

III. HUMANITARIAN AID

Article 30

1. The Union's operations in the field of humanitarian aid shall be conducted within the framework of the principles and objectives of the external action of the Union as set out in Article 1 of this Title. Such operations shall be intended to provide ad hoc assistance, relief and protection for people in third countries and victims of man-made and natural disasters, in order to meet the humanitarian needs resulting from these different situations. The Union's actions and those of the Member States shall complement and reinforce each other.
2. Humanitarian aid operations shall be conducted in compliance with the principles of international humanitarian law, in particular the principles of impartiality and non-discrimination.
3. The European Parliament and the Council, in accordance with the legislative procedure, shall adopt the necessary laws and framework laws defining the framework within which the Union's humanitarian aid operations shall be implemented.
4. The Union may conclude with third countries and competent international organisations any agreement helping to achieve the objectives referred to in Article 1. Such agreements shall

be negotiated and concluded pursuant to Article 33 of this Title.

The first subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

5. In order to establish a framework for joint contributions from young Europeans to the humanitarian actions of the Union, a European Voluntary Humanitarian Aid Corps shall be set up. The European Parliament and the Council, in compliance with the legislative procedure, shall adopt a European law determining the rules and operation of the Corps.
6. The Commission may take any useful initiative to promote coordination between actions of the Union and those of the Member States, in order to enhance the efficiency and complementarity of Union and national humanitarian aid measures.
7. The Union shall ensure that its humanitarian operations are coordinated and consistent with those of international organisations and bodies, in particular those forming part of the United Nations System.

Comments

1. *This is a new Article in accordance with draft Article 12(6) of the Constitution, which explicitly defines this as an area of shared competence. There is no specific legal basis for humanitarian aid in the current Treaties; it is implemented in accordance with Council Regulation (EC) No 1257/96 of 20 June 1996 (legal basis: Article 179 (ex 130w) of the TEC).*
2. *The basic structure of the Article is modelled on that on development cooperation, but paragraph 1 places more emphasis on the specific nature of humanitarian operations. The description is based on the definitions in the abovementioned Regulation (food aid for example will be granted without conditionality as to the long-term objective of consolidation of the rule of law or sustainable development – under Regulation No 1257/96 the granting of assistance "must not be guided by or subject to political considerations").*

3. *Paragraph 2 sets out the fundamental principles of humanitarian aid: that operations are conducted in accordance with the principles of international humanitarian law and in particular the principles of impartiality and non-discrimination. The first implies that humanitarian aid decisions are to be taken impartially on the sole basis of the needs and the interests of the victims. The second implies that humanitarian aid is accorded without discrimination on grounds of the victims' race, ethnic group, religion, sex, age, nationality or political affiliation (see Regulation No 1257/96 and Working Group VII's report, CONV 459/02, paragraph 57).*
4. *Paragraphs 3 and 4 cover procedures for adopting acts for implementing and concluding agreements with third countries and international organisations (adaptations made to reflect the discussions in the Convention).*
5. *Paragraphs 5 and 6 deal with coordination between the Union and the Member States and coordination with international organisations and bodies.*

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CHAPTER 4: RESTRICTIVE MEASURES

Article 31

1. Where a decision on a Union position or action adopted according to the provisions on the common foreign and security policy in Chapter 1 of this Title provides for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal from the Minister for Foreign Affairs and the Commission, shall take the necessary measures. It shall inform the European Parliament thereof.
2. In the areas referred to in paragraph 1 the Council may adopt restrictive measures under the same procedure against natural or legal persons and non-State groups or bodies.

Comments

1. *Paragraph 1 takes over Article 301 TEC and adds a reference to financial relations to cover the areas referred to in Article 60 TEC. The Council will act on a proposal from the Minister for Foreign Affairs and the Commission to ensure the consistency of the measures proposed. This Chapter concerns the adoption of restrictive measures originating in a foreign policy decision covered by Chapter 1. The restrictive measures that the Union may introduce after determining that a third country has violated the rules of origin are covered by Chapter 5 on international agreements.*

The text introduces a new provision on informing the European Parliament.

2. *At present the Treaties provide legal bases only for restrictive measures against States. Yet it has proved necessary at times to be able to take other kinds of measures. This paragraph provides a legal basis to enable the Union to take restrictive measures against natural or legal persons, non-State groups or bodies, etc.*

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CHAPTER 5: INTERNATIONAL AGREEMENTS

Article 32

1. The Union may commit itself through agreements concluded with one or more third countries or international organisations in cases where the provisions of the Constitution provide for the conclusion of such agreements.
2. The Union may conclude association agreements with one or more third countries or international organisations. Such agreements shall establish an association with one or more third countries or international organisations involving reciprocal rights and obligations, common action and special procedure.
3. The Union may conclude international agreements where conclusion is necessary to achieve a Union objective, where there is provision for it in a Union legislative act, or where the agreements affect one of the Union's internal acts.
4. Agreements concluded by the Union are binding upon the institutions of the Union and on its Member States.

Comments

The disappearance of the pillars makes it necessary to merge the provisions on the Union's external competence in the CFSP area (Article 24 TEU), the JHA area (Article 38 TEU) and the Community area (Article 300(1) TEC).

Article 300(1) TEC as it now stands mentions only the Community's explicit external competence, that is to say cases "where this Treaty provides for the conclusion of agreements". The provisions in question are Article 133 TEC (common commercial policy), Articles 177 to 181 TEC (development cooperation), Article 111 TEC (monetary policy), Article 170 TEC (research and technological development policy), Article 174 TEC (environmental policy), Articles 182 to 188 TEC (association of overseas countries and territories) and Article 310 TEC (association of third countries or international organisations).

However, under Court of Justice case law, the Community's external competence may not only arise from an express attribution by the Treaty but may also flow implicitly from its provisions. That is the case:

- *when Union external competence is necessary to attain one of the objectives set out in the Treaty but on which the Union has not yet adopted any internal legislation (Court of Justice Opinions 1/76 of 26 April 1976, 2/91 of 19 March 1993 and 1/94 of 15 November 1994), and*
- *when Union external competence is necessary for the uniform application of Community law where the Union has already exercised its internal competence (Court of Justice judgment (AETR) of 31 March 1971 and Court of Justice Opinions 1/92 of 10 April 1992 and 2/92 of 24 March 1995).*

On the basis of that case law, Working Group VII recommended that:

- *the Treaty should indicate that the Union is competent to conclude agreements dealing with issues falling under its internal competences;*
- *the new provision in the Treaty should also specify that the Council should deliberate on such agreements according to the same voting procedure which would apply to internal legislative deliberations on the same issues (normally QMV).*

This provision should in no way modify the delimitation of competences between the EU and Member States.

Draft Article 32 deals only with the assignment to the Union of competence to conclude the agreements: explicit competence where the conclusion of the agreements is laid down in a provision of the Constitution (paragraph 1) and implicit competence where the conclusion of an agreement is necessary to achieve a Union objective, is laid down in a Union legislative act, or is necessary for uniform application of one of the Union's internal acts (paragraph 3).

This draft Article does not refer to the exclusive or shared nature of this competence. The matter is covered in the draft Articles 11 and 12 of the Constitution, which state

- *in Article 11, that "the Union shall have exclusive competence (...) in (...) common commercial policy, monetary policy for the Member States who have adopted the euro, the conservation of marine biological resources under the common fisheries policy", this exclusive competence extending to international agreements referring to those areas. The second paragraph of draft Article 11 adds that "The Union shall have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union, is necessary to enable the Union to exercise its competence internally, or affects an internal Union act."*

- *in Article 12, the areas in which the Union shares competence with the Member States. In some of these areas the Union has explicit external competence, which it shares with the Member States. These areas are development cooperation, research and technological development policy and environmental policy.*

Article 33

1. Without prejudice to the specific provisions laid down in Articles 24 of this Title, agreements between the Union and third states or international organisations shall be negotiated and concluded by the following procedure.
2. The Council shall authorise negotiations to be opened, adopt negotiating directives and conclude agreements.
3. The Commission, or the Union's Minister for Foreign Affairs where the agreement exclusively or principally relates to the common foreign and security policy, shall submit recommendations to the Council, authorising him to open negotiations. The Commission and the Union's Minister for Foreign Affairs shall, where appropriate, present recommendations jointly.
4. In connection with the decision authorising negotiations, depending on the subject of the future agreement, the Council shall nominate the negotiator or leader of the Union's negotiating team.
5. The Council may address the negotiating directives to the negotiator of the agreement and may designate a special committee in consultation with which the negotiations must be held.

6. On a proposal from the agreement negotiator, the Council shall decide on the signing and, if necessary, provisional application of agreements before entry into force.
7. The Council shall conclude agreements on the proposal of the agreement negotiator. Except where agreements relate exclusively to the common foreign and security policy, the Council shall not conclude any agreement until the European Parliament has been consulted. The Parliament shall deliver its opinion within a time-limit which the Council may lay down according to the urgency of the matter. In the absence of an opinion within that time-limit, the Council may act. However, the European Parliament's assent shall be required for association agreements, accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms and for agreements establishing a specific institutional framework by organising cooperation procedures, agreements with important budgetary implications for the Union and agreements covering fields to which the legislative procedure applies. The Council and the European Parliament may, in an urgent situation, agree upon a time-limit for the assent.
8. When concluding an agreement, the Council may, by way of derogation from the foregoing, authorise the negotiator of the agreement to approve modifications on the Union's behalf where the agreement provides for them to be adopted by a simplified procedure or by a body set up by the agreement; it may attach specific conditions to such authorisation.
9. The Council shall act by a qualified majority throughout the procedure. However, it shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of internal rules and for association agreements and accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

10. The Council, on a proposal from the Union's Minister for Foreign Affairs or the Commission, shall decide to suspend the application of an agreement, and establish the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt decisions having legal effects, with the exception of decisions supplementing or amending the institutional framework of the agreement.
11. The European Parliament shall be immediately and fully informed of all the stages of the procedure described in this Article.
12. The European Parliament, the Council, the Commission, the European Central Bank or a Member State may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of the Constitution over which the Court of Justice has jurisdiction. Where the opinion of the Court of Justice is adverse, the agreement envisaged may not enter into force unless the Constitution is revised in accordance with the procedure laid down in Article [N].

Comments

Working Group VII recommended: "that the new Treaty include one single set of provisions on the negotiation and conclusion of international agreements that would indicate that the Council authorises the opening of negotiations, issues negotiating directives, and concludes the agreements and would indicate who would act on the behalf of the EU according to the subject of the agreement."

Where the scope of an agreement falls within both the current Community domain and under current Titles V and/or VI TEU, the Group recommended aiming "wherever possible to conclude one single agreement, and that the procedure for the negotiations would be decided by the Council, on the basis of the main object of the agreement and its legal basis. In that respect, the Council would also indicate who would negotiate on behalf of the Union: e.g. the person holding the function of HR and the Commission together, or the Commission or the HR alone, under the supervision of a committee."

The proposal takes on board this recommendation by incorporating the Article 24 and 38 TEU procedures into the existing Article 300 TEC procedure; this is then expanded on the assumption that the office of Minister for Foreign Affairs of the Union will be instituted.

Article 34

1. By way of derogation from Article 33, the Council, acting unanimously on a recommendation from the European Central Bank or from the Commission, and following consultation with the European Central Bank with a view to reaching a consensus compatible with the objective of price stability, and after consultation with the European Parliament in accordance with the procedure laid down in paragraph 3 for the arrangements there referred to, may conclude formal agreements on a system of exchange rates for the euro in relation to non-Union currencies. The Council may, acting by a qualified majority on a recommendation from the European Central Bank or the Commission, and after consulting the European Central Bank, in an endeavour to reach a consensus consistent with the objective of price stability, adopt, adjust or abandon the central rates of the euro within the exchange-rate system. The President of the Council shall inform the European Parliament of the adoption, adjustment or abandonment of the central rates of the euro.
2. In the absence of an exchange-rate system in relation to one or more third-country currencies as referred to in paragraph 1, the Council, acting by a qualified majority on a recommendation from the Commission after consulting the European Central Bank, may formulate general orientations for exchange-rate policy in relation to these currencies. These general orientations shall be without prejudice to the primary objective of the European System of Central Banks, to maintain price stability.
3. By way of derogation from Article 33, where agreements on matters relating to the monetary or exchange-rate system are to be the subject of negotiations between the Union and one or more States or international organisations, the Council shall, acting by a qualified majority on a recommendation from the Commission and after consulting the European Central Bank, decide the arrangements for the negotiation and for the conclusion of the agreements. These arrangements shall ensure that the Community expresses a single position. The Commission shall be fully associated with the negotiations.

4. Subject to paragraph 1, the Council shall, acting by a qualified majority on a proposal from the Commission and after consulting the European Central Bank, decide on the position occupied by the Union at international level in relation to questions having particular interest for the Economic and Monetary Union and on the Union's representation, while complying with the allocation of competences laid down in Articles X [formerly 99] and Y [formerly 105].
5. Without prejudice to Union competence as regards economic and monetary union, Member States may negotiate in international bodies and conclude international agreements.

Comments

The proposal takes over the text of the current Article 111 TEC, merely replacing the reference to the ECU by a reference to the euro, and does not reproduce the second subparagraph of paragraph 3, since there is a general provision in the fourth paragraph of draft Article 33.

Working Group VI acknowledged the need to improve the effectiveness of the current informal arrangements for representing the Eurozone in international organisations (which reflect the fact that the provisions of Article 111(4) TEC have not been implemented). Some members felt that this could be achieved by better coordination. Others wanted to go further, although there was a recognition that the type of representation required might depend in part on the international organisation. Views differed between those who wished to see this role lying chiefly with the Chairman of the Eurogroup, and those who would prefer to follow practice in the area of trade policy, by including an enabling clause in the Treaty that would confer the task on the Commission. Paragraph 4 of the proposed article therefore leaves the question unresolved, leaving it to the Council to appoint a representative for the Union (in reality, the Eurozone): either the President of the ECOFIN Council or the Commission, this latter option being more in keeping with the rest of the Constitution, since monetary policy for Member States which have adopted the euro is an exclusive competence.

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CHAPTER 6: RELATIONS WITH INTERNATIONAL ORGANISATIONS AND THIRD COUNTRIES AND UNION DELEGATIONS

Article 35

1. The Union shall establish all appropriate forms of cooperation with the United Nations, the Council of Europe, the Organisation for Security and Cooperation in Europe and the Organisation for Economic Cooperation and Development.

It shall also maintain such relations as are appropriate with all international organisations.

2. The Union's Minister for Foreign Affairs and the Commission shall be instructed to implement the above paragraph.

Article 36

1. Union delegations in third countries and to international organisations shall represent the Union.
2. Union delegations shall operate under the authority of the Union's Minister for Foreign Affairs and in close cooperation with Member States' missions.

Comments

1. *Paragraphs 1 and 2 of the Article are based on Articles 302, 303 and 304 TEC. A reference to the OSCE has been added to the list of international organisations with which the Union is to establish appropriate forms of cooperation, in view, in particular, of the relations established with that organisation in connection with the development of the common security and defence policy.*
2. *The second paragraph establishes that the Union's Minister for Foreign Affairs and the Commission will be instructed to implement the provisions referred to in the preceding paragraph.*
3. *Paragraph 3 sets out the representation role to be played by Union delegations in third countries and in relations with international organisations.*
4. *The question of a single representative for the eurozone in the international financial institutions will be dealt with in the draft texts concerning monetary policy.*

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PART II

CHAPTER X: SOLIDARITY

Article X (implementation of the solidarity clause)

1. On the basis of a joint proposal by the Minister for Foreign Affairs and the Commission, the Council shall adopt acts defining a framework for the implementation of the solidarity clause referred to in Article X of Part One. These acts shall be adopted in accordance with the relevant provisions of the Constitution.
2. Should a Member State fall victim to a terrorist attack, the other Member States shall assist it at the request of its political authorities. To that end, the Member States shall coordinate between themselves in the Council.
3. For the purposes of this Article, the Council shall be assisted by the Political and Security Committee and by the Standing Committee on Internal Security, which shall, if necessary, submit joint opinions.
4. The European Council shall regularly assess the threats facing the Union, on the basis of a report from the Commission, in order to enable the Union to take effective action.

Comments

This Article follows on directly from Group VIII's recommendations for the inclusion of a solidarity clause in the Constitution; it sets out the procedure for its implementation.

The first paragraph describes how the clause is to be implemented as regards preventing a terrorist threat and protecting democratic institutions and the civilian population against a possible terrorist attack. Given that the clause provides for recourse to all the means at the Union's disposal, including those of the Member States and therefore military means, the proposal for defining the general framework has to be submitted jointly by the Commission and by the Minister for Foreign Affairs. For the same reason, it is not possible to lay down a uniform voting rule for the use of all the means on which the Union can draw, including those which are currently subject to QMV, and others, such as military means, which cannot be deployed except by a unanimous decision. The Article accordingly lays down procedures in keeping with the constitutional provisions applicable to the procedures for adopting each of the acts making up the general framework. The role of the European Parliament will therefore be that provided for in the relevant procedures.

As regards assistance to a Member State following a terrorist attack, States need to take action immediately after the event. Accordingly, the second paragraph provides that assistance should be triggered automatically at the request of the Member State in question. The Member State will have to specify its requirements and the other States, meeting in Council, will coordinate the action and resources needed to remedy the situation.

The third paragraph covers preparation for Council discussions by the Political and Security Committee and the Standing Committee on Internal Security (responsible inter alia for coordinating the action of the competent authorities of the Member States, including the police and customs authorities). The remits of these two committees (Articles 22 and X of Part Two of the Constitution, entitled An area of freedom, security and justice) correspond to expertise which the Council might need; at the same time, if action is to be effective it is important that the committees' opinions be consistent and coordinated, hence the sentence providing that they may issue joint opinions.

The fourth paragraph reflects Group VIII's recommendation that the European Council should regularly evaluate the threat to the Union so that an early-warning system can be operated.

