

**FORWARDING NOTE**

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from : Praesidium  
to : the Convention

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Subject : **Part I, Title IV (Institutions)**  
**- revised text**

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Members of the Convention received on 26 May a revised draft text of Part I of the Constitution (CONV 724/03). The cover note to that document explained why the articles on institutions (Title IV) were the only ones which remained unchanged and informed the Convention that the Praesidium would subsequently submit a revised version of these articles.

In view of the variety and conflicting nature of the comments and amendments received, the Praesidium considers that it needs further elements to assist it in its reflection and in drawing up a proposal which could serve as the basis for consensus. It has therefore decided that the President and the Vice-Presidents should have consultations with each of the component groups of the Convention.

However, to enable these consultations and subsequent discussion in the Convention to focus on the most central issues, the Praesidium has decided to issue a revised text of Title IV of Part I which incorporates a number of modifications and corrections drawing on suggestions by members of the Convention. This corrected version is meant only to clear the ground: the changes concern a number of questions on which either there is no real divergence of views or improvements can be made without affecting the central issues.

In the comments on the articles, certain central provisions on which at this stage the Praesidium is not offering a revised text, are highlighted in the comments in **bold** and with an asterisk\*. (This does not of course imply that these are the only provisions on which the Praesidium looks forward to hearing the views of the component groups in the Presidency's consultations).

The Praesidium recognises that, whilst these central issues are specifically related to the functioning of each of the main institutions of the Union, some of them have ramifications which go beyond the content of specific articles, and in some cases lie outside the scope of the Institutions Title (for example, a decision on the definition of a Qualified Majority could, for some, affect decisions on the scope of Qualified Majority voting).

The Praesidium recalls that there was broad support in the Convention during its debate in January on institutions for work on this issue to be guided by a number of basic principles: the need to improve the effectiveness of all the institutions, the requirement for institutional balance, the recognition that improving the effectiveness of each institution will help them all, and the importance of respecting both the equality of citizens and of Member States.

In the light of the consultations which the President and Vice-Presidents, on behalf of the Praesidium, will hold with each of the component groups of the Convention on 4 June, the Praesidium will revert to the articles which concern the central issues, and will subsequently put forward proposals for amendment in addition to those set out in the attached text.

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# **PART ONE OF THE CONSTITUTION**

## **TITLE IV: THE UNION'S INSTITUTIONS**

### **Chapter I - Institutional Framework**

#### **Article I-18 : The Union's Institutions**

1. The Union shall be served by a single institutional framework which shall aim to:

- advance the objectives of the Union,
- promote the values of the Union,
- serve the interests of the Union, its citizens and its Member States,

and ensure the consistency, effectiveness and continuity of the policies and actions which it undertakes in pursuit of its objectives.

2. This institutional framework comprises:

The European Parliament,

The European Council,

The Council of Ministers,

The European Commission,

The Court of Justice [~~of the European Union,~~]

~~The European Central Bank,~~

~~The Court of Auditors.~~

3. Each institution shall act within the limits of the powers conferred on it in the Constitution, and in conformity with the procedures and conditions set out in it. The institutions shall practice full mutual cooperation.

Comments:

*There were different sets of amendments from members of the Convention on the list of institutions; some wished to remove the reference to the European Council from the list; others wanted to reorder the list and place the European Council at the top. Several proposed changing the title of "Council of Ministers" to either simply "Council" or "Council of the European Union".*

*There was also a proposal to delete the ECB from the list of institutions. The Praesidium suggest that the article on the ECB be maintained in this Title, but that, together with the Court of Auditors, it be placed under a separate chapter headed 'Other institutions and Bodies'. The main institutions would then come under a first chapter headed 'the institutional framework'.*

*The Praesidium agrees to accept the proposal (Barnier + Vitorino) to amend the title of the ECJ to read simply "the Court of Justice".*

### **Article I-19 : The European Parliament**

1. The European Parliament shall, jointly with the Council, enact legislation, and exercise **the budgetary function**, as well as functions of political control and consultation as laid down in the Constitution. It shall elect the President of the European Commission.
2. The European Parliament shall be directly elected by universal suffrage of European citizens in free and secret ballot for a term of five years. Its members shall not exceed seven hundred in number. Representation of European citizens shall be degressively proportional, with a minimum threshold of four members per Member State.
3. The European Parliament shall elect its President and its officers from among its members, ~~for~~ a term of five years.

Comments:

*Article 15 attracted many amendments and comments. Most suggest simply repeating the provisions of Nice on the composition of the European Parliament. The proposed ceiling of 700 was criticised, and several amendments suggest that it revert to 732.\**

*The Praesidium proposes accepting the request from many Convention members (Brok and 27 others, Farnleitner, Kiljunen, Lopes, Muscardini, Santer, de Vries, Michel, Papandreou, Roche, Voggenhuber, Barnier, Vitorino) for the inclusion of a reference to the Parliament's budgetary competences.*

*The Praesidium proposes accepting the amendment to paragraph 3 from Ms Giannakou aimed at avoiding the imposition of a five-year electoral term for the President and officers of the EP (by established practice, the term of office of the President is two and a half years).*

*The last amendment proposed to paragraph 2 is purely linguistic (concerning only the French version) and simplifies the text.*

### **Article I-20 : The European Council**

1. The European Council shall provide the Union with the necessary impetus for its development, and shall define its general political directions and priorities.
2. The European Council shall consist of the Heads of State or Government of the Member States, together with its President and the President of the Commission. The Foreign Minister shall take part in its work.
3. The European Council shall meet quarterly, convened by its President. When the agenda so requires, its members may decide to be assisted by a minister, and, in the case of the President of the Commission, a Commissioner. When the situation so requires, the President shall convene an additional meeting of the European Council.
4. Except where the Constitution provides otherwise, decisions of the European Council shall be taken by consensus.

#### Comments:

***The Secretariat received a number of proposals for amendments to the Praesidium's proposal for replacing the European Council's rotating Presidency \*.***

*A number of other amendments relate to the issue of participation in the European Council. Some Convention members ask for example that Ministers for Foreign Affairs continue to be members as of right.*

*A third set of amendments concerns the title of the President of the European Council. Some suggest that this should be translated into English as "Chairman" and into German as "Vorsitzender". This suggestion could perhaps be examined further. However it should be born in mind that in the other articles of the draft Constitution concerning, for example, the Presidency of the Commission or the Parliament, an alternative term to "President" was not proposed. Could the word "Président" in French be translated differently into English or German depending on the articles of the Constitution?*

### **Article I-21 : The European Council Chair**

1. The European Council shall elect its President, by qualified majority, for a term of two and a half years, renewable once. ~~The person elected must be, or have been for at least two years, a member of the European Council.~~ In cases of serious malpractice, the European Council can end his mandate according to the same procedure.
2. The President of the European Council shall chair it and drive forward its work, ensuring proper preparation and continuity. He shall endeavour to facilitate cohesion and consensus within the European Council. He shall present a report to the European Parliament after each of its meetings.

The President of the European Council shall **in that capacity** ensure, at his level, **the external representation of the Union**, ~~that the Union is effectively represented in the wider world on issues concerning its common foreign and security policy.~~, **without prejudice to the responsibilities of the President of the Commission and the Minister for Foreign Affairs.**

3. The European Council may decide ~~by consensus~~ to create a board consisting of three of its members chosen according to a system of equitable rotation.
4. The President of the European Council may not be a member of another European institution or hold a national mandate.

#### Comments:

*As for Article 16, there were a number of amendments to the Praesidium's proposal for replacing the European Council's rotating Presidency\*.*

*Certain members of the Convention (Andriukaitis, Hain, Thorning-Schmidt, Van Lancker) expressed doubts about the need to specify these criteria for the President of the European Council. The Praesidium on reflection agrees.*

*The reference to the representative duties of the President of the European Council in the wider world attracted a number of comments, particularly related to the issue of possible overlap with the duties of the Minister for European Affairs or the Commission President (Christophersen, Fischer, Hübner, de Villepin, Severin, Teufel). The Praesidium agrees to take into account these concerns by modifying paragraph 2, second subparagraph.*

*Many members of the Convention expressed some concern at the creation of a "new bureaucracy" at the service of the European Council which would duplicate that of the Commission. In order to address this issue, the proposed article on the European Council in Part III (article III-239) includes a reference to the European Council being supported by the General Secretariat of the Council.*

*In paragraph 3 it is not necessary to specify the voting rule of the European Council, which, of necessity unless stipulated otherwise, comes under the general rule of decision-making by consensus in Article 16(4).*

*There were a number of amendments requesting the deletion of the provision in paragraph 4 prohibiting the President of the European Council from being "a member of another institution". The Praesidium has made no changes at this stage.*

## **Article I-22 : The Council of Ministers**

1. The Council of Ministers shall, jointly with the European Parliament, enact legislation, exercise the **budgetary function** and carry out policy-making and coordinating functions, as laid down in the Constitution.
2. The Council of Ministers shall consist of a representative of each Member State at ministerial level for each of its formations. Only this representative may commit the Member State in question, and cast its vote.
3. Except where the Constitution provides otherwise, decisions of the Council shall be taken by qualified majority.

Comments:

*The Praesidium agrees to the suggestion put forward by a number of Convention members (Michel, de Vries, Santer, Barnier, Vitorino, Papandreou, Vanhanen, Balázs, Korhonen) to add a reference to the Council's budgetary function in paragraph 1.*

*A number of amendments (de Villepin, Balázs, Korhonen, Teufel, Vanhanen) proposed modifications to paragraph 2 aimed in some cases at avoiding limiting the language on representation in the Council to national ministers. Others suggested that this paragraph reflect faithfully the text of existing Article 203. The text as drafted is not intended to restrict the representation of Member States in the Council, and it is therefore proposed to leave it unchanged.*

### **Article I-23 : Council formations**

1. The General Affairs Council shall ensure consistency in the work of the Council of Ministers. With the participation of the Commission, it shall prepare meetings of the European Council.
2. The Legislative Council shall consider and, jointly with the European Parliament, enact European laws and European framework laws, in accordance with the provisions of the Constitution. **Each Member State's representation on the Legislative Council shall be ensured by a ministerial representative and one or two representatives at the same level with relevant expertise, reflecting the business on the Council agenda.**
3. The Foreign Affairs Council shall, on the basis of strategic guidelines laid down by the European Council, flesh out the Union's external policies, and ensure that its actions are consistent. It shall be chaired by the Union's Foreign Minister.
4. The Council shall also meet in the configuration of an Economic and Financial Affairs Council, and a Council on Justice and Security.
5. The Council, in its General Affairs formation, may decide on further formations.

6. The European Council may decide ~~by consensus~~ that the Presidency of a Council formation, other than that of Foreign Affairs, should be undertaken by a Member State for a period of at least a year, taking into account European political and geographical balance and the diversity of all Member States.

Comments:

*The proposal to create a Legislative Council and, in particular, its modus operandi elicited many comments and reactions. Several Convention members expressed doubts regarding the proposed arrangement whereby "sectoral" ministers, whose political weight at national level is often considerable (finance minister, justice minister) would not participate in meetings of the Legislative Council concerning them and would merely "assist" the ministerial representative, who would express the Member State's position. In order to take this concern into account, a rewording of the last sentence is proposed. Other aspects will no doubt be raised in the forthcoming consultations.*

*In paragraph 3, several amendments proposed deleting the reference to the Foreign Minister chairing the Foreign Affairs Council (Barnier, Bonde, Einem, Helle, Palacio). Whilst there is an argument that it would be difficult for the minister both to chair the Council and defend his proposals, this is largely theoretical given the Minister's particular status within the Commission, and the fact that his authority for CFSP issues is actually derived from the Council. If the Minister were not to have this role, his ability to be seen externally as the single representative of the Union's foreign policy would be undermined, given that there would be a separate chair of the FAC.*

*In paragraph 6, the proposed amendment is simply editorial (the reference to consensus is unnecessary since it is stated as the general voting rule for the Council in 17(3)).*

***Paragraph 6 as drafted provides for the European Council to take decisions on the Presidency of Council formations. The general issue of the future extent of rotation for the Council Presidency is raised in many amendments.\****

#### **Article I-24 : Qualified majority**

1. When the European Council or the Council take decisions by qualified majority, such a majority shall consist of the majority of Member States, representing at least three fifths of the population of the Union.
2. Within the European Council, its President and the President of the Commission do not vote.

Comments:

***A number of amendments propose that the voting arrangements contained in the current Treaties (post Nice) should be maintained and that this article be amended accordingly.\****

*During the plenary session several Convention members also proposed that the Constitution should incorporate an existing provision which increases the qualified majority (to two-thirds of the Member States, as agreed at Nice) where the Council does not take a decision on the basis of a Commission proposal (but on the initiative of a Member State or group of Member States). The Praesidium agrees; but will wish to revert to the definition of the majority in the light of the forthcoming consultations.*

### **Article I-25 : The European Commission**

1. The European Commission shall ~~safeguard~~ **promote** the general European interest **and take appropriate initiatives to that end**. It shall ensure the application of the Constitution, and steps taken by the institutions under the Constitution. It shall also exercise coordinating, executive and management functions as laid down in the Constitution.
2. Except where the Constitution provides otherwise, Union acts can be adopted only on the basis of a Commission proposal.
3. The Commission shall consist of a President and up to fourteen other members. It may call on the help of Associate Commissioners. **This will not take effect before 1 November 2009.**
4. In carrying out its responsibilities, the Commission shall be completely independent. In the discharge of their duties members of the Commission shall neither seek nor take instructions from any government or other body.
5. The Commission, as a body, shall be responsible to the European Parliament. Under the procedures set out in Article III-238 of the Constitution, it may pass a censure motion on the Commission. If such a motion is passed, the members of the Commission must all resign. ~~They~~ **The Commission** shall continue to handle everyday business until ~~their successors are~~ **a new college is** nominated.

Comments:

***A large number of amendments to this Article concern the composition of the Commission as contained in paragraph 3. Most of them suggest either reverting to the relevant Nice provisions or providing a permanent arrangement of one Commissioner per Member State.\****

*In paragraph 1, the Praesidium proposes accepting the suggestion by Mr Barnier, Mr Vitorino, Mr Lopes, Mr de Vries, Mr Santer and Mr Michel to amend the definition of the Commission's role.*

*It has been pointed out that the drafting of paragraph 2 is incorrect because it implies the need for a Commission proposal even in cases where institutions can adopt acts on their own initiative. The Praesidium will review its proposed text of this paragraph in the light of legal advice.*

*The amendment to paragraph 3 is a straightforward clarification.*

*It is proposed that a suggestion from several Convention members – whereby Article 18a(3), slightly amended, would become the last paragraph of Article 18 – should be accepted. The Praesidium has also proposed minor drafting improvements.*

## **Article I-26 : The President of the European Commission**

1. Taking into account the elections to the European Parliament, the European Council, deciding by qualified majority, shall put forward to the European Parliament its proposed candidate for the Presidency of the Commission. This candidate shall be elected by the European Parliament by a majority of its members. If this candidate does not receive the required majority support, the European Council shall within one month put forward a new candidate, following the same procedure as before.
2. Each Member State shall submit a list of three persons, of whom at least one must be a woman, whom it considers qualified to be a European Commissioner. The President-elect, taking account of European political and geographical balance, shall, from among the names submitted, select as members of the Commission up to thirteen persons chosen for their competence, European commitment, and guaranteed independence. The President, the persons so nominated for membership of the Commission **including the future Minister for Foreign Affairs**, shall be submitted as a body to a vote of approval by the European Parliament. **The Commission's term of office shall be five years.**

3. The Commission shall work to guidelines laid down by its President. He shall decide its internal organisation, ensuring that it acts consistently, efficiently and on a collegiate basis. He shall appoint vice-presidents from among the members of the Commission. **A Member of the Commission shall resign if the President so requests.**
4. The President may appoint Associate Commissioners, chosen according to the same criteria as apply for members of the Commission. Their number must not exceed the number of members of the Commission.

Comments:

*This article has been the subject of several amendments. Most focus specifically on the issue of the size of the Commission, as well as on the proposal to introduce "Associate Commissioners" (paragraphs 2 and 4). \**

*In addition, several Convention members have voiced doubts about the procedure set out at the beginning of paragraph 2.*

*Several Convention members (Brok, Berger, Barnier, Papandreou) preferred the inclusion of an explicit reference to the fact that the Foreign Minister would be among the names submitted collectively for approval by the European Parliament.*

*The Praesidium agrees to take up the suggestion that paragraph 2 should specify that the term of office of the Commission and of its President is five years (amendments Brok and 31 others, Meyer, Stockton, Svensson, de Villepin, Giannakou).*

*Also taken up is the proposal broadly supported by the Convention (see Barnier, Vitorino, Papandreou, Attalides, Farnleitner, Duff, Hübner, Kiljunen, Liepina, Lopes, McAvan, Santer, Michel, de Vries) for increasing the powers of the President of the Commission by incorporating a provision from the Nice Treaty allowing him to require the resignation of a Commissioner (current Article 217(4)). However, it is proposed that, in order to enhance the decision-making autonomy of the President of the Commission, the condition of approval by the College – as contained in the current Article 217(4) – should not be adopted.*

## Article I-27 : The Foreign Minister

1. The European Council, deciding by qualified majority, with the agreement of the President of the Commission, shall appoint the Union's Foreign Minister. He shall conduct the Union's common foreign and security policy. **The European Council may end his tenure by the same procedure.**
2. The Foreign Minister shall contribute by his proposals to the development of the common foreign policy, which he shall carry out as mandated by the Council. The same shall apply to the common security and defence policy.
3. The Foreign Minister shall be one of the Vice-Presidents of the Commission. He shall be responsible there for handling external relations and for coordinating other aspects of the Union's external action. In exercising these responsibilities within the Commission, and only for these responsibilities, the Foreign Minister shall be bound by Commission procedures.

### Comments:

*There are a variety of proposals for changes to the title of this article. The most plausible options are "Secretary of the Union", "External Representative of the European Union", or "High Commissioner".*

*Several Convention members asked for the inclusion of a reference to the termination of the Foreign Minister's duties. The Praesidium agrees that a proposal on this matter by Mr de Villepin should be taken up in amended form (paragraph 1).*

## Article I-28: The Court of Justice ~~of the European Union~~

1. **The Court of Justice shall ensure respect for the law in the interpretation and application of the Constitution. The Court of Justice shall also include the High Court and specialised courts.**

The Member States shall provide rights of appeal sufficient to ensure effective legal protection in the field of Union law.

2. The Court of Justice shall consist of one judge from each Member State, and shall be assisted by Advocates-General. The High Court shall include at least one judge per Member State: the number shall be fixed by the Statute of the Court of Justice. The judges **and the Advocates-General** of the Court of Justice and the judges of the High Court, chosen from persons whose independence is beyond doubt and who satisfy the conditions set out in Articles III-256 to III-257, shall be appointed by common accord of the governments of the Member States for a term of six years, renewable.
3. The Court of Justice shall:
  - **rule** on actions brought by ~~the Commission~~, a Member State, an institution or a natural or legal person **in accordance with the provisions of Part III**;
  - **give** preliminary rulings, at the request of Member State courts, on the interpretation of Union law or the validity of acts adopted by the institutions;
  - **rule** on the other cases provided for in the Constitution.

Comments:

*Several amendments were submitted with the aim of strengthening the idea that the Court of Justice is both a Union institution and a court. Some wanted to clarify the fact that, as an institution, the Court of Justice comprises the Court of Justice and the High Court (de Villepin, Michel, Severin). Others wanted the specialised courts to be added (Balázs + 8, Vitorino, Azevedo + 1, Papandreou, Fini, Hjelm-Wallén + 5, Kiljunen, Severin). Both of these suggestions are taken up.*

*With regard to the procedure for appointing the judges and Advocates-General of the Court of Justice, some Convention members suggested it should be decided by the Council, acting by a qualified majority, after obtaining the assent of the European Parliament (Brok + 26, Borrell + 2, McAvan, Voggenhuber + 4). As for the mandate, many Convention members argued that a longer and non-renewable mandate could strengthen the independence of Court members. Some Convention members suggested a single mandate of twelve years (Vitorino, Papandreou) and a large number suggested a single mandate of nine years (Andriukaitis + 2, Berger, Duff + 6, Duhamel + 2, Einem, Haenel, Azevedo, McAvan, De Villepin, Olesky, Paciotti Queiró). It emerged however from the circle's proceedings and discussions in plenary session that a large number of Convention members preferred to keep the existing appointment procedure and the current mandate for judges. The Praesidium so recommends.*

*The Praesidium has proposed amending the text of paragraph 3 to make it more general. This is in response to several different drafting suggestions from Convention members.*

## **Chapter II - Other Institutions and Bodies**

### **Article I-29: The European Central Bank**

1. The European Central Bank shall direct the European System of Central Banks, of which it, alongside the national central banks, forms part.
2. The primary objective of the **System** shall be to maintain price stability. Without prejudice to the objective of price stability, the System shall support general economic policies in the Union with a view to contributing to the achievement of the Union's objectives. **The System shall conduct** the monetary policy of the Union **as well as** other Central Bank tasks according to the provisions of Part III of the Constitution and its statute.
3. The Bank shall have legal personality. It alone may authorise the issue of the Union currency, the Euro. In the exercise of its powers and for its finances, it shall be independent. Union institutions and bodies, and the governments of the Member States, shall undertake to respect this principle.

4. The Bank shall adopt such measures as are necessary to carry out its tasks in accordance with the provisions of Articles III-74 to III-81, and with the conditions laid down in its Statutes. In accordance with these same provisions, those Member States which have not adopted the euro, and their central banks, shall retain their powers in monetary matters.
5. Within its areas of competence, the Bank shall be consulted on all proposed Union acts, and all proposals for regulation at national level; and may give an opinion.
6. The organs of the Bank, their composition and operating methods are set out in articles III-82 to III-85, as well as in the Statute of the Bank.

Comments:

*Only a few members of the Convention put forward amendments suggesting that the ECB should not be an institution, although some wished to see it more clearly distinguished from the other main institutions. In response, it is proposed to create a separate chapter for the ECB and Court of Auditors (see commentary to Article 14).*

*Several amendments have been put forward on the drafting of paragraph 1, and in particular on what is seen to be a change in the relationship between the ECB and ESCB. In order to address this issue, the Praesidium proposes amending this article to align the text more closely with existing Treaty language.*

### **Article I-30: The Court of Auditors**

1. The Court of Auditors shall carry out the audit.
2. It shall examine the accounts of all Union revenue and expenditure, and shall ensure good financial management.
3. It shall consist of one national of each Member State. In the performance of their duties, its members shall be completely independent.

Comments:

*There were very few textual amendments to this article. However a number of members of the Convention (de Vries, Hjelm-Wallén, Fischer) have put forward substantive ideas for modifying the functioning of the Court, in particular a move away from one national from each Member State fulfilling executive functions in the Court, combined with the establishment of a Governing Committee. These modifications would have to be considered in the context of any amendments to the Part III articles on the Court of Auditors.*

**Article I-31 : The Union's Advisory Bodies**

1. The European Parliament, the Council of Ministers and the Commission shall be assisted by a Committee of the Regions and an Economic and Social Committee, exercising advisory functions.
2. The Committee of the Regions shall consist of representatives of regional and local bodies who ~~have either been elected to hold~~ a regional or local authority **mandate** or are politically accountable to an elected assembly.
3. The Economic and Social Committee shall consist of representatives of organisations of employers, of the employed, and of others representative of civil society, notably in socio-economic, civic, professional and cultural areas.
4. The members of the Committee of the Regions and the Economic and Social Committee must not be bound by any mandatory instructions. They shall be completely independent, in the performance of their duties, in the Union's general interest.
5. Rules governing the composition of these Committees, the designation of their members, their powers and their operations, are set out in Articles III-288 to III-294 of the Constitution. The rules governing their composition shall be reviewed at regular intervals by the Council, on the basis of a Commission proposal, in the light of economic, social and demographic developments within the Union.

Comments:

*The original text has on the whole been welcomed. On reflection however, the Praesidium supports the request by several Convention members for the exact wording contained in the current treaties to be incorporated into paragraph 2.*

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*The Praesidium has decided not to maintain its proposal for a possible article X for Title VI on "The democratic life of the Union".*

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