

DECLARATIONS TO BE ANNEXED TO THE FINAL ACT OF THE INTERGOVERNMENTAL CONFERENCE AND THE FINAL ACT

TABLE OF CONTENTS

Quick reference	Declaration	Page
	A. Declarations concerning provisions of the Constitution	5
Primacy of EU-law	1. Declaration on Article I-6	5
Human rights	2. Declaration on Article I-9(2)	5
Demographic differences	3. Declaration on Articles I-22, I-27 and I-28	5
The Presidency of the Council	4. Declaration on Article I-24(7) concerning the European Council decision on the exercise of the Presidency of the Council	5
Voting in the Council	5. Declaration on Article I-25	6
Smaller Commission	6. Declaration on Article I-26	8
Commission President	7. Declaration on Article I-27	8
National experts	8. Declaration on Article I-36	8
Solidarity against terror	9. Declaration on Articles I-43 and III-329	9
Personal data and national security	10. Declaration on Article I-51	9
Small neighbours	11. Declaration on Article I-57	9
Charter explanations	12. Declaration concerning the explanations relating to the Charter of Fundamental Rights	10
Violence at home	13. Declaration on Article III-116	53
Social security	14. Declaration on Articles III-136 and III-267	53
Restrictive measures	15. Declaration on Articles III-160 and III-322	53
Division of Germany - aid	16. Declaration on Article III-167(2)(c)	54
Growth and stability pact	17. Declaration on Article III-184	54
Labour law	18. Declaration on Article III-213	55
Islands	19. Declaration on Article III-220	55

Division of Germany - transport	20. Declaration on Article III-243	55
Research	21. Declaration on Article III-248	56
Energy	22. Declaration on Article III-256	56
Prosecutions	23. Declaration on Article III-273(1), second subparagraph	56
EU Foreign Office	24. Declaration on Article III-296	56
International agreements	25. Declaration on Article III-325 concerning the negotiation and conclusion of international agreements by Member States relating to the area of freedom, security and justice	56
Financial frames	26. Declaration on Article III-402(4)	57
Deepening clause	27. Declaration on Article III-419	57
Mayottes status	28. Declaration on Article IV-440(7)	57
Official languages	29. Declaration on Article IV-448(2)	57
EU Summit after rejections	30. Declaration on the ratification of the Treaty establishing a Constitution for Europe	58
Declarations about protocols	B. Declarations concerning Protocols annexed to the Constitution Declarations concerning the Protocol on the Treaties and Acts of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, of the Hellenic Republic, of the Kingdom of Spain and the Portuguese Republic, and of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden	58
Åland islands	31. Declaration on the Åland islands	58
Sami people	32. Declaration on the Sami people	58
Accession countries 2004	Declarations concerning the Protocol on the Treaty and the Act of Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic	59

UK-base in Cyprus	33. Declaration on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus	59
Commission on Cyprus	34. Declaration by the Commission on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus	60
Ignalina Nuclear Plant	35. Declaration on the Ignalina Nuclear Power Plant in Lithuania	61
Kaliningrad transit	36. Declaration on the transit of persons by land between the region of Kaliningrad and other parts of the Russian Federation	62
Nuclear plant in Slovakia	37. Declaration on Unit 1 and Unit 2 of the Bohunice V1 nuclear power plant in Slovakia	63
Division in Cyprus	38. Declaration on Cyprus	63
Danish derogations	39. Declaration concerning the Protocol on the position of Denmark	64
Bulgaria and Romania	40. Declaration concerning the Protocol on the transitional provisions relating to the institutions and bodies of the Union	65
Backward regions in Italy	41. Declaration concerning Italy	66
	Declarations by Member States	67
Dutch net payments	42. Declaration by the Kingdom of the Netherlands on Article I-55	67
Dutch Antilles	43. Declaration by the Kingdom of the Netherlands on Article IV-440	67
Nuclear treaty	44. Declaration by the Federal Republic of Germany, Ireland, the Republic of Hungary, the Republic of Austria and the Kingdom of Sweden	67
Gibraltar	45. Declaration by the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland	68
UK "citizens"	46. Declaration by the United Kingdom of Great Britain and Northern Ireland on the definition of the term "nationals"	68
Spain about EU citizenship	47. Declaration by the Kingdom of Spain on the definition of the term "nationals"	68
UK about EP voting rights	48. Declaration by the Kingdom of the United Kingdom of Great Britain and Northern Ireland on	68

	the franchise for elections to the European Parliament	
Belgium chambers	49. Declaration by the Kingdom of Belgium on national parliaments	69
Spelling of euro	50. Declaration by the Republic of Latvia and the Republic of Hungary on the spelling of the name of the single currency in the Treaty establishing a Constitution for Europe.	69

A. DECLARATIONS CONCERNING PROVISIONS OF THE CONSTITUTION

Primacy of EU law

Primacy of EU law applies today by reason of the EU Court's case law

1. DECLARATION ON ARTICLE I-6

The Conference notes that Article I-6 reflects existing case law of the Court of Justice of the European Communities and of the Court of First Instance.

Human rights

Dialogue between EU Court and Court of Human Rights

2. DECLARATION ON ARTICLE I-9(2)

The Conference agrees that the Union's accession to the European Convention on the Protection of Human Rights and Fundamental Freedoms should be arranged in such a way as to preserve the specific features of Union law. In this connection, the Conference notes the existence of a regular dialogue between the Court of Justice of the European Union and the European Court of Human Rights; such dialogue could be reinforced when the Union accedes to that Convention.

Demographic differences

Geographical and demographic diversity respected when choosing Presidents - not for EP

3. DECLARATION ON ARTICLES I-22, I-27 AND I-28

In choosing the persons called upon to hold the offices of President of the European Council, President of the Commission and Union Minister for Foreign Affairs, due account is to be taken of the need to respect the geographical and demographic diversity of the Union and its Member States.

The Presidency of the Council

Prepares decisions on exercise of the Council presidency as soon as Constitution is signed

4. DECLARATION ON ARTICLE I-24(7) CONCERNING THE EUROPEAN COUNCIL DECISION ON THE EXERCISE OF THE PRESIDENCY OF THE COUNCIL

The Conference declares that the Council should begin preparing the European decision establishing the measures for applying the European decision of the European Council on the exercise of the Presidency of the Council as soon as the Treaty establishing a Constitution for Europe is signed and should give its political approval within six months. A draft European decision of the European Council, which will be adopted on the date of entry into force of the said Treaty, is set out below:

Draft European decision of the European Council on the exercise of the Presidency of the Council

ARTICLE 1

1. The Presidency of the Council, with the exception of the Foreign Affairs

configuration, shall be held by pre-established groups of three Member States for a period of 18 months. The groups shall be made up on a basis of equal rotation among the Member States, taking into account their diversity and geographical balance within the Union.

2. Each member of the group shall in turn chair for a six-month period all configurations of the Council, with the exception of the Foreign Affairs configuration. The other members of the group shall assist the Chair in all its responsibilities on the basis of a common programme. Members of the team may decide alternative arrangements among themselves.

ARTICLE 2

The Committee of Permanent Representatives of the Governments of the Member States shall be chaired by a representative of the Member State chairing the General Affairs Council.

The Chair of the Political and Security Committee shall be held by a representative of the Union Minister for Foreign Affairs.

The chair of the preparatory bodies of the various Council configurations, with the exception of the Foreign Affairs configuration, shall fall to the member of the group chairing the relevant configuration, unless decided otherwise in accordance with Article 4.

ARTICLE 3

The General Affairs Council shall ensure consistency and continuity in the work of the different Council configurations in the framework of multiannual programmes in cooperation with the Commission. The Member States holding the Presidency shall take all necessary measures for the organisation and smooth operation of the Council's work, with the assistance of the General Secretariat of the Council.

ARTICLE 4

The Council shall adopt a European decision establishing the measures for the implementation of this decision.

Voting in the Council

5. DECLARATION ON ARTICLE I-25

The Conference declares that the European decision relating to the implementation of Article I-25 will be adopted by the Council on the day the Treaty establishing a Constitution for Europe enters into force. The draft decision is set out below:

Draft European decision of the Council relating to the implementation of Article I-25

THE COUNCIL OF THE EUROPEAN UNION,

Whereas:

(1) Provisions should be adopted allowing for a smooth transition from the system for decision-making in the Council by a qualified majority as defined in the Treaty of Nice and set out in Article 2(2) of the Protocol on the transitional provisions relating to the institutions and bodies of the Union annexed to the Constitution, which will continue to apply until 31 October 2009, to the voting system provided for in Article I-25 of the Constitution, which will apply with effect from 1 November 2009.

(2) It is recalled that it is the practice of the Council to devote every effort to strengthening the democratic legitimacy of decisions taken by a qualified majority.

(3) It is judged appropriate to maintain this decision as long as is necessary to ensure smooth transition to the new voting system provided for in the Constitution,

HAS DECIDED AS FOLLOWS:

ARTICLE 1

If members of the Council, representing:

- (a) at least three quarters of the population, or
- (b) at least three quarters of the number of Member States

necessary to constitute a blocking minority resulting from the application of Article I-25(1), first subparagraph, or Article I-25(2), indicate their opposition to the Council adopting an act by a qualified majority, the Council shall discuss the issue.

ARTICLE 2

The Council shall, in the course of these discussions, do all in its power to reach, within a reasonable time and without prejudicing obligatory time limits laid down by Union law, a satisfactory solution to address concerns raised by the members of the Council referred to in Article 1.

ARTICLE 3

To this end, the President of the Council, with the assistance of the Commission and in compliance with the Rules of Procedure of the Council, shall undertake any initiative necessary to facilitate a wider basis of agreement in the Council. The members of the Council shall lend him or her their assistance.

*Nice system until
31 October 2009
(Qualified majority =
232 out of 321 votes)*

*From 1 November 2009,
Art.I-25 basically applies*

*But political blocking is
possible if a minority
represents $\frac{3}{4}$ of either the
EU population or the
number of Member States
required for reaching a
blocking minority*

*Then, the Council must
do everything possible to
reach a satisfactory
solution*

*President of the Council
and the Commission
shall try to find a
compromise*

ARTICLE 4

Present decision takes effect in 2009 and stays in force until at least 2014

This decision shall take effect on 1 November 2009. It shall remain in force at least until 2014. Thereafter the Council may adopt a European decision repealing it.

Smaller Commission

6. DECLARATION ON ARTICLE I-26

Since not all Member States are represented, Commission shall ensure full transparency in relations with all Member States...

The Conference considers that when the Commission no longer includes nationals of all Member States, the Commission should pay particular attention to the need to ensure full transparency in relations with all Member States. Accordingly, the Commission should liaise closely with all Member States, whether or not they have a national serving as member of the Commission, and in this context pay special attention to the need to share information and consult with all Member States.

...and take account of political, social and economic realities in all countries

The Conference also considers that the Commission should take all the necessary measures to ensure that political, social and economic realities in all Member States, including those which have no national serving as member of the Commission, are fully taken into account. These measures should include ensuring that the position of those Member States is addressed by appropriate organisational arrangements.

Commission President

7. DECLARATION ON ARTICLE I-27

Both Council and EP participate in finding a candidate for the Commission President

The Conference considers that, in accordance with the provisions of the Constitution, the European Parliament and the European Council are jointly responsible for the smooth running of the process leading to the election of the President of the European Commission. Prior to the decision of the European Council, representatives of the European Parliament and of the European Council will thus conduct the necessary consultations in the framework deemed the most appropriate. These consultations will focus on the backgrounds of the candidates for President of the Commission, taking account of the elections to the European Parliament, in accordance with Article I-27(1). The arrangements for such consultations may be determined, in due course, by common accord between the European Parliament and the European Council.

National experts

8. DECLARATION ON ARTICLE I-36

"Lamfalussy" procedure

The Conference takes note of the Commission's intention to continue to consult experts appointed by the Member States in the preparation of draft delegated European regulations in the financial services area, in accordance with its established practice.

Solidarity against terror

Member States are free to define how to comply with the solidarity clause

9. DECLARATION ON ARTICLES I-43 AND III-329

Without prejudice to the measures adopted by the Union to comply with its solidarity obligation towards a Member State which is the object of a terrorist attack or the victim of natural or man-made disaster, none of the provisions of Articles I-43 and III-329 of the Constitution is intended to affect the right of another Member State to choose the most appropriate means to comply with its own solidarity obligation towards that Member State.

Personal data and national security

Rules on protection of personal data take into account national security matters

10. DECLARATION ON ARTICLE I-51

The Conference declares that, whenever rules on protection of personal data to be adopted on the basis of Article I-51 could have direct implications for national security, due account will have to be taken of the specific characteristics of the matter. It recalls that the legislation presently applicable (see in particular Directive 95/46/EC) includes specific derogations in this regard.

Declaration on small neighbouring states

Special consideration towards small neighbouring states (Andorra, Monaco, San Marino, Vatican and Liechtenstein)

11. DECLARATION ON ARTICLE I-57

The Union will take into account the particular situation of small-sized countries which maintain specific relations of proximity with it.

Charter explanations

Explanations prepared by the Convention relating to the Charter are taken as a contribution when interpreting the Charter

Valuable tool of interpretation

**12. DECLARATION CONCERNING THE EXPLANATIONS
RELATING
TO THE CHARTER OF FUNDAMENTAL RIGHTS**

The Conference takes note of the explanations relating to the Charter of Fundamental Rights prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention, as set out below.

**EXPLANATIONS RELATING TO THE CHARTER OF
FUNDAMENTAL RIGHTS**

These explanations were originally prepared under the authority of the Praesidium of the Convention which drafted the Charter of Fundamental Rights of the European Union. They have been updated under the responsibility of the Praesidium of the European Convention, in the light of the drafting adjustments made to the text of the Charter by that Convention (notably to Articles 51 and 52 ¹) and of further developments of Union law. Although they do not as such have the status of law, they are a valuable tool of interpretation intended to clarify the provisions of the Charter.

¹ Articles II-111 and II-112 of the Constitution.

PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, services, goods and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

TITLE I

DIGNITY

ARTICLE 1²

Human dignity

*Human dignity part of
EU law*

² Article II-61 of the Constitution.

Human dignity is inviolable. It must be respected and protected.

Explanation

The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights. The 1948 Universal Declaration of Human Rights enshrined human dignity in its preamble: "Whereas recognition of the inherent dignity and of the equal and

inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.’ In its judgment of 9 October 2001 in case C-377/98 Netherlands v European Parliament and Council [2001] ECR 7079, at grounds 70 to 77, the Court of Justice confirmed that a fundamental right to human dignity is part of Union law.

It results that none of the rights laid down in this Charter may be used to harm the dignity of another person, and that the dignity of the human person is part of the substance of the rights laid down in this Charter. It must therefore be respected, even where a right is restricted.

ARTICLE 2³

Right to life

³ Article II-62 of the Constitution.

Right to life

1. Everyone has the right to life.

No death penalty

2. No one shall be condemned to the death penalty, or executed.

Explanation

1. Paragraph 1 of this Article is based on the first sentence of Article 2(1) of the ECHR, which reads as follows:
"1. Everyone's right to life shall be protected by law..."

2. The second sentence of the provision, which referred to the death penalty, was superseded by the entry into force of Article 1 of Protocol No 6 to the ECHR, which reads as follows:
"The death penalty shall be abolished. No-one shall be condemned to such penalty or executed."
Article 2(2) of the Charter⁴ is based on that provision.

⁴ Article II-62(2) of the Constitution.

3. The provisions of Article 2 of the Charter⁵ correspond to those of the above Articles of the ECHR and its Protocol. They have the same meaning and the same scope, in accordance with Article 52(3) of the Charter⁶. Therefore, the "negative" definitions appearing in the ECHR must be regarded as also forming part of the Charter:

⁵ Article II-62 of the Constitution.

⁶ Article II-112(3) of the Constitution.

Exceptions:

(a) Article 2(2) of the ECHR:

"Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- when defending another person
- in a lawful arrest

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

- when quelling a riot or insurrections

(b) Article 2 of Protocol No 6 to the ECHR:

Death penalty allowed in time of war

"A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions..."

ARTICLE 3 ⁷

Right to the integrity of the person

⁷ Article II-63 of the Constitution.

Physical and mental integrity

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - (a) the free and informed consent of the person concerned, according to the procedures laid down by law;
 - (b) the prohibition of eugenic practices, in particular those aiming at the selection of persons;
 - (c) the prohibition on making the human body and its parts as such a source of financial gain;
 - (d) the prohibition of the reproductive cloning of human beings.

Explanation

Part of EU law

1. In its judgment of 9 October 2001 in case C-377/98 Netherlands v. European Parliament and Council, 2001 ECR 7079, at grounds No 70, 78 - 80, the Court of Justice confirmed that a fundamental right to human integrity is part of Union law and encompasses, in the context of medicine and biology, the free and informed consent of the donor and recipient.

Cloning

2. The principles of Article 3 of the Charter ⁸ are already included in the Convention on Human Rights and Biomedicine, adopted by the Council of Europe (ETS 164 and additional protocol ETS 168). The Charter does not

set out to depart from those principles, and therefore prohibits only reproductive cloning. It neither authorises nor prohibits other forms of cloning. Thus it does not in any way prevent the legislature from prohibiting other forms of cloning.

⁸ Article II-63 of the Constitution.

3. The reference to eugenic practices, in particular those aiming at the selection of persons, relates to possible situations in which selection programmes are organised and implemented, involving campaigns for sterilisation, forced pregnancy, compulsory ethnic marriage among others, all acts deemed to be international crimes in the Statute of the International Criminal Court adopted in Rome on 17 July 1998 (see its Article 7(1)(g)).

ARTICLE 4 ⁹

Prohibition of torture and inhuman or degrading treatment or punishment

⁹ Article II-64 of the Constitution.

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Explanation

The right in Article 4 ¹⁰ is the right guaranteed by Article 3 of the ECHR, which has the same wording: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". By virtue of Article 52(3) of the Charter ¹¹, it therefore has the same meaning and the same scope as the ECHR Article.

¹⁰ Article II-64 of the Constitution.

¹¹ Article II-112(3) of the Constitution.

ARTICLE 5 ¹²

Prohibition of slavery and forced labour

¹² Article II-65 of the Constitution.

1. No one shall be held in slavery or servitude.

Torture and inhuman treatment

Slavery and forced labour

2. No one shall be required to perform forced or compulsory labour.

3. Trafficking in human beings is prohibited.

Explanation

1. The right in Article 5(1) and (2) ¹³ corresponds to Article 4(1) and (2) of the ECHR, which has the same wording. It therefore has the same meaning and scope as the ECHR Article, by virtue of Article 52(3) of the Charter ¹⁴. Consequently:

¹³ Article II-65 of the Constitution.

¹⁴ Article II-112(3) of the Constitution.

– no limitation may legitimately affect the right provided for in paragraph 1;

– in paragraph 2, "forced or compulsory labour" must be understood in the light of the "negative" definitions contained in Article 4(3) of the ECHR:

"For the purpose of this article the term "forced or compulsory labour" shall not include:

- *Prison*

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;

- *Military*

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

- *Emergency*

(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

- *Civil obligations*

(d) any work or service which forms part of normal civic obligations."

Traffic in human beings

Illegal immigration
Sexual exploitation

2. Paragraph 3 stems directly from human dignity and takes account of recent developments in organised crime, such as the organisation of lucrative illegal immigration or sexual exploitation networks. The annex to the Europol Convention contains the following definition which refers to trafficking for the purpose of sexual exploitation: "traffic in human beings: means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children". Chapter VI of the Convention implementing the Schengen Agreement, which has been integrated into the Union's acquis, in which the United Kingdom and Ireland participate, contains the following wording in Article 27(1) which

refers to illegal immigration networks: " The Contracting Parties undertake to impose appropriate penalties on any person who, for financial gain, assists or tries to assist an alien to enter or reside within the territory of one of the Contracting Parties in breach of that Contracting Party's laws on the entry and residence of aliens." On 19 July 2002, the Council adopted a framework decision on combating trafficking in human beings (OJ L 203/1) whose Article 1 defines in detail the offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation, which the Member States must make punishable by virtue of that framework decision.

TITLE II

FREEDOMS

ARTICLE 6 ¹⁵

Right to liberty and security

Liberty and security

¹⁵ Article II-66 of the Constitution.

Everyone has the right to liberty and security of person.

Explanation

The rights in Article 6 ¹⁶ are the rights guaranteed by Article 5 of the ECHR, and in accordance with Article 52(3) of the Charter ¹⁷, they have the same meaning and scope. Consequently, the limitations which may legitimately be imposed on them may not exceed those permitted by the ECHR, in the wording of Article 5:

¹⁶ Article II-66 of the Constitution.

¹⁷ Article II-112(3) of the Constitution.

Exceptions:

- *lawful detention*

- *lawful arrest*

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- *prevention of diseases* (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- *unauthorised entry into a country* (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
- Rights of the arrested or detained* 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
- *right to be brought before a judge* 3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
- *right to take proceedings* 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
- *right to compensation* 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

The rights enshrined in Article 6 ¹⁸ must be respected particularly when the European Parliament and the Council adopt laws and framework laws in the area of judicial cooperation in criminal matters, on the basis of Articles III-270, III-271 and III-273 of the Constitution, notably to define common minimum provisions as regards the categorisation of offences and punishments and certain aspects of procedural law.

¹⁸ Article II-66 of the Constitution.

ARTICLE 7 ¹⁹

Respect for privacy

Respect for private and family life

¹⁹ Article II-67 of the Constitution.

Everyone has the right to respect for his or her private and family life, home and communications.

Explanation

The rights guaranteed in Article 7²⁰ correspond to those guaranteed by Article 8 of the ECHR. To take account of developments in technology the word "correspondence" has been replaced by "communications".

²⁰ Article II-67 of the Constitution.

In accordance with Article 52(3)²¹, the meaning and scope of this right are the same as those of the corresponding article of the ECHR. Consequently, the limitations which may legitimately be imposed on this right are the same as those allowed by Article 8 of the ECHR:

²¹ Article II-112(3) of the Constitution.

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

ARTICLE 8²²

Protection of personal data

²² Article II-68 of the Constitution.

1. Everyone has the right to the protection of personal data concerning him or her.

2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

3. Compliance with these rules shall be subject to control by an independent authority.

Explanation

This Article has been based on Article 286 of the Treaty establishing the European Community and Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995) as well as on Article 8 of the ECHR and on the

Exceptions:

- national security
- public safety
- country's economic well-being

Protection of personal data

Right of access to own data

Independent control

Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which has been ratified by all the Member States. Article 286 EC Treaty is now replaced by Article I-51 of the Constitution. Reference is also made to Regulation No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001). The abovementioned Directive and Regulation contain conditions and limitations for the exercise of the right to the protection of personal data.

ARTICLE 9 ²³

Right to found a family

Right to marry and right to found a family

²³ Article II-69 of the Constitution.

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Explanation

The Charter neither prohibits nor imposes gay/lesbian marriages

This Article is based on Article 12 of the ECHR, which reads as follows: "Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right." The wording of the Article has been modernised to cover cases in which national legislation recognises arrangements other than marriage for founding a family. This Article neither prohibits nor imposes the granting of the status of marriage to unions between people of the same sex. This right is thus similar to that afforded by the ECHR, but its scope may be wider when national legislation so provides.

ARTICLE 10 ²⁴

Freedom of thought, conscience and religion

Freedom of thought, conscience and religion

²⁴ Article II-70 of the Constitution.

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

Conscientious objection

2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Explanation

The right guaranteed in paragraph 1 corresponds to the right guaranteed in Article 9 of the ECHR and, in accordance with Article 52(3) of the

Limitations

Charter ²⁵, has the same meaning and scope. Limitations must therefore respect Article 9(2) of the Convention, which reads as follows: "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

²⁵ Article II-112(3) of the Constitution.

The right guaranteed in paragraph 2 corresponds to national constitutional traditions and to the development of national legislation on this issue.

ARTICLE 11 ²⁶

Freedom of expression and information

Freedom of expression and information

²⁶ Article II-71 of the Constitution.

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

2. The freedom and pluralism of the media shall be respected.

Freedom and pluralism

Explanation

1. Article 11 ²⁷ corresponds to Article 10 of the European Convention on Human Rights, which reads as follows:

²⁷ Article II-71 of the Constitution.

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Limitations

Pursuant to Article 52(3) of the Charter ²⁸, the meaning and scope of this right are the same as those guaranteed by the ECHR. The limitations which may be imposed on it may therefore not exceed those provided for in Article 10(2) of the Convention, without prejudice to any restrictions which competition law of the Union may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR.

²⁸ Article II-112(3) of the Constitution.

2. Paragraph 2 of this Article spells out the consequences of paragraph 1 regarding freedom of the media. It is based in particular on Court of Justice case law regarding television, particularly in case C-288/89 (judgment of 25 July 1991, Stichting Collectieve Antennevoorziening Gouda and others [1991] ECR I-4007), and on the Protocol on the system of public broadcasting in the Member States annexed to the EC Treaty and now to the Constitution, and on Council Directive 89/552/EC (particularly its seventeenth recital).

ARTICLE 12 ²⁹

Freedom of assembly and of association

Freedom of assembly and association

²⁹ Article II-72 of the Constitution.

Political - trade union and civic matters

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.

EU - political parties

2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Explanation

Paragraph 1 of this Article corresponds to Article 11 of the ECHR, which reads as follows:

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

- Limitations:*
- national security
 - public safety
 - prevention of crime
 - protection of health or morals
 - protection of rights and freedoms

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

The meaning of the provisions of paragraph 1 is the same as that of the ECHR, but their scope is wider since they apply at all levels including European level. In accordance with Article 52(3) of the Charter ³⁰, limitations on that right may not exceed those considered legitimate by virtue of Article 11(2) of the ECHR.

³⁰ Article II-112(3) of the Constitution.

2. This right is also based on Article 11 of the Community Charter of the Fundamental Social Rights of Workers.

3. Paragraph 2 of this Article corresponds to Article I-46(4) of the Constitution.

Freedom of arts and sciences

ARTICLE 13 ³¹
Freedom of the arts and sciences

³¹ Article II-73 of the Constitution.

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Explanation

Limitations

This right is deduced primarily from the right to freedom of thought and expression. It is to be exercised having regard to Article 1 ³² and may be subject to the limitations authorised by Article 10 of the ECHR.

³² Article II-61 of the Constitution.

Right to education

ARTICLE 14 ³³
Right to education

³³ Article II-74 of the Constitution.

1. Everyone has the right to education and to have access to vocational and continuing training.

Free compulsory education

2. This right includes the possibility to receive free compulsory education.

Freedom to found educational establishments

3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Explanation

1. This Article is based on the common constitutional traditions of Member States and on Article 2 of the Protocol to the ECHR, which reads as follows:

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

It was considered useful to extend this article to access to vocational and continuing training (see point 15 of the Community Charter of the Fundamental Social Rights of Workers and Article 10 of the Social Charter) and to add the principle of free compulsory education. As it is worded, the latter principle merely implies that as regards compulsory education, each child has the possibility of attending an establishment which offers free education. It does not require all establishments which provide education or vocational and continuing training, in particular private ones, to be free of charge. Nor does it exclude certain specific forms of education having to be paid for, if the State takes measures to grant financial compensation. Insofar as the Charter applies to the Union, this means that in its training policies the Union must respect free compulsory education, but this does not, of course, create new powers. Regarding the right of parents, it must be interpreted in conjunction with the provisions of Article 24 ³⁴.

³⁴ Article II-84 of the Constitution.

2. Freedom to found public or private educational establishments is guaranteed as one of the aspects of freedom to conduct a business but it is limited by respect for democratic principles and is exercised in accordance with the arrangements defined by national legislation.

ARTICLE 15 ³⁵

Freedom to choose an occupation and right to engage in work

Free choice of work

³⁵ Article II-75 of the Constitution.

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.

- in any Member State

2. Every citizen of the Union has the freedom to seek employment, to

work, to exercise the right of establishment and to provide services in any Member State.

3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Explanation

Freedom to choose an occupation, as enshrined in Article 15(1)³⁶, is recognised in Court of Justice case law (see inter alia judgment of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraphs 12 to 14 of the grounds; judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 8 October 1986, Case 234/85 Keller [1986] ECR 2897, paragraph 8 of the grounds).

³⁶ Article II-75 of the Constitution.

This paragraph also draws upon Article 1(2) of the European Social Charter, which was signed on 18 October 1961 and has been ratified by all the Member States, and on point 4 of the Community Charter of the Fundamental Social Rights of Workers of 9 December 1989. The expression "working conditions" is to be understood in the sense of Article III-213 of the Constitution.

Paragraph 2 deals with the three freedoms guaranteed by Articles I-4 and III-133, III-137 and III-144 of the Constitution, namely freedom of movement for workers, freedom of establishment and freedom to provide services.

Paragraph 3 has been based on TEC Article 137(3), fourth indent, now replaced by Article III-210(1)(g) of the Constitution, and on Article 19(4) of the European Social Charter signed on 18 October 1961 and ratified by all the Member States. Article 52(2) of the Charter³⁷ is therefore applicable. The question of recruitment of seamen having the nationality of third States for the crews of vessels flying the flag of a Member State of the Union is governed by Union law and national legislation and practice.

³⁷ Article II-112(2) of the Constitution.

ARTICLE 16³⁸

Freedom to conduct a business

Freedom to conduct a business

³⁸ Article II-76 of the Constitution.

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

Explanation

This Article is based on Court of Justice case law which has recognised freedom to exercise an economic or commercial activity (see judgments of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraph 14 of the grounds, and of 27 September 1979, Case 230-78 SPA Eridiana and others [1979] ECR 2749, paragraphs 20 and 31 of the grounds) and freedom of contract (see inter alia Sukkerfabriken Nykøbing judgment, Case 151/78 [1979] ECR 1, paragraph 19 of the grounds, and judgment of 5 October 1999, C-240/97 Spain v. Commission, [1999] ECR I-6571, paragraph 99 of the grounds) and Article I-3(2) of the Constitution, which recognises free competition. Of course, this right is to be exercised with respect for Union law and national legislation. It may be subject to the limitations provided for in Article 52(1) of the Charter ³⁹.

³⁹ Article II-112(1) of the Constitution.

ARTICLE 17 ⁴⁰

Right to property

Right to property

⁴⁰ Article II-77 of the Constitution.

Expropriation only possible in the public interest and with "fair compensation"

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.

Intellectual property

2. Intellectual property shall be protected.

Explanation

This Article is based on Article 1 of the Protocol to the ECHR:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

This is a fundamental right common to all national constitutions. It has been recognised on numerous occasions by the case law of the Court of Justice, initially in the Hauer judgment (13 December 1979, ECR [1979] 3727). The wording has been updated but, in accordance with Article 52(3) ⁴¹, the meaning and scope of the right are the same as those of the right guaranteed by the ECHR and the limitations may not exceed those provided for there.

⁴¹ Article II-112(3) of the Constitution.

Protection of intellectual property, one aspect of the right of property, is explicitly mentioned in paragraph 2 because of its growing importance and Community secondary legislation. Intellectual property covers not only literary and artistic property but also inter alia patent and trademark rights and associated rights. The guarantees laid down in paragraph 1 shall apply as appropriate to intellectual property.

ARTICLE 18 ⁴²

Asylum

Right to asylum

⁴² Article II-78 of the Constitution.

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Constitution.

Explanation

Special cases:

- United Kingdom

- Denmark

The text of the Article has been based on TEC Article 63, now replaced by Article III-266 of the Constitution, which requires the Union to respect the Geneva Convention on refugees. Reference should be made to the Protocols relating to the United Kingdom and Ireland annexed to the [Treaty of Amsterdam] Constitution and to Denmark to determine the extent to which those Member States implement Union law in this area and the extent to which this Article is applicable to them. This Article is in line with the Protocol on Asylum annexed to the Constitution.

ARTICLE 19 ⁴³

Removal, extradition, expulsion of persons

Protection in the event of removal, expulsion or extradition

⁴³ Article II-79 of the Constitution.

Collective expulsions are prohibited

No removal, extradition, expulsion when there is risk of torture or death penalty

1. Collective expulsions are prohibited.

2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

Explanation

Paragraph 1 of this Article has the same meaning and scope as Article 4 of Protocol No 4 to the ECHR concerning collective expulsion. Its purpose is

to guarantee that every decision is based on a specific examination and that no single measure can be taken to expel all persons having the nationality of a particular State (see also Article 13 of the Covenant on Civil and Political Rights).

Paragraph 2 incorporates the relevant case law from the European Court of Human Rights regarding Article 3 of the ECHR (see Ahmed v. Austria, judgment of 17 December 1996, [1996] ECR VI-2206 and Soering, judgment of 7 July 1989).

TITLE III

EQUALITY

ARTICLE 20 ⁴⁴

Equality before the law

Equality before the law

⁴⁴ Article II-80 of the Constitution.

Everyone is equal before the law.

Explanation

This Article corresponds to a general principle of law which is included in all European constitutions and has also been recognised by the Court of Justice as a basic principle of Community law (judgment of 13 November 1984, Case 283/83 Racke [1984] ECR 3791, judgment of 17 April 1997, Case 15/95 EARL [1997] ECR I-1961, and judgment of 13 April 2000, Case 292/97 Karlsson [2000] ECR 2737).

ARTICLE 21 ⁴⁵

Non-discrimination

Non-discrimination

⁴⁵ Article II-81 of the Constitution.

*All kinds of
discrimination forbidden*

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

Discrimination on grounds of nationality

2. Within the scope of application of the Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

Explanation

Paragraph 1 draws on Article 13 of the EC Treaty, now replaced by Article III-124 of the Constitution, Article 14 of the ECHR and Article 11 of the Convention on Human Rights and Biomedicine as regards genetic heritage. Insofar as this corresponds to Article 14 of the ECHR, it applies in compliance with it.

There is no contradiction or incompatibility between paragraph 1 and Article III-124 of the Constitution which has a different scope and purpose: Article III-124 confers power on the Union to adopt legislative acts, including harmonisation of the Member States' laws and regulations, to combat certain forms of discrimination, listed exhaustively in that Article. Such legislation may cover action of Member State authorities (as well as relations between private individuals) in any area within the limits of the Union's powers. In contrast, the provision in paragraph 1 does not create any power to enact anti-discrimination laws in these areas of Member State or private action, nor does it lay down a sweeping ban of discrimination in such wide-ranging areas. Instead, it only addresses discriminations by the institutions and bodies of the Union themselves, when exercising powers conferred under other articles of Parts I and III of the Constitution, and by Member States only when they are implementing Union law. Paragraph 1 therefore does not alter the extent of powers granted under Article III-124 nor the interpretation given to that Article.

Paragraph 2 corresponds to Article I-4(2) of the Constitution and must be applied in compliance with that Article.

ARTICLE 22 ⁴⁶

Cultural, religious and linguistic diversity

Cultural, religious and linguistic diversity

⁴⁶ Article II-82 of the Constitution.

The Union shall respect cultural, religious and linguistic diversity.

Explanation

This Article has been based on Article 6 of the Treaty on European Union and on Article 151(1) and (4) of the EC Treaty, now replaced by Article III-280(1) and (4) of the Constitution, concerning culture. Respect for cultural and linguistic diversity is now also laid down in Article I-3(3) of the Constitution. The Article is also inspired by Declaration No 11 to the Final Act of the Amsterdam Treaty on the status of churches and non-confessional organisations, now taken over in Article I-52 of the Constitution.

ARTICLE 23 ⁴⁷

Equality between women and men

Equality between women and men

⁴⁷ Article II-83 of the Constitution.

Equality between women and men must be ensured in all areas, including employment, work and pay.

Positive discrimination

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Explanation

The first paragraph has been based on Articles 2 and 3(2) of the EC Treaty, now replaced by Articles I-3 and III-116 of the Constitution which impose the objective of promoting equality between men and women on the Union, and on Article 141(1) of the EC Treaty, now replaced by Article III-214(1) of the Constitution. It draws on Article 20 of the revised European Social Charter of 3 May 1996 and on point 16 of the Community Charter on the rights of workers.

It is also based on Article 141(3) of the EC Treaty, now replaced by Article III-214(3) of the Constitution, and Article 2(4) of Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

The second paragraph takes over in shorter form Article III-214(4) of the Constitution which provides that the principle of equal treatment does not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers. In accordance with Article 52(2) ⁴⁸, the present paragraph does not amend Article III-214(4).

⁴⁸ Article II-112(2) of the Constitution.

ARTICLE 24 ⁴⁹

Rights of children

The rights of the child

⁴⁹ Article II-84 of the Constitution.

Protection and care

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

Free expression of view

*Right to contact with
both parents*

2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Explanation

This Article is based on the New York Convention on the Rights of the Child signed on 20 November 1989 and ratified by all the Member States, particularly Articles 3, 9, 12 and 13 thereof.

Paragraph 3 takes account of the fact that, as part of the establishment of an area of freedom, security and justice, Union legislation on civil matters having cross-border implications, for which Article III-269 of the Constitution confers power, may include notably visiting rights ensuring that children can maintain on a regular basis a personal and direct contact with both his or her parents.

	ARTICLE 25 ⁵⁰
<i>Right of the elderly</i>	<u>The rights of the elderly</u>
	⁵⁰ Article II-85 of the Constitution.
<i>Right to dignified life</i>	The Union recognises and respects the <u>rights of the elderly</u> to lead a life of <u>dignity</u> and <u>independence</u> and to participate in social and cultural life.
	Explanation
	This Article draws on Article 23 of the revised European <u>Social Charter</u> and Articles 24 and 25 of the Community Charter of the Fundamental <u>Social Rights of Workers</u> . Of course, participation in social and cultural life also covers participation in <u>political life</u> .
	ARTICLE 26 ⁵¹
<i>Integration of disabled</i>	<u>Integration of persons with disabilities</u>
	⁵¹ Article II-86 of the Constitution.
<i>Formal and occupational integration</i>	The Union recognises and respects the <u>right of persons with disabilities</u> to benefit from measures designed to ensure their independence, social and occupational <u>integration</u> and participation in the life of the community.
	Explanation
	The principle set out in this Article is based on Article 15 of the European <u>Social Charter</u> and also draws on point 26 of the Community Charter of the Fundamental <u>Social Rights of Workers</u> .
	TITLE IV
	SOLIDARITY
<i>Solidarity</i>	
	ARTICLE 27 ⁵²
<i>Workers' rights to consultation</i>	<u>Workers' right to information and consultation within the undertaking</u>
	⁵² Article II-87 of the Constitution.
	<u>Workers</u> or their representatives must, at the appropriate levels, be <u>guaranteed information and consultation</u> in good time in the cases and under the conditions provided for by Union law and national laws and practices.
	Explanation
	This Article appears in the revised European <u>Social Charter</u> (Article 21)

and in the Community Charter on the rights of workers (points 17 and 18). It applies under the conditions laid down by Union law and by national laws. The reference to appropriate levels refers to the levels laid down by Union law or by national laws and practices, which might include the European level when Union legislation so provides. There is a considerable Union acquis in this field: Articles III-211 and III-212 of the Constitution, and Directives 2002/14/EC (general framework for informing and consulting employees in the European Community), 98/59/EC (collective redundancies), 2001/23/EC (transfers of undertakings) and 94/45/EC (European works councils).

ARTICLE 28 ⁵³

*Collective bargaining
and strikes*

Right of collective bargaining and action

⁵³ Article II-88 of the Constitution.

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Explanation

This Article is based on Article 6 of the European Social Charter and on the Community Charter of the Fundamental Social Rights of Workers (points 12 to 14). The right of collective action was recognised by the European Court of Human Rights as one of the elements of trade union rights laid down by Article 11 of the ECHR. As regards the appropriate levels at which collective negotiation might take place, see the explanation given for the above Article. The modalities and limits for the exercise of collective action, including strike action, come under national laws and practices, including the question of whether it may be carried out in parallel in several Member States.

ARTICLE 29 ⁵⁴

*Access to placement
services*

Right of access to placement services

⁵⁴ Article II-89 of the Constitution.

Everyone has the right of access to a free placement service.

Explanation

This Article is based on Article 1(3) of the European Social Charter and point 13 of the Community Charter of the Fundamental Social Rights of Workers.

*Protection from
unjustified dismissals*

ARTICLE 30⁵⁵

Protection in the event of unjustified dismissal

⁵⁵ Article II-90 of the Constitution.

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

Explanation

This Article draws on Article 24 of the revised Social Charter. See also Directive 2001/23/EC on the safeguarding of employees' rights in the event of transfers of undertakings, and Directive 80/987/EEC on the protection of employees in the event of the insolvency of their employer, as amended by Directive 2002/74/EC.

*Free and fair working
conditions*

ARTICLE 31⁵⁶

Fair and just working conditions

⁵⁶ Article II-91 of the Constitution.

*Health, safety and
dignity*

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.

*Working hours, paid
leave*

2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Explanation

1. Paragraph 1 of this Article is based on Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work. It also draws on Article 3 of the Social Charter and point 19 of the Community Charter on the rights of workers, and, as regards dignity at work, on Article 26 of the revised Social Charter. The expression "working conditions" must be understood in the sense of Article III-213 of the Constitution.

2. Paragraph 2 is based on Directive 93/104/EC concerning certain aspects of the organisation of working time, Article 2 of the European Social Charter and point 8 of the Community Charter on the rights of workers.

ARTICLE 32⁵⁷

Child labour prohibited

Prohibition of child labour and protection of young people at work

⁵⁷ Article II-92 of the Constitution.

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Explanation

This Article is based on Directive 94/33/EC on the protection of young people at work, Article 7 of the European Social Charter and points 20 to 23 of the Community Charter of the Fundamental Social Rights of Workers.

ARTICLE 33⁵⁸

Compatibility of family life and professional life

Family and professional life

⁵⁸ Article II-93 of the Constitution.

Family protection

1. The family shall enjoy legal, economic and social protection.

Maternity

2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Parental leave

Explanation

Article 33(1)⁵⁹ is based on Article 16 of the European Social Charter. The second paragraph draws on Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding and Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC. It is also based on Article 8 (protection of maternity) of the European Social Charter and draws on Article 27 (right of workers with family responsibilities to equal opportunities and equal treatment) of the revised Social Charter. "Maternity" covers the period from conception to weaning.

⁵⁹ Article II-93 of the Constitution.

Social security

ARTICLE 34⁶⁰

Social security and social assistance

⁶⁰ Article II-94 of the Constitution.

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.

2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

*Poverty:
- right to social and
housing assistance*

Explanation

The principle set out in Article 34(1)⁶¹ is based on Articles 137 and 140 of the EC Treaty, now replaced by Articles III-210 and III-213 and on Article 12 of the European Social Charter and point 10 of the Community Charter on the rights of workers. The Union must respect it when exercising the powers conferred on it by Articles III-210 and III-213 of the Constitution. The reference to social services relates to cases in which such services have been introduced to provide certain advantages but does not imply that such services must be created where they do not exist. "Maternity" must be understood in the same sense as in the preceding Article.

⁶¹ Article II-94 of the Constitution.

Paragraph 2 is based on Articles 12(4) and 13(4) of the European Social Charter and point 2 of the Community Charter of the Fundamental Social Rights of Workers and reflects the rules arising from Regulation No 1408/71 and Regulation No 1612/68.

Paragraph 3 draws on Article 13 of the European Social Charter and Articles 30 and 31 of the revised Social Charter and point 10 of the Community Charter. The Union must respect it in the context of policies based on Article III-210 of the Constitution.

Health care

ARTICLE 35 ⁶²

Health care

⁶² Article II-95 of the Constitution.

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Explanation

The principles set out in this Article are based on Article 152 of the EC Treaty, now replaced by Article III-278 of the Constitution, and on Articles 11 and 13 of the European Social Charter. The second sentence of the Article takes over Article III-278(1).

ARTICLE 36 ⁶³

Access to services of general economic interest

Services of general economic interest

⁶³ Article II-96 of the Constitution.

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Constitution, in order to promote the social and territorial cohesion of the Union.

Explanation

This Article is fully in line with Article III-122 of the Constitution and does not create any new right. It merely sets out the principle of respect by the Union for the access to services of general economic interest as provided for by national provisions, when those provisions are compatible with Union law.

ARTICLE 37 ⁶⁴

Environmental protection

Environment

⁶⁴ Article II-97 of the Constitution.

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Explanation

The principles set out in this Article have been based on Articles 2, 6 and 174 of the EC Treaty, which have now been replaced by Articles I-3(3), III-119 and III-233 of the Constitution.

It also draws on the provisions of some national constitutions.

ARTICLE 38 ⁶⁵

Consumer protection

Consumer protection

⁶⁵ Article II-98 of the Constitution.

Union policies shall ensure a high level of consumer protection.

Explanation

The principles set out in this Article have been based on Article 153 of the EC Treaty, now replaced by Article III-235 of the Constitution.

TITLE V

CITIZENS' RIGHTS

ARTICLE 39 ⁶⁶

European elections

Right to vote and to stand as a candidate at elections to the European Parliament

⁶⁶ Article II-99 of the Constitution.

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.

2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Explanation

Article 39 ⁶⁷ applies under the conditions laid down in Parts I and III of the Constitution, in accordance with Article 52(2) of the Charter ⁶⁸. Article 39(1) ⁶⁷ corresponds to the right guaranteed in Article I-10(2) of the Constitution (cf. also the legal base in Article III-126 for the adoption of detailed arrangements for the exercise of that right) and Article 39(2) ⁶⁷ corresponds to Article I-20(2) of the Constitution. Article 39(2) ⁶⁷ takes

over the basic principles of the electoral system in a democratic State.

⁶⁷ Article II-99 of the Constitution.

⁶⁸ Article II-112(2) of the Constitution.

ARTICLE 40 ⁶⁹

Municipal elections

Right to vote and to stand as a candidate at municipal elections

⁶⁹ Article II-100 of the Constitution.

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Explanation

This Article corresponds to the right guaranteed by Article I-10(2) of the Constitution (cf. also the legal base in Article III-126 for the adoption of detailed arrangements for the exercise of that right). In accordance with Article 52(2) of the Charter ⁷⁰, it applies under the conditions set out in these Articles of Parts I and III of the Constitution.

⁷⁰ Article II-112(2) of the Constitution.

ARTICLE 41 ⁷¹

Good administration

Right to good administration

⁷¹ Article II-101 of the Constitution.

Impartiality

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

2. This right includes:

Right to be heard

(a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

Access to documents

(b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

Reasons

(c) the obligation of the administration to give reasons for its decisions.

Damage

3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

Languages

4. Every person may write to the institutions of the Union in one of the languages of the Constitution and must have an answer in the same language.

Case law

Explanation

Article 41 ⁷² is based on the existence of the Union as subject to the rule of law whose characteristics were developed in the case law which enshrined inter alia good administration as a general principle of law (see inter alia Court of Justice judgment of 31 March 1992 in Case C-255/90 P, *Burban* [1992] ECR I-2253, and Court of First Instance judgments of 18 September 1995 in Case T-167/94 *Nölle* [1995] ECR II-2589, and 9 July 1999 in Case T-231/97 *New Europe Consulting and others* [1999] ECR II-2403). The wording for that right in the first two paragraphs results from the case law (Court of Justice judgment of 15 October 1987 in Case 222/86 *Heylens* [1987] ECR 4097, paragraph 15 of the grounds, judgment of 18 October 1989 in Case 374/87 *Orkem* [1989] ECR 3283, judgment of 21 November 1991 in Case C-269/90 *TU München* [1991] ECR I-5469, and Court of First Instance judgments of 6 December 1994 in Case T-450/93 *Lisrestal* [1994] ECR II-1177, 18 September 1995 in Case T-167/94 *Nölle* [1995] ECR II-258) and the wording regarding the obligation to give reasons comes from Article 253 of the EC Treaty, now replaced by Article I-38(2) of the Constitution (cf. also the legal base in Article III-398 of the Constitution for the adoption of legislation in the interest of an open, efficient and independent European administration).

⁷² Article II-101 of the Constitution.

Paragraph 3 reproduces the right now guaranteed by Article III-431 of the Constitution. Paragraph 4 reproduces the right now guaranteed by Articles I-10(2)(d) and III-129 of the Constitution. In accordance with Article 52(2) of the Charter ⁷³, those rights are to be applied under the conditions and within the limits defined by Part III of the Constitution.

⁷³ Article II-112(2) of the Constitution.

The right to an effective remedy, which is an important aspect of this question, is guaranteed in Article 47 of this Charter ⁷⁴.

⁷⁴ Article II-107 of the Constitution.

Transparency

ARTICLE 42⁷⁵

Right of access to documents

⁷⁵ Article II-102 of the Constitution.

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.

Explanation

The right guaranteed in this Article has been taken over from Article 255 of the EC Treaty, on the basis of which Regulation 1049/2001 has subsequently been adopted. The European Convention has extended this right to documents of institutions, bodies and agencies generally, regardless of their form, see Article I-50(3) of the Constitution. In accordance with Article 52(2) of the Charter ⁷⁶, the right of access to documents is exercised under the conditions and within the limits for which provision is made in Articles I-50(3) and III-399.

⁷⁶ Article II-112(2) of the Constitution.

ARTICLE 43⁷⁷

Ombudsman

European Ombudsman

⁷⁷ Article II-103 of the Constitution.

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role.

Explanation

The right guaranteed in this Article is the right guaranteed by Articles I-10 and III-335 of the Constitution. In accordance with Article 52(2) of the Charter ⁷⁸, it applies under the conditions defined in these two Articles.

⁷⁸ Article II-112(2) of the Constitution.

Petition

ARTICLE 44⁷⁹

Right to petition

⁷⁹ Article II-104 of the Constitution.

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Explanation

The right guaranteed in this Article is the right guaranteed by Articles I-10 and III-334 of the Constitution. In accordance with Article 52(2) of the Charter⁸⁰, it applies under the conditions defined in these two Articles.

⁸⁰ Article II-104 of the Constitution.

Free movement and residence for EU citizens

ARTICLE 45⁸¹

Freedom of movement and of residence

⁸¹ Article II-105 of the Constitution.

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.

2. Freedom of movement and residence may be granted, in accordance with the Constitution, to nationals of third countries legally resident in the territory of a Member State.

Nationals of third countries

Explanation

The right guaranteed by paragraph 1 is the right guaranteed by Article I-10(2)(a) of the Constitution (cf. also the legal base in Article III-125; and the judgement of the Court of Justice of 17 September 2002, C-413/99 Baumbast, [2002] ECR 709). In accordance with Article 52(2) of the Charter⁸², it applies under the conditions and within the limits defined for which provision is made in Part III of the Constitution.

⁸² Article II-112(2) of the Constitution.

Paragraph 2 refers to the power granted to the Union by Articles III-265 to III-267 of the Constitution. Consequently, the granting of this right depends on the institutions exercising that power.

Diplomatic protection

ARTICLE 46⁸³

Diplomatic and consular protection

⁸³ Article II-106 of the Constitution.

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

Explanation

The right guaranteed by this Article is the right guaranteed by Article I-10 of the Constitution; cf. also the legal base in Article III-127. In accordance with Article 52(2) of the Charter⁸⁴, it applies under the conditions defined in these Articles.

⁸⁴ Article II-112(2) of the Constitution.

TITLE VI

JUSTICE

ARTICLE 47⁸⁵

Right to an effective remedy and to a fair trial

⁸⁵ Article II-107 of the Constitution.

Effective remedy against unlawful action

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Right to fair trials

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Explanation

The first paragraph is based on Article 13 of the ECHR:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in

an official capacity."

However, in Union law the protection is more extensive since it guarantees the right to an effective remedy before a court. The Court of Justice enshrined that right in its judgment of 15 May 1986 as a general principle of Union law (Case 222/84 Johnston [1986] ECR 1651; see also judgment of 15 October 1987, Case 222/86 Heylens [1987] ECR 4097 and judgment of 3 December 1992, Case C-97/91 Borelli [1992] ECR I-6313).

According to the Court, that general principle of Union law also applies to the Member States when they are implementing Union law. The inclusion of this precedent in the Charter has not been intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to admissibility for direct actions before the Court of Justice of the European Union. The European Convention has considered the Union's system of judicial review including the rules on admissibility, and confirmed them while amending them as to certain aspects, as reflected in Articles III-353 to III-381 of the Constitution, and in particular in Article III-365(4). Article 47⁸⁶ applies to the institutions of the Union and of Member States when they are implementing Union law and does so for all rights guaranteed by Union law.

⁸⁶ Article II-107 of the Constitution.

The second paragraph corresponds to Article 6(1) of the ECHR which reads as follows:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

In Union law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations. That is one of the consequences of the fact that the Union is a community based on the rule of law as stated by the Court in Case 294/83, "Les Verts" v. European Parliament (judgment of 23 April 1986, [1988] ECR 1339). Nevertheless, in all respects other than their scope, the guarantees afforded by the ECHR apply in a similar way to the Union.

With regard to the third paragraph, it should be noted that in accordance with the case law of the European Court of Human Rights, provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy (ECHR Judgment of 9.10.1979, Airey, Series A, Volume 32, 11). There is also a system of legal assistance for cases before the Court of Justice of the European Union.

ARTICLE 48⁸⁷

Presumption of innocence and right of defence

Innocent until proven guilty

⁸⁷ Article II-108 of the Constitution.

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.

2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Explanation

Article 48⁸⁸ is the same as Article 6(2) and (3) of the ECHR, which reads as follows:

⁸⁸ Article II-108 of the Constitution.

"2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- (b) to have adequate time and facilities for the preparation of his defence;
- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

In accordance with Article 52(3)⁸⁹, this right has the same meaning and scope as the right guaranteed by the ECHR.

⁸⁹ Article II-112(3) of the Constitution.

*No retroactive
punishments*

ARTICLE 49⁹⁰

Principles of legality and proportionality of criminal offences and penalties

⁹⁰ Article II-109 of the Constitution.

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.

3. The severity of penalties must not be disproportionate to the criminal offence.

Explanation

This Article follows the traditional rule of the non-retroactivity of laws and criminal sanctions. There has been added the rule of the retroactivity of a more lenient penal law, which exists in a number of Member States and which features in Article 15 of the Covenant on Civil and Political Rights.

Article 7 of the ECHR is worded as follows:

"1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

In paragraph 2, the reference to "civilised" nations has been deleted; this does not change the meaning of this paragraph, which refers to crimes against humanity in particular. In accordance with Article 52(3)⁹¹, the right guaranteed here therefore has the same meaning and scope as the right guaranteed by the ECHR.

⁹¹ Article II-112(3) of the Constitution.

Paragraph 3 states the general principle of proportionality between penalties and criminal offences which is enshrined in the common constitutional traditions of the Member States and in the case law of the Court of Justice of the Communities.

ARTICLE 50⁹²

No one may be tried or punished twice for same offence

Right not to be tried or punished twice in criminal proceedings for the same criminal offence

⁹² Article II-110 of the Constitution.

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

Explanation

Article 4 of Protocol No 7 to the ECHR reads as follows:

"1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and the penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.

3. No derogation from this Article shall be made under Article 15 of the Convention."

The "non bis in idem" rule applies in Union law (see, among the many precedents, the judgment of 5 May 1966, Cases 18/65 and 35/65, Gutmann v. Commission [1966] ECR 103 and a recent case, the decision of the Court of First Instance of 20 April 1999, Joined Cases T-305/94 and others, Limburgse Vinyl Maatschappij NV v. Commission [1999] ECR II-931). The rule prohibiting cumulation refers to cumulation of two penalties of the same kind, that is to say criminal law penalties.

In accordance with Article 50⁹³, the "non bis in idem" rule applies not only within the jurisdiction of one State but also between the jurisdictions of several Member States. That corresponds to the *acquis* in Union law; see Articles 54 to 58 of the Schengen Convention and the judgment of the Court of Justice of 11 February 2003, C-187/01 Gözütok (not yet published), Article 7 of the Convention on the Protection of the European Communities' Financial Interests and Article 10 of the Convention on the fight against

corruption. The very limited exceptions in those Conventions permitting the Member States to derogate from the "non bis in idem" rule are covered by the horizontal clause in Article 52(1) of the Charter⁹⁴ concerning limitations. As regards the situations referred to by Article 4 of Protocol No 7, namely the application of the principle within the same Member State, the guaranteed right has the same meaning and the same scope as the corresponding right in the ECHR.

⁹³ Article II-110 of the Constitution.

⁹⁴ Article II-112(1) of the Constitution.

TITLE VII

GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

ARTICLE 51⁹⁵

Field of application

⁹⁵ Article II-111 of the Constitution.

*Charter binds EU
agencies and Member
States when
implementing EU law*

1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the other Parts of the Constitution.

2. This Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks defined in the other Parts of the Constitution.

Explanation

The aim of Article 51⁹⁶ is to determine the scope of the Charter. It seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union, in compliance with the principle of subsidiarity. This provision was drafted in keeping with Article 6(2) of the Treaty on European Union, which required the Union to respect fundamental rights, and with the mandate issued by Cologne European Council. The term "institutions" is enshrined in Part I of the Constitution. The expression "bodies, offices and agencies" is commonly used in the Constitution to refer to all the authorities set up by the Constitution or by secondary legislation (see, e.g., Articles I-50 or I-51 of the Constitution).

⁹⁶ Article II-111 of the Constitution.

As regards the Member States, it follows unambiguously from the case law of the Court of Justice that the requirement to respect fundamental rights defined in a Union context is only binding on the Member States when they act in the scope of Union law (judgment of 13 July 1989, Case 5/88 Wachauf [1989] ECR 2609; judgment of 18 June 1991, ERT [1991] ECR I-2925); judgment of 18 December 1997 (C-309/96 Annibaldi [1997] ECR I-7493). The Court of Justice confirmed this case law in the following terms: "In addition, it should be remembered that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they implement Community rules ..." (judgment of 13 April 2000, Case C-292/97, [2000] ECR 2737, paragraph 37 of the grounds). Of course this rule, as enshrined in this Charter, applies to the central authorities as well as to regional or local bodies, and to public organisations, when they are implementing Union law.

Paragraph 2, together with the second sentence of paragraph 1, confirms that the Charter may not have the effect of extending the competences and tasks which the other Parts of the Constitution confer on the Union. Explicit mention is made here of the logical consequences of the principle of subsidiarity and of the fact that the Union only has those powers which have been conferred upon it. The fundamental rights as guaranteed in the Union do not have any effect other than in the context of the powers determined by Parts I and III of the Constitution. Consequently, an obligation, pursuant to the second sentence of paragraph 1, for the Union's institutions to promote principles laid down in the Charter, may arise only within the limits of these same powers.

Paragraph 2 also confirms that the Charter may not have the effect of extending the field of application of Union law beyond the powers of the Union as established in the other Parts of the Constitution. The Court of Justice has already established this rule with respect to the fundamental rights recognised as part of Union law (judgment of 17 February 1998, C-249/96 Grant, 1998 ECR I-621, paragraph 45 of the grounds). In accordance with this rule, it goes without saying that the incorporation of the Charter into the Constitution cannot be understood as extending by itself the range of Member State action considered to be "implementation of Union law" (within the meaning of paragraph 1 and the above-mentioned case law).

ARTICLE 52⁹⁷

Scope and interpretation of rights and principles

⁹⁷ Article II-112 of the Constitution.

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of

Limitations by law

More extensive protection in the EU is always allowed

- general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter for which provision is made in other Parts of the Constitution shall be exercised under the conditions and within the limits defined by these relevant Parts.
 3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
 4. Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
 5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.
 6. Full account shall be taken of national laws and practices as specified in this Charter.
 7. The explanations drawn up as a way of providing guidance in the interpretation of the Charter of Fundamental Rights shall be given due regard by the courts of the Union and of the Member States.

Explanation

The purpose of Article 52⁹⁸ is to set the scope of the rights and principles of the Charter, and to lay down rules for their interpretation. Paragraph 1 deals with the arrangements for the limitation of rights. The wording is based on the case law of the Court of Justice: "... it is well established in the case law of the Court that restrictions may be imposed on the exercise of fundamental rights, in particular in the context of a common organisation of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights" (judgment of 13 April 2000, Case C-292/97, paragraph 45 of the grounds). The reference to general interests recognised by the Union covers both the objectives mentioned in Article I-2 of the Constitution and other interests protected by specific provisions of the Constitution such as Articles I-5(1), III-133(3), III-154 and III-436.

⁹⁸ Article II-112 of the Constitution.

Paragraph 2 refers to rights which were already expressly guaranteed in the Treaty establishing the European Community and have been recognised in the Charter, and which are now found in other Parts of the Constitution (notably the rights derived from Union citizenship). It clarifies that such rights remain subject to the conditions and limits applicable to the Union law on which they are based, and for which provision is now made in Parts I and III of the Constitution. The Charter does not alter the system of rights conferred by the EC Treaty and now taken over by Parts I and III of the Constitution.

Paragraph 3 is intended to ensure the necessary consistency between the Charter and the ECHR by establishing the rule that, insofar as the rights in the present Charter also correspond to rights guaranteed by the ECHR, the meaning and scope of those rights, including authorised limitations, are the same as those laid down by the ECHR. This means in particular that the legislator, in laying down limitations to those rights, must comply with the same standards as are fixed by the detailed limitation arrangements laid down in the ECHR, which are thus made applicable for the rights covered by this paragraph, without thereby adversely affecting the autonomy of Union law and of that of the Court of Justice of the European Union.

The reference to the ECHR covers both the Convention and the Protocols to it. The meaning and the scope of the guaranteed rights are determined not only by the text of those instruments, but also by the case law of the European Court of Human Rights and by the Court of Justice of the European Union. The last sentence of the paragraph is designed to allow the Union to guarantee more extensive protection. In any event, the level of protection afforded by the Charter may never be lower than that guaranteed by the ECHR.

The Charter does not affect the possibilities of Member States to avail themselves of Article 15 ECHR, allowing derogations from ECHR rights in the event of war or of other public dangers threatening the life of the nation, when they take action in the areas of national defence in the event of war and of the maintenance of law and order, in accordance with their responsibilities recognised in Articles I-5 (1), III-131, III-262 of the Constitution.

The list of rights which may at the present stage, without precluding developments in the law, legislation and the Treaties, be regarded as corresponding to rights in the ECHR within the meaning of the present paragraph is given hereafter. It does not include rights additional to those in the ECHR.

1. Articles of the Charter where both the meaning and the scope are the same as the corresponding Articles of the ECHR:

- Article 2⁹⁹ corresponds to Article 2 of the ECHR

⁹⁹ Article II-62 of the Constitution.

- Article 4 ¹⁰⁰ corresponds to Article 3 of the ECHR

¹⁰⁰ Article II-64 of the Constitution.

- Article 5(1) and (2) ¹⁰¹ correspond to Article 4 of the ECHR

¹⁰¹ Article II-65 of the Constitution.

- Article 6 ¹⁰² corresponds to Article 5 of the ECHR

¹⁰² Article II-66 of the Constitution.

- Article 7 ¹⁰³ corresponds to Article 8 of the ECHR

¹⁰³ Article II-67 of the Constitution.

- Article 10(1) ¹⁰⁴ corresponds to Article 9 of the ECHR

¹⁰⁴ Article II-70 of the Constitution.

- Article 11 ¹⁰⁵ corresponds to Article 10 of the ECHR without prejudice to any restrictions which Union law may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR

¹⁰⁵ Article II-71 of the Constitution.

- Article 17 ¹⁰⁶ corresponds to Article 1 of the Protocol to the ECHR

¹⁰⁶ Article II-77 of the Constitution.

- Article 19(1) ¹⁰⁷ corresponds to Article 4 of Protocol No 4

¹⁰⁷ Article II-79 of the Constitution.

- Article 19(2) ¹⁰⁸ corresponds to Article 3 of the ECHR as interpreted by the European Court of Human Rights

¹⁰⁸ Article II-79 of the Constitution.

- Article 48 ¹⁰⁹ corresponds to Article 6(2) and(3) of the ECHR

¹⁰⁹ Article II-108 of the Constitution.

- Article 49(1) (with the exception of the last sentence) and (2) ¹¹⁰ correspond to Article 7 of the ECHR

¹¹⁰ Article II-109 of the Constitution.

2. Articles where the meaning is the same as the corresponding Articles of the ECHR, but where the scope is wider:

- Article 9¹¹¹ covers the same field as Article 12 of the ECHR, but its scope may be extended to other forms of marriage if these are established by national legislation

¹¹¹ Article II-69 of the Constitution.

- Article 12(1)¹¹² corresponds to Article 11 of the ECHR, but its scope is extended to European Union level

¹¹² Article II-72 of the Constitution.

- Article 14(1)¹¹³ corresponds to Article 2 of the Protocol to the ECHR, but its scope is extended to cover access to vocational and continuing training

¹¹³ Article II-74 of the Constitution.

- Article 14(3)¹¹⁴ corresponds to Article 2 of the Protocol to the ECHR as regards the rights of parents

¹¹⁴ Article II-74 of the Constitution.

- Article 47(2) and (3)¹¹⁵ correspond to Article 6(1) of the ECHR, but the limitation to the determination of civil rights and obligations or criminal charges does not apply as regards Union law and its implementation

¹¹⁵ Article II-107 of the Constitution.

- Article 50¹¹⁶ corresponds to Article 4 of Protocol No 7 to the ECHR, but its scope is extended to European Union level between the Courts of the Member States.

¹¹⁶ Article II-110 of the Constitution.

- Finally, citizens of the European Union may not be considered as aliens in the scope of the application of Union law, because of the prohibition of any discrimination on grounds of nationality. The limitations provided for by Article 16 of the ECHR as regards the rights of aliens therefore do not apply to them in this context.

The rule of interpretation contained in paragraph 4 has been based on the wording of Article 6(2) of the Treaty on European Union (cf. now the wording of Article I-9(3) of the Constitution) and takes due account of the approach to common constitutional traditions followed by the Court of Justice (e.g., judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 18 May 1982, Case 155/79, AM&S, [1982] ECR 1575). Under that rule, rather than following a rigid approach of "a lowest

common denominator", the Charter rights concerned should be interpreted in a way offering a high standard of protection which is adequate for the law of the Union and in harmony with the common constitutional traditions.

Paragraph 5 clarifies the distinction between "rights" and "principles" set out in the Charter. According to that distinction, subjective rights shall be respected, whereas principles shall be observed (Article 51 (1))¹¹⁷. Principles may be implemented through legislative or executive acts (adopted by the Union in accordance with its powers, and by the Member States only when they implement Union law); accordingly, they become significant for the Courts only when such acts are interpreted or reviewed. They do not however give rise to direct claims for positive action by the Union's institutions or Member States authorities. This is consistent both with case law of the Court of Justice (Cf. notably case law on the "precautionary principle" in Article 174 (2) TEC (replaced by Article III-233 of the Constitution): judgment of the CFI of 11 September 2002, T-13/99, Pfizer vs. Council, with numerous references to earlier case law; and a series of judgments on Article 33 (ex-39) on the principles of agricultural law, e.g. judgment of the Court of Justice C-265/85, Van den Berg, 1987 ECR 1155: scrutiny of the principle of market stabilisation and of reasonable expectations) and with the approach of the Member States' constitutional systems to "principles" particularly in the field of social law. For illustration, examples for principles recognised in the Charter include e.g. Articles 25, 26 and 37¹¹⁸. In some cases, an Article of the Charter may contain both elements of a right and of a principle, e.g. Articles 23, 33 and 34¹¹⁹.

¹¹⁷ Article II-111 of the Constitution.

¹¹⁸ Articles II-85, II-86 and II-97 of the Constitution.

¹¹⁹ Articles II-83, II-93 and II-94 of the Constitution.

Paragraph 6 refers to the various Articles in the Charter which, in the spirit of subsidiarity, make reference to national laws and practices.

ARTICLE 53¹²⁰

Level of protection

¹²⁰ Article II-113 of the Constitution.

Nothing can be interpreted in a way that restricts other rights

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

Explanation

This provision is intended to maintain the level of protection currently afforded within their respective scope by Union law, national law and international law. Owing to its importance, mention is made of the ECHR.

ARTICLE 54 ¹²¹

Prohibition of abuse of rights

¹²¹ Article II-114 of the Constitution.

No abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

Explanation

This Article corresponds to Article 17 of the ECHR:

"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

Violence at home

13. DECLARATION ON ARTICLE III-116

Union should combat all kinds of domestic violence

The Conference agrees that, in its general efforts to eliminate inequalities between women and men, the Union will aim in its different policies to combat all kinds of domestic violence. The Member States should take all necessary measures to prevent and punish these criminal acts and to support and protect the victims.

Social security

14. DECLARATION ON ARTICLES III-136 AND III-267

Interests of Member States will be taken into account if fundamental aspects of social systems are affected

The Conference considers that in the event that a draft European law or framework law based on Article III-267(2) would affect fundamental aspects of the social security system of a Member State, including its scope, cost or financial structure, or would affect the financial balance of that system as set out in Article III-136(2), the interests of that Member State will be duly taken into account.

Restrictive measures

15. DECLARATION ON ARTICLES III-160 AND III-322

Protection of due process rights

The Conference recalls that the respect for fundamental rights and freedoms implies, in particular, that proper attention is given to the

protection and observance of the due process rights of the individuals or entities concerned. For this purpose and in order to guarantee a thorough judicial review of European decisions subjecting an individual or entity to restrictive measures, such decisions must be based on clear and distinct criteria. These criteria should be tailored to the specifics of each restrictive measure.

Division of Germany - aid

Aid for eastern Germany continues as now

16. DECLARATION ON ARTICLE III-167(2)(C)

The Conference notes that Article III-167(2)(c) shall be interpreted in accordance with the existing case law of the Court of Justice of the European Communities and of the Court of First Instance regarding the applicability of the provisions to aid granted to certain areas of the Federal Republic of Germany affected by the former division of Germany.

Growth and stability pact

Growth and budget stability are the two pillars of Union economic policy

17. DECLARATION ON ARTICLE III-184

With regard to Article III-184, the Conference confirms that raising growth potential and securing sound budgetary positions are the two pillars of the economic and fiscal policy of the Union and the Member States. The Stability and Growth Pact is an important tool to achieve these goals.

Reaffirms commitment to pact

The Conference reaffirms its commitment to the provisions concerning the Stability and Growth Pact as the framework for the coordination of budgetary policies in the Member States.

Must be rule-based

The Conference confirms that a rule-based system is the best guarantee for commitments to be enforced and for all Member States to be treated equally.

Reaffirms Lisbon Strategy for jobs

Within this framework, the Conference also reaffirms its commitment to the goals of the Lisbon Strategy: job creation, structural reforms, and social cohesion.

Goal: achieving balanced economic growth and price stability

The Union aims at achieving balanced economic growth and price stability. Economic and budgetary policies thus need to set the right priorities towards economic reforms, innovation, competitiveness and strengthening of private investment and consumption in phases of weak economic growth. This should be reflected in the orientations of budgetary decisions at the national and Union level in particular through restructuring of public revenue and expenditure while respecting budgetary discipline in accordance with the Constitution and the Stability and Growth Pact.

Budgetary and economic challenges facing the Member States underline

Consolidate public finances and improve budgetary position

the importance of sound budgetary policy throughout the economic cycle.

The Conference agrees that Member States should use periods of economic recovery actively to consolidate public finances and improve their budgetary positions. The objective is to gradually achieve a budgetary surplus in good times which creates the necessary room to accommodate economic downturns and thus contribute to the long-term sustainability of public finances.

Proposals of the Commission and Member States on the pact

The Member States look forward to possible proposals of the Commission as well as further contributions of Member States with regard to strengthening and clarifying the implementation of the Stability and Growth Pact. The Member States will take all necessary measures to raise the growth potential of their economies. Improved economic policy coordination could support this objective. This Declaration does not prejudice the future debate on the Stability and Growth Pact.

Labour law

18. DECLARATION ON ARTICLE III-213

Measures only complementary with social policy

The Conference confirms that the policies described in Article III-213 fall essentially within the competence of the Member States. Measures to provide encouragement and promote coordination to be taken at Union level in accordance with this Article shall be of a complementary nature. They shall serve to strengthen cooperation between Member States and not to harmonise national systems. The guarantees and practices existing in each Member State as regards the responsibility of the social partners will not be affected.

This Declaration is without prejudice to the provisions of the Constitution conferring competence on the Union, including in social matters.

Islands

19. DECLARATION ON ARTICLE III-220

Island states can be included under the term island areas

The Conference considers that the reference in Article III-220 to island regions can include island States in their entirety, subject to the necessary criteria being met.

Division of Germany - transport

20. DECLARATION ON ARTICLE III-243

Aid for eastern Germany continues as now

The Conference notes that the provisions of Article III-243 shall be applied in accordance with the current practice. The terms "such measures are required in order to compensate for the economic disadvantages caused by the division of Germany to the economy of certain areas of the Federal Republic affected by that division" shall be interpreted in accordance with the existing case law of the Court of Justice of the

European Communities and of the Court of First Instance.

Research Policies

21. DECLARATION ON ARTICLE III-248

The Conference agrees that the Union's action in the area of research and technological development will pay due respect to the fundamental orientations and choices of the research policies of the Member States.

Energy

22. DECLARATION ON ARTICLE III-256

Member States can take measures to secure energy supply

The Conference believes that Article III-256 does not affect the right of the Member States to take the necessary measures to ensure their energy supply under the conditions provided for in Article III-131.

Prosecutions

23. DECLARATION ON ARTICLE III-273(1), SECOND SUBPARAGRAPH

Takes national practices into account

The Conference considers that the European laws referred to in the second subparagraph of Article III-273(1) should take into account national rules and practices relating to the initiation of criminal investigations.

EU Foreign Office

24. DECLARATION ON ARTICLE III-296

Preparation of External Service as soon as Constitution is signed

The Conference declares that, as soon as the Treaty establishing a Constitution for Europe is signed, the Secretary-General of the Council, High Representative for the common foreign and security policy, the Commission and the Member States should begin preparatory work on the European External Action Service.

International agreements

25. DECLARATION ON ARTICLE III-325 CONCERNING THE NEGOTIATION AND CONCLUSION OF INTERNATIONAL AGREEMENTS BY MEMBER STATES RELATING TO THE AREA OF FREEDOM, SECURITY AND JUSTICE

Member States' right to conclude international agreements in the areas of freedom, security and justice

The Conference confirms that Member States may negotiate and conclude agreements with third countries or international organisations in the areas covered by Sections 3, 4 and 5 of Chapter IV of Title III of Part III of the Treaty establishing a Constitution for Europe insofar as such agreements comply with Union law.

Financial frames

If no new financial framework adopted old framework extended.

From 2007 the same criteria will apply to all Member States if phasing-in ends 2006 and no new framework is established

26. DECLARATION ON ARTICLE III-402(4)

Article III-402(4) of the Constitution provides that where no European law of the Council establishing a new financial framework has been adopted by the end of the previous financial framework, the ceilings and other provisions corresponding to the last year of that framework shall be extended until such time as that law is adopted.

The Conference states that if no European law of the Council establishing a new financial framework has been adopted by the end of 2006 and where the Treaty of Accession of 16 April 2003 provides for a phasing-in period for the allocation of appropriations to the new Member States ending in 2006, the allocation of funds as from 2007 will be established on the basis of the same criteria being applied for all Member States.

Deepening clause

When introducing enhanced cooperation members should indicate if they will go from unanimity to qualified majority voting

27. DECLARATION ON ARTICLE III-419

The Conference declares that Member States may indicate, when they make a request to establish enhanced cooperation, if they intend already at that stage to make use of Article III-422 providing for the extension of qualified majority voting or to have recourse to the ordinary legislative procedure.

Status of Mayotte

Mayotte will have status as outermost region

28. DECLARATION ON ARTICLE IV-440(7)

The High Contracting Parties agree that the European Council, pursuant to Article IV-440(7), will take a European decision leading to the modification of the status of Mayotte with regard to the Union in order to make this territory an outermost region within the meaning of Article IV-440(2) and Article III-424, when the French authorities notify the European Council and the Commission that the evolution currently underway in the internal status of the island so allows.

Official languages

Linguistic diversity

29. DECLARATION ON ARTICLE IV-448(2)

The Conference considers that the possibility of producing translations of the Treaty establishing a Constitution for Europe in the languages mentioned in Article IV-448(2) contributes to fulfilling the objective of respecting the Union's rich cultural and linguistic diversity as set forth in the fourth subparagraph of Article I-3(3) of that Treaty. In this context, the Conference confirms the attachment of the Union to the cultural diversity of Europe and the special attention it will continue to pay to these and other languages.

Member States inform Council within 6 months if they want to translate

The Conference recommends that those Member States wishing to avail themselves of the possibility recognised in Article IV-448(2) communicate to the Council, within six months from the date of the signature of that Treaty, the language or languages into which translations of that Treaty will be made.

EU Summit after rejections

30. DECLARATION ON THE RATIFICATION OF THE TREATY ESTABLISHING A CONSTITUTION FOR EUROPE

If 4/5 have ratified the Constitution after 2 years but not all countries, the European Council will find a solution

The Conference notes that if, two years after the signature of the Treaty establishing a Constitution for Europe, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter will be referred to the European Council.

B. DECLARATIONS CONCERNING PROTOCOLS ANNEXED TO THE CONSTITUTION

Declarations about protocols

Declarations concerning the Protocol on the Treaties and Acts of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, of the Hellenic Republic, of the Kingdom of Spain and the Portuguese Republic, and of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden

Åland islands

31. DECLARATION ON THE ÅLAND ISLANDS

The Conference acknowledges that the regime applicable to the Åland islands, referred to in Article IV-440(5), is established taking into account the special status that these islands enjoy under international law.

To that end, the Conference stresses that specific provisions have been included in Section 5 of Title V of the Protocol on the Treaties and Acts of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, of the Hellenic Republic, of the Kingdom of Spain and the Portuguese Republic, and of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

Sami people

32. DECLARATION ON THE SAMI PEOPLE

Having regard to Articles 60 and 61 of the Protocol on the Treaties and Acts of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, of the Hellenic Republic, of the Kingdom of Spain and the Portuguese Republic, and of

the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, the Conference recognises the obligations and commitments of Sweden and Finland with regard to the Sami people under national and international law.

The Conference notes that Sweden and Finland are committed to preserving and developing the means of livelihood, language, culture and way of life of the Sami people and considers that traditional Sami culture and livelihood depend on primary economic activities, such as reindeer husbandry in the traditional areas of Sami settlement.

To that end, the Conference stresses that specific provisions have been included in Section 6 of Title V of the Protocol on the Treaties and Acts of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, of the Hellenic Republic, of the Kingdom of Spain and the Portuguese Republic, and of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

*Accession countries
2004*

**Declarations concerning the Protocol on the Treaty
and the Act of Accession of the Czech Republic,
the Republic of Estonia, the Republic of Cyprus, the Republic of
Latvia,
the Republic of Lithuania, the Republic of Hungary,
the Republic of Malta, the Republic of Poland, the Republic of
Slovenia
and the Slovak Republic**

UK-base in Cyprus

**33. DECLARATION ON THE SOVEREIGN BASE AREAS
OF THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND IN CYPRUS**

THE CONFERENCE,

Recalling that the Joint Declaration on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus annexed to the Final Act of the Treaty concerning the Accession of the United Kingdom to the European Communities provided that the arrangements applicable to relations between the European Economic Community and the Sovereign Base Areas will be defined within the context of any agreement between the Community and the Republic of Cyprus,

Taking account of the provisions concerning the Sovereign Base Areas set out in the Treaty concerning the Establishment of the Republic of Cyprus (hereinafter referred to as the "Treaty of Establishment") and the associated Exchanges of Notes dated 16 August 1960,

Noting the Exchange of Notes between the Government of the United Kingdom and the Government of the Republic of Cyprus concerning the administration of the Sovereign Base Areas, dated 16 August 1960, and the attached Declaration by the United Kingdom Government that one of the main objects to be achieved is the protection of the interests of those resident or working in the Sovereign Base Areas, and considering in this context that the said persons should have, to the extent possible, the same treatment as those resident or working in the Republic of Cyprus;

Noting further the provisions of the Treaty of Establishment regarding customs arrangements between the Sovereign Base Areas and the Republic of Cyprus and in particular those of Annex F to the said Treaty;

Noting also the commitment of the United Kingdom not to create customs posts or other frontier barriers between the Sovereign Base Areas and the Republic of Cyprus and the arrangements made pursuant to the Treaty of Establishment whereby the authorities of the Republic of Cyprus administer a wide range of public services in the Sovereign Base Areas, including in the fields of agriculture, customs and taxation;

Confirming that the accession of the Republic of Cyprus to the Union should not affect the rights and obligations of the parties to the Treaty of Establishment;

Recognising therefore the need to apply certain provisions of the Constitution and acts of the Union to the Sovereign Base Areas and to make special arrangements regarding the implementation of these provisions in the Sovereign Base Areas;

Points out that specific provisions to that end have been included in Title III of Part Two of the Protocol on the Treaty and Act of Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic.

Commission on Cyprus

**34. DECLARATION BY THE COMMISSION ON THE
SOVEREIGN BASE AREAS
OF THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND IN CYPRUS**

The Commission confirms its understanding that the provisions of Union law applicable to the Sovereign Base Areas pursuant to Title III of Part Two of the Protocol on the Treaty and Act of Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic include:

(a) Council Regulation (EC) No 3448/93 of 6 December 1993 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products;

(b) Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds, to the extent required by Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) for the purpose of financing rural development measures in the Sovereign Base Areas under the EAGGF Guarantee Section.

Ignalina Nuclear Plant

35. DECLARATION ON THE IGNALINA NUCLEAR POWER PLANT IN LITHUANIA

THE CONFERENCE,

Declaring the Union's willingness to continue to provide adequate additional assistance to Lithuania's decommissioning effort also after Lithuania's accession to the Union for the period until 2006 and beyond and noting that Lithuania, bearing in mind this expression of Union solidarity, has committed to close Unit 1 of the Ignalina Nuclear Power Plant before 2005 and Unit 2 by 2009;

Recognising that the decommissioning of the Ignalina Nuclear Power Plant with two 1500 MW RBMK-type reactor units inherited from the former Soviet Union is of an unprecedented nature and represents for Lithuania an exceptional financial burden not commensurate with the size and economic strength of the country and that this decommissioning will continue beyond the current Financial Perspective as defined by the Interinstitutional Agreement of 6 May 1999;

Noting the need to adopt implementing provisions for the additional Union assistance to address the consequences of the closure and the decommissioning of the Ignalina Nuclear Power Plant;

Noting that Lithuania will pay due attention to the needs of the regions most affected by the closure of the Ignalina Nuclear Power Plant in its use of Union assistance;

Declaring that certain measures that will be supported through public aid shall be considered as compatible with the internal market, such as the decommissioning of the Ignalina Nuclear Power Plant, and the environmental upgrading in line with the *acquis* and modernisation of conventional electricity production capacity needed to replace the two Ignalina Nuclear Power Plant reactors after their closure,

Points out that specific provisions to that end have been included in Title IV of Part Two of the Protocol on the Treaty and Act of Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic.

Kaliningrad transit

**36. DECLARATION ON THE TRANSIT OF PERSONS BY LAND
BETWEEN
THE REGION OF KALININGRAD AND OTHER PARTS
OF THE RUSSIAN FEDERATION**

THE CONFERENCE,

Considering the particular situation of the Kaliningrad region of the Russian Federation in the context of the Union's enlargement;

Recognising the obligations and commitments of Lithuania with regard to the *acquis* establishing an area of freedom, security and justice;

Noting, in particular, that Lithuania shall fully apply and implement the Union *acquis* regarding the list of countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement as well the Union *acquis* regarding the uniform format for a visa as from accession at the latest;

Recognising that the transit of persons by land between the region of Kaliningrad and other parts of the Russian Federation through Union territory is a matter concerning the Union as a whole and should be treated as such and must not entail any unfavourable consequence for Lithuania;

Considering the decision to be taken by the Council to remove controls at internal borders after it has verified that the necessary conditions to that effect have been met;

Determined to assist Lithuania in fulfilling the conditions for full participation in the Schengen area without internal frontiers as soon as possible,

Points out that specific provisions to that end have been included in Title V of Part Two of the Protocol on the Treaty and Act of Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic.

***Nuclear plant in
Slovakia***

**37. DECLARATION ON UNIT 1 AND UNIT 2
OF THE BOHUNICE V1 NUCLEAR POWER PLANT
IN SLOVAKIA**

THE CONFERENCE,

Noting Slovakia's commitment to close Unit 1 and Unit 2 of the Bohunice V1 Nuclear Power Plant at the end of 2006 and 2008 respectively and declaring the Union's willingness to continue to provide financial aid until 2006 in continuation of the pre-accession aid planned under the Phare programme in support of Slovakia's decommissioning effort;

Noting the need to adopt implementing provisions regarding continued Union assistance;

Points out that specific provisions to that end have been included in Title IX of Part Two of the Protocol on the Treaty and Act of Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic.

Division of Cyprus

38. DECLARATION ON CYPRUS

THE CONFERENCE,

Reaffirming its commitment to a comprehensive settlement of the Cyprus problem, consistent with relevant United Nations Security Council Resolutions, and its strong support for the efforts of the United Nations Secretary General to that end;

Considering that such a comprehensive settlement to the Cyprus problem has not yet been reached;

Considering that it is, therefore, necessary to provide for the suspension of the application of the *acquis* in those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control;

Considering that, in the event of a solution to the Cyprus problem, this suspension will be lifted;

Considering that the Union is ready to accommodate the terms of such a settlement in line with the principles on which the Union is founded;

Considering that it is necessary to provide for the terms under which the relevant provisions of Union law will apply to the line between the abovementioned areas and both those areas in which the Government of

the Republic of Cyprus exercises effective control and the Eastern Sovereign Base Area of the United Kingdom of Great Britain and Northern Ireland;

Desiring that the accession of Cyprus to the Union shall benefit all Cypriot citizens and promote civil peace and reconciliation;

Considering, therefore, that nothing in Title X of Part Two of the Protocol on the Treaty and Act of Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic shall preclude measures with this end in view;

Considering that such measures shall not affect the application of the *acquis* under the conditions set out in the that Protocol in any other part of the Republic of Cyprus;

Points out that specific provisions to that end have been included in Title X of Part Two of the Protocol on the Treaty and Act of Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic.

Danish derogations

Denmark shall not block decisions not applicable to Denmark

39. DECLARATION CONCERNING THE PROTOCOL ON THE POSITION OF DENMARK

The Conference notes that with respect to legal acts to be adopted by the Council acting alone or jointly with the European Parliament and containing provisions applicable to Denmark as well as provisions not applicable to Denmark because they have a legal basis to which Part I of the Protocol on the position of Denmark applies, Denmark declares that it will not use its voting right to prevent the adoption of the provisions which are not applicable to Denmark.

Furthermore, the Conference notes that on the basis of the Declaration by the Conference on Articles I-43 and III-329 of the Constitution, Denmark declares that Danish participation in actions or legal acts pursuant to Articles I-43 and III-329 will take place in accordance with Part I and Part II of the Protocol on the position of Denmark.

Bulgaria and Romania

40. DECLARATION CONCERNING THE PROTOCOL ON THE TRANSITIONAL PROVISIONS RELATING TO THE INSTITUTIONS AND BODIES OF THE UNION

The common position which will be taken by the Member States at the conferences on the accession to the Union of Romania and/or Bulgaria regarding the allocation of seats in the European Parliament and the weighting of votes in the European Council and the Council will be as follows.

1. If the accession to the Union of Romania and/or Bulgaria takes place before the entry into force of the European Council Decision referred to in Article I-20(2), the allocation of seats in the European Parliament throughout the 2004-2009 parliamentary term will be in accordance with the following table for a Union of 27 Member States.

<u>MEMBER STATES:</u>	<u>SEATS IN THE EP:</u>
Germany	99
United Kingdom	78
France	78
Italy	78
Spain	54
Poland	54
Romania	35
Netherlands	27
Greece	24
Czech Republic	24
Belgium	24
Hungary	24
Portugal	24
Sweden	19
Bulgaria	18
Austria	18
Slovakia	14
Denmark	14
Finland	14
Ireland	13
Lithuania	13
Latvia	9
Slovenia	7
Estonia	6
Cyprus	6
Luxembourg	6
Malta	5
<u>TOTAL</u>	785

The Treaty of Accession to the Union will therefore, by way of derogation from Article I-20(2) of the Constitution, stipulate that the number of

members of the European Parliament may temporarily exceed 750 for the remainder of the 2004 to 2009 Parliamentary term.

2. In Article 2(2) of the Protocol on the transitional provisions relating to the institutions and bodies of the Union, the weighting of the votes of Romania and Bulgaria in the European Council and the Council will be set at 14 and 10 respectively.

3. At the time of each accession, the threshold referred to in the Protocol on the transitional provisions relating to the institutions and bodies of the Union will be calculated according to Article 2(3) of that Protocol.

Less developed areas in Italy

41. DECLARATION CONCERNING ITALY

The Conference notes that the Protocol on Italy annexed in 1957 to the Treaty establishing the European Economic Community, as amended upon adoption of the Treaty on European Union, stated that:

"THE HIGH CONTRACTING PARTIES,

DESIRING to settle certain particular problems relating to Italy,

HAVE AGREED upon the following provisions, which shall be annexed to this Treaty:

THE MEMBER STATES OF THE COMMUNITY

TAKE NOTE of the fact that the Italian Government is carrying out a ten-year programme of economic expansion designed to rectify the disequilibria in the structure of the Italian economy, in particular by providing an infrastructure for the less developed areas in Southern Italy and in the Italian islands and by creating new jobs in order to eliminate unemployment;

RECALL that the principles and objectives of this programme of the Italian Government have been considered and approved by organisations for international cooperation of which the Member States are members;

RECOGNISE that it is in their common interest that the objectives of the Italian programme should be attained;

AGREE, in order to facilitate the accomplishment of this task by the Italian Government, to recommend to the institutions of the Community that they should employ all the methods and procedures provided in this Treaty and, in particular, make appropriate use of the resources of the European Investment Bank and the European Social Fund;

ARE OF THE OPINION that the institutions of the Community should, in applying this Treaty, take account of the sustained effort to be made by the

Italian economy in the coming years and of the desirability of avoiding dangerous stresses in particular within the balance of payments or the level of employment, which might jeopardise the application of this Treaty in Italy;

RECOGNISE that in the event of Articles 109h and 109i being applied it will be necessary to take care that any measures required of the Italian Government do not prejudice the completion of its programme for economic expansion and for raising the standard of living of the population."

DECLARATIONS BY MEMBER STATES

Dutch net payments

Netherlands supports qualified majority on multi-annual framework when it does not pay as much to the Union budget

42. DECLARATION BY THE KINGDOM OF THE NETHERLANDS ON ARTICLE I-55

The Kingdom of the Netherlands will agree to a European decision as referred to in Article I-55(4) once a revision of the European law referred to in Article I-54(3) has provided the Netherlands with a satisfactory solution for its excessive negative net payment position vis-à-vis the Union budget.

Status of Netherlands Antilles and Aruba

Netherlands has veto over status of Netherlands Antilles and/or Aruba

43. DECLARATION BY THE KINGDOM OF THE NETHERLANDS ON ARTICLE IV-440

The Kingdom of the Netherlands declares that an initiative for a European decision, as referred to in Article IV-440(7) aimed at amending the status of the Netherlands Antilles and/or Aruba with regard to the Union, will be submitted only on the basis of a decision taken in conformity with the Charter for the Kingdom of the Netherlands.

Nuclear treaty

44. DECLARATION BY THE FEDERAL REPUBLIC OF GERMANY, IRELAND, THE REPUBLIC OF HUNGARY, THE REPUBLIC OF AUSTRIA AND THE KINGDOM OF SWEDEN

Germany, Ireland, Hungary, Austria and Sweden note that the core provisions of the Treaty establishing the European Atomic Energy Community have not been substantially amended since its entry into force and need to be brought up to date. They therefore support the idea of a Conference of the Representatives of the Governments of the Member States, which should be convened as soon as possible.

Gibraltar

45. DECLARATION BY THE KINGDOM OF SPAIN AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

The Treaty establishing the Constitution applies to Gibraltar as a European territory for whose external relations a Member State is responsible. This shall not imply changes in the respective positions of the Member States concerned.

UK "citizens"

46. DECLARATION BY THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND ON THE DEFINITION OF THE TERM "NATIONALS"

In respect of the Treaty establishing a Constitution for Europe and the Treaty establishing the European Atomic Energy Community, and in any of the acts deriving from those Treaties or continued in force by those Treaties, the United Kingdom reiterates the Declaration it made on 31 December 1982 on the definition of the term "nationals" with the exception that the reference to "British Dependent Territories Citizens" shall be read as meaning "British overseas territories citizens".

Spain about EU citizenship

47. DECLARATION BY THE KINGDOM OF SPAIN ON THE DEFINITION OF THE TERM "NATIONALS"

Spain notes that, under Article I-10 of the Constitution, every national of a Member State shall be a citizen of the Union. Spain also notes that, under the current state of European integration reflected in the Constitution, only nationals of Member States are entitled to the specific rights of European citizenship unless Union law expressly provides otherwise. In that respect, Spain notes, finally, that under Articles I-20 and I-46 of the Treaty, the European Parliament currently represents the citizens of the Union.

UK about EP voting rights

48. DECLARATION BY THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND ON THE FRANCHISE FOR ELECTIONS TO THE EUROPEAN PARLIAMENT

The United Kingdom notes that Article I-20 and other provisions of the Treaty establishing a Constitution for Europe are not intended to change the basis for the franchise for elections to the European Parliament.

Belgium chambers

49. DECLARATION BY THE KINGDOM OF BELGIUM ON NATIONAL PARLIAMENTS

Belgium wishes to make clear that, in accordance with its constitutional law, not only the Chamber of Representatives and Senate of the Federal Parliament but also the parliamentary assemblies of the Communities and the Regions act, in terms of the competences exercised by the Union, as components of the national parliamentary system or chambers of the national Parliament.

Spelling of euro

50. DECLARATION BY THE REPUBLIC OF LATVIA AND THE REPUBLIC OF HUNGARY ON THE SPELLING OF THE NAME OF THE SINGLE CURRENCY IN THE TREATY ESTABLISHING A CONSTITUTION FOR EUROPE

Without prejudice to the unified spelling of the name of the single currency of the European Union referred to in the Treaty establishing a Constitution for Europe as displayed on the banknotes and on the coins, Latvia and Hungary declare that the spelling of the name of the single currency, including its derivatives as applied throughout the Latvian and Hungarian text of the Treaty establishing a Constitution for Europe, has no effect on the existing rules of the Latvian and the Hungarian languages.