

NOTE

from : Praesidium
to : Convention

Subject : **Suggested approach for the Euratom Treaty**

1. The Praesidium has noted that the Laeken declaration, which provides the framework for the Convention's proceedings, does not mention the Euratom Treaty, or raise questions relating specifically to the areas covered by that Treaty. However, some of the written contributions concerning that Treaty¹ also contain suggestions for amendments of substance, and other members of the Convention have said that they are against any initiative to revise the substance of the Treaty.
2. Given the Convention's terms of reference and its timetable, the Praesidium believes that there is no basis for the Convention to become involved in an operation to amend the Euratom Treaty substantially, nor would it be appropriate for it to do so.

¹ See particularly the written contributions presented on 14 October 2002 by Mr Hänsch (CONV 344/02), on 22 October 2002 by Mr Farnleitner, Mr Einem and Mr Bösch (CONV 358/02) and more generally on 12 July 2002 by Mr Hänsch and others (CONV 189/02, p. 5) and on 11 December 2002 by Mr Borrel, Mr Carnero, and Mr Lopez Garrido (CONV 455/02, p. 26). See also the contributions by Ms Marie Nagy, Ms Renée Wagner and Mr Neil MacCormick (CONV 563/02 of 18 February 2003).

3. Nonetheless, as the Laeken declaration underlines, the Union functions with four Treaties; the question of what to do with the Euratom Treaty should therefore be addressed.
4. The substantial amendments which the Convention envisages making to the Union's institutional and financial provisions in the context of the Constitutional Treaty mean that the corresponding provisions in the Euratom Treaty cannot remain unchanged, but should be adapted correspondingly.
5. The Praesidium has examined all the possible options for adjusting the Euratom Treaty to the new provisions of the Constitution. These options are as follows:
 - (a) the incorporation of the Euratom Treaty into the Constitutional Treaty (in Part Two or in a Protocol);
 - (b) the amendment of the Euratom Treaty, allowing it to continue to exist independently.
Two sub-options might be envisaged:
 - (i) adjustment by means of a treaty separate to and independent from the Constitutional Treaty, or
 - (ii) adjustment by means of a Protocol annexed to the Constitutional Treaty.

The Praesidium believes that the latter route, namely adjusting the Euratom Treaty by means of a Protocol to the Constitution, would be the most appropriate.

6. At technical level, the Praesidium proposes the use of a general clause to this effect, referring to the Constitutional Treaty. This general clause would have the effect of repealing all of Title III (institutional provisions) and nearly all of Title IV (financial provisions), with the exception of Articles 134, 135, 144, 145, 171, 172, 174 and 176, which contain provisions which are specific to the Euratom Treaty. This general provision could be worded as follows:

"Article 107

Without prejudice to the specific provisions laid down in Articles 134, 135, 144, 145, 171, 172, 174 and 176, the institutional and financial provisions of the Treaty establishing a Constitution for Europe (Articles XX to ZZ) and Article 45¹ of that Treaty apply to this Treaty²".

7. This technique would also make it possible to repeal all the previous Treaties (Single Act, Maastricht, Amsterdam and Nice), thus meeting the request for simplification made at Laeken. To do this, it would suffice to include four additional provisions in the Protocol, to reintroduce the four amendments made by those Treaties other than those made to Titles III and IV of the Euratom Treaty³.

(As an indication, and subject to its final drafting, the possible wording for such a Protocol is attached).

¹ Equivalent to Article 309 of the TEC and Article 204 of the TEAEC on sanctions.

² This provision is inspired by Article 41 of the TEU.

³ These changes concern Article 190 (language regime – Nice), and Articles 198(a) stipulating that the Euratom Treaty does not apply to the Faroe Islands, Article 201 concerning relations with the OECD and Article 206 on association agreements (all these amendments were made by the Maastricht Treaty).

8. Amending the Euratom Treaty in that way would not change its nature, as it would continue to be primary legislation. Furthermore, the fact that it is still a separate Treaty would not preclude a merging of the legal personalities of the Euratom Community and of the European Union. To that effect, the provisions amending the Euratom Treaty should:
- explicitly stipulate that in the latter the word "Community" is replaced by the words "European Union" (or a name to be chosen by the Convention);
 - indicate that the Union succeeds and replaces the "Euratom Community";
 - mention that the provision explicitly conferring legal personality on the Union applies to the Euratom Treaty;
 - repeal Article 184 of the Euratom Treaty which establishes that the Euratom Community has legal personality.
9. Merging the legal personalities means that the agreements concluded by the Commission pursuant to Article 101 TEAEC commit the Union. If the legal personalities are not merged, these agreements would be concluded by the Euratom Community. Third States and international organisations might therefore, where appropriate, have to conclude agreements either with the European Union or with the Euratom Community, depending on the subject. This situation, while being technically possible from a legal point of view, would probably conflict with the Convention's intention to simplify.
10. If the Convention agrees with the approach recommended by the Praesidium, it would then be presented to the European Council. The latter would in any event be fully informed of the other suggestions made by Convention members in their contributions.
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**ELEMENTS FOR DRAFTING A SEPARATE TREATY OR A PROTOCOL AMENDING
THE EURATOM TREATY**

(repealing Titles III and IV and replacing them by a general referral clause)¹

The Treaty establishing the European Atomic Energy Community shall be amended as follows:

- (1) The heading of Title III "Institutional provisions" shall be replaced by the following heading:

"Institutional and financial provisions".

- (2) Articles 107 to 170 shall be replaced by the following:

"Article 107

Without prejudice to the specific provisions laid down in Articles 134, 135, 144, 145, 171, 172, 174 and 176, the institutional and financial provisions of the Treaty establishing a Constitution for Europe (Articles XX to ZZ) and Article 45² of that Treaty shall apply to this Treaty³."

- (3) The heading of Title IV "Financial provisions" shall be replaced by the following:

"Specific financial provisions".

¹ It is proposed that the technical work particularly on repealing the existing Treaties be carried out by the three Legal Services of the European Parliament, the Council and the Commission based on the outline proposed here.

² Equivalent to Article 309 of the TEC and Article 204 of the TEAEC on sanctions.

³ This provision is inspired by Article 41 of the TEU.

- (4) Articles 173, 175 and 177 to 183a shall be repealed.

Furthermore, in order to repeal the Single European Act and the Treaties of Maastricht, Amsterdam and Nice, the amendments made by those Treaties will have to be reintroduced.

- (5) Article 190 shall be replaced by the following:

"[text as inserted by the Treaty of Nice]".

- (6) Article 198 shall be amended as follows: *[see amendment in the Treaty of Maastricht]*.

- (7) Article 201 shall be amended as follows: *[idem]*.

- (8) Article 206 shall be amended as follows: *[idem]*.

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