



The EIROforum is a coordination and collaboration group consisting of seven major Intergovernmental Research Organisations.

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Illmo Sig. Ministro Franco FRATTINI
Ministero degli Affari Esteri
Piazza della Farnesina 1
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Illmo Sig. Ministro Frattini,

I am writing to you as chair of the EIROforum, the coordination body for Europe's seven major intergovernmental research organisations devoted to the physical and natural sciences. The EIROforum Assembly, consisting of the Directors-General or equivalent, has been following with interest the work of the Convention.

My predecessor as EIROforum chair, Prof. F. Kafatos of EMBL, wrote to President Giscard d'Estaing on 27 January 2003 concerning the need for the Constitution to reflect a deeper engagement at the level of the Union in science and technology. In general we are pleased with the outcome of the Convention's work in this respect, and in particular with Article I-3 stating that "The Union ... shall promote scientific and technological advance". However, we have one strong concern, which is with the first point of Article III-146, where we find:

"1. The Union shall aim to strengthen the scientific and technological bases of Union industry and encourage it to become more competitive at international level, while promoting all research activities deemed necessary by virtue of other Chapters of the Constitution".

We regret that this text, taken over directly from earlier treaties, appears solely to emphasise the role of industry in ensuring the scientific and technological progress of the Union, and to neglect the role of other actors in research and science such as schools, universities, research centres. As a result, we would like to propose the following new version for the first point of Article III-146.

"1. With the objective of making itself the most competitive knowledge-based society, the Union shall aim to strengthen its scientific and technological capacities and to encourage Union industry to become more competitive at international level."

I thank you in advance for your consideration of this proposal. Please find enclosed a Memorandum providing additional background.

Yours sincerely,

Dr Jérôme Paméla,
(Chairman to EIROforum)

Annex: Memorandum

MEMORANDUM

Article III-146 and the role of research in the draft treaty establishing a Constitution for Europe

1. We think that the Constitution for Europe should reflect reality:
The current situation is that the treaties of the European Communities foresee promotion of research just for specific areas. However, it is undisputed that in practice this has been interpreted more and more extensively. Since the Maastricht Treaty made the promotion of research and technological development a basic principle¹, and since Article 163 of the EC Treaty allows promoting research activities deemed necessary by virtue of other Chapters of the EC Treaty, the European Institutions are *de facto* free to promote all kinds of research².
2. When Article 163 of the EC-Treaty became - without any revision - Article III-146 of the Draft Treaty establishing a Constitution for Europe³, this would have been the opportunity to revise the wording according to current practise mentioned above in paragraph one. Legal certainty would have been established.
3. Furthermore the current wording of Article III-146 No.1 conflicts with the systematic structure of the Draft Treaty. One could argue that Article II-13 (Freedom of the arts and sciences) in conjunction with Article II – 20 (Equality before the law) give rise to a revision of Article III-146 No. 1 for reasons of consistency. These fundamental rights shall lead to claims of research institutions, no matter what kind of research they undertake. Considering the importance of Article II-13 (Freedom of arts and sciences), stressed a) by the ranking within the charter of fundamental rights and b) by its wording (free of written constraints), it is likely that Article III-146 itself has to be interpreted in the light of the aforementioned fundamental rights. Once again, a revised Article III-146 would give legal certainty on this topic.

¹ See Article 3 n of the EC Treaty

² Hans-Heinrich Trute/Thomas Gross, Rechtsvergleichende Grundlagen der europaeischen Forschungspolitik, in: Wissenschaftsrecht Bd 27 (1994), Anmerkung. 4, S. 205.

³ Hereinafter: "Draft Treaty"