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**CONTRIB 105**

**COVER NOTE**

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from Secretariat

to The Convention

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**Subject : Contribution from M. Robert Badinter, alternate member of the Convention**  
**"A European Constitution"**

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The Secretary-General of the Convention has received the attached contribution from Mr Robert Badinter, alternate member of the Convention.

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# A EUROPEAN CONSTITUTION

## INTRODUCTION

The question of institutions is at the heart of all European problems. After the difficult ratification of the Maastricht Treaty in 1992, the Treaty of Amsterdam in 1997 did not satisfy those who were awaiting the re-foundation of a European Union which is set to grow from fifteen to twenty-five or thirty members. Nor did the Treaty of Nice of December 2000, laboriously concluded under the influence of political necessity, resolve the institutional crisis of the Union. In truth, selective reforms are no longer acceptable. The necessary re-foundation can only take form within a European Constitution. In a classical perspective, provision would have been made for European citizens to directly elect representatives to a Constituent Assembly, which would prepare a draft European Constitution for submission to a vote by the citizens of the Union in a European referendum. The general will of all Europeans would then have appeared more clearly. Even so, the fact that the State Members conclude a Treaty between themselves to provide the European Union with a Constitution will not change its significance. The Treaty will still be ratified by the citizens of the Union, directly, or through their representatives. The European Union will then be governed by a Constitution. That is the main thing.

Many authoritative voices have been raised in favour of a Constitution for Europe. On 12 May 2000, the German Minister for Foreign Affairs, Joschka Fisher, described the broad outlines of a Federal Constitution for the European Union at the Humboldt University in Berlin. On 27 June 2000, President Chirac, speaking before the Bundestag, also pronounced his support for a European Constitution, the text of which would be approved by the European people. He underlined on that occasion that there was no question of the Nation-States disappearing in favour of a European super-State. In February 2001, returning to the subject, President Chirac reiterated his idea of a *‘Federation of Nation-States’*, already put forward by Jacques Delors. Lionel Jospin, then Prime Minister, also declared himself in favour of a *‘Federation of Nation-States’* and a European Constitution. On 4 April 2001, the German President, Mr. Johannes Rau, in a speech before the European Parliament, advocated a Constitution creating a Federation of States.

In France, many individuals and political groups have recommended the elaboration of a Constitution for Europe, whether it be Alain Juppé, Jacques Toubon or the U.D.F. on the right, socialists such as Pierre Moscovici and Henri Nallet, or Daniel Cohn Bendit and Dominique Voynet for the Greens. Moreover, numerous communications, motions and proposals have been produced by circles and committees dealing with European questions. In short, the *‘great debate’* over

institutional reform and a European Constitution has begun, in particular in France and Germany. The question of a Constitution is squarely on the European Agenda.

The Declaration on the future of the Union, annexed to the Treaty of Nice of December 2000, called for *à deeper and wider debate about the future of the European Union*. A mandate was given to the European Council to adopt, during the meeting at Laeken, in December 2001, *à declaration containing appropriate initiatives for the continuation of this process*

At Laeken, the European Council defined an objective and adopted a method. In a globalised environment, *àThe Union needs to become more democratic, more transparent and more efficient*. Faced with its imminent enlargement, it is necessary to *improve the efficiency of decision-making and the workings of the institutions in a Union of some thirty Member States*. Finally the Laeken Declaration poses the key question *àwhether this simplification and reorganisation might not lead in the long run to the adoption of a constitutional text in the Union? What might the basic features of such a constitution be?* The word was out, the taboo lifted. To evoke the adoption of a Constitution is already to admit the possibility of endowing the European Union with it. And History teaches that, once a sovereign body, in this case the European Council, puts forward the question of a constitution so clearly, the principle is already accepted in spirit.

But what sort of Constitution does the European Union need and how may it be brought into being in the present context of the Union?

The method chosen by the European Council at Laeken was to convene a *àConvention composed of the main parties involved in the debate on the future of the Union*, placed under the authority of President Giscard-d'Estaing and two vice-presidents, Messrs Amato et Dehaenne, appointed by the European Council. The Convention brings together 15 representatives of the Member States, 30 members of national Parliaments, 16 members of the European Parliament and 2 members of the European Commission. Representatives of countries that are candidates for accession will participate in the discussions, but not in the voting.

The term *àConvention*, rich in historical echoes, must not be misconstrued. The Convention is a consultative, not a constituent assembly. Its task is *àto consider the key issues arising for the Union's future development and try to identify the various possible responses*. Even so, it will be

politically very difficult to reject its conclusions and proposals if they are reached by a broad consensus. Therein lies the political significance of the Convention and the importance of its work.

A precedent bears witness to this. An earlier Convention was given the task by the European Council of elaborating a Charter of Fundamental Rights of the European Union. This first Convention was also composed of governmental and parliamentary representatives, as well as European parliamentarians. Led by President Herzog, the Convention drafted the Charter which was adopted at the Nice Summit. This Charter does not, as matters stand, have the force of law. Just like the 1789 Declaration of the Rights of Man under the French Third Republic, it is a source of inspiration and reference. However, any contemporary Constitution opens with a Declaration of Fundamental Rights. The Charter will thus become the Declaration of Human Rights for the Union. Its provisions will then have constitutional force.

The success of this first Convention inspired the creation of the present structure, responsible for elaborating the draft reforms which should culminate in a European Constitution. However, the community of views among European nations concerning shared values disappears when the question of the institutions and powers of the Union is raised. The cleavages here are a measure of the political stakes: considerable.

On the one hand, the most engaged Europeans dream, like Victor Hugo, of a United States of Europe. All Europeans would be citizens of a vast federal State which, given its great resources, population and territory, is capable of becoming a new super-power, the equal of the United States of America. A glorious perspective which has never ceased to burn as a flame in the souls of convinced Europeans. On the other hand, the sovereignty-minded, attached to their territory, only have faith in the nation, which they consider to be not only unavoidable, but incapable of being improved upon. They see in Europe a simple free exchange zone, a 'common market' as it was formerly called. For nationalists, European integration contains more threats than promises.

Between these two extremes there are many possible orientations: pragmatists who weigh up each announced reform in terms of profits and costs; politicians who know that all European progress requires agreement between States, and thus endeavour to reconcile opposing viewpoints (through synthesis or complex compromise); empiricists, for whom all that matters is pursuit of the European enterprise, and who do not burden themselves with conceptual baggage; theoreticians

who know the mysteries of the European framework down to the last details, European specialists who elaborate ever more refined schemes.

Despite this diversity of approaches, the main problem is power. A democratic Constitution is based upon a certain balance of powers. In the case of a federal State, the division of powers between the central State and the federated States is essential. A powerful centre in Washington or Berlin means less local power in Chicago or Munich. In the same way, in a centralised State, any strengthening of the executive is seen as an attack on Parliament. The institutional combinations are numerous, but all of them revolve around the central question of power. This question will dominate the work of the Convention. Government representatives are hardly likely to strengthen community institutions, the Commission or the European Parliament. Equally, national parliamentarians worry about any changes which would further increase the powers of the Union and reduce the extent of their national authority. To add to this, certain State candidates for admission have a vision of Europe which is different from that of the founding States. These differences will become more and more clear during debate on the essential problems (the distribution of functions and the exercise of powers) within the Union. The answers given will determine not only the success of the Convention, but also of the institutions with which the Union will be endowed.

To the question posed by the Convention, I cannot resist the temptation to add my personal response. As luck would have it, I contributed, in the 1990s, to the draft constitutions of new democracies in Eastern Europe and the Balkans. I now find myself in Brussels, thanks to the confidence of my colleagues in the Senate, as a modest alternate national representative to the Convention. The unexpected meetings and improvised conversations have been rich in interest. The group meetings, whether of national parliamentarians or European socialists, were equally lively. My reflections took shape when reading the various contributions which flooded my electronic inbox and annotating the numerous publications on the future of the institutions of the Union. I decided to put the calm days of the summer to good use and make a personal contribution to this common enterprise. Never has a better subject for reflection been offered to me than that of a European constitution. Without a mandate of any kind, I went to work. Here it is, preceded by a few preliminary comments.

The case against the current institutions of the Union has often been made: lack of legitimacy, efficiency and readability. These criticisms are sometimes expressed excessively. While they are not unfounded, the principle handicap from which the Union suffers is ambiguity. This allows the postponement of necessary choices to avoid responding to the main question: what European Union do we want for the future? And to what ends?

In order to construct durable and efficient institutions, it is first necessary to lay their foundations. A Constitution is an expression of sovereignty. That is what breathes life into it. In the case of the European Union, as a matter of history, the sovereignty from which it proceeds is of double origin†:

First, the delegations of sovereignty granted by the Member States, through successive treaties. In establishing a single market, a common commercial policy and the free movement of persons and goods, the Member States have delegated sovereign legislative, taxation and police powers to the Union. The phenomenon is all the more striking concerning the single currency for those States which have substituted the Euro for their national currency.

Added to this sovereignty delegated by States is another source, less obvious but more direct: the citizens of the Union. By establishing citizenship of the Union to which specific rights are attached (in particular that of directly electing the Members of the European Parliament), successive treaties have established an organised community of European citizens.

Two sources of legitimacy are thus reunited through the Union: that of the Member States and that of the people of the Union, composed of all its citizens, without any distinction as to nationality.

At first sight, this double sovereignty would lead one to conceptualise the Union as a Federation. But a classical Federation implies the disappearance of the international sovereignty of the Member States, whereas, in the case of the European Union, the State Members are sovereign and intend so to remain. Neither the United Kingdom nor France envisage abandoning, for example, their permanent seat on the U.N. Security Council in favour of the European Union. A representative of the Union would certainly be welcome on the Security Council, but would not imply their withdrawal. The Union is a Federation composed of sovereign States. The formula of Jacques Delors†: 'Federation of Nation-States' is an appealing illustration of the originality of the European Union. Although the expression is pleasing to the French mind, where the State is analogous with the Nation, it is not reflected in the diversity of European States. Belgium, made up of the Flemish and Walloons, and the United Kingdom, which brings together the English, Scottish, Welsh and Northern Irish, are difficult to classify as Nation-States. The same applies to certain State candidates for admission, from Central and Eastern Europe.

The European Union is a Federation of States which share the values set out in the Charter of Fundamental Rights, respect for which must be ensured by its laws. The incorporation of the Charter into the Constitution will accomplish this. The latter must also provide for the separation of powers and guarantee the rule of law. However, the hybrid nature of the Union requires the insertion of all these democratic principles in an original institutional architecture.

Because the Union is a Federation of sovereign States and because policy made in the name of the Union directly affects their interests, it is the European Council, composed of the heads of State and government, to determine the broad limits of general policy. It is for the European Council to open up the future avenues of the Union, giving it the impetus needed for its development. There is no change, in this respect, compared with the current state of the Union.

Conversely, the Presidency of the Union can no longer be held by different Member States in turn, for a period of several months. Given its international legal personality and capacity to conclude treaties, the European Union must be represented on the international scene by a President specifically designated to hold office. The European people must be incarnated, in the eyes of the nations of the world, by a prestigious European personality, and not by a national head of State assuming the European presidency due to the hazards of the calendar.

Moreover, the rapid succession of national presidencies, expiring six-monthly, set up by a European Community limited to a few members, already hardly practicable in a Union of fifteen members, becomes an aberration for a Europe of twenty-five members. Each European State would only be confided with the presidency of the Union for six months in every twelve years. If it were decided to extend the duration of the mandate to one year, in order to avoid a too rapid merry-go-round, it would only be once every quarter of a century that each State of the Union would assume the presidency. Imagine the inconvenience such an itinerant presidency would create. In order to follow its perpetual movement, one would have the impression of returning to times long past when the ministers and officers of the King wandered with the Court from castle to castle!

A President of the Union is thus necessary to incarnate the Union. In order to ensure the legitimacy of the Presidency, the procedure for appointment must result from the double sovereignty of the Member States and the European people. Accordingly, the person selected by the European Council for eminent services rendered to the European cause will also be subject to approval by the Parliament. Nevertheless, the President of the Union should not exercise executive power. The function would be of a symbolic and moral nature, rather than governmental or political. The appropriate comparison is with the German President rather than with the President of the French Republic or the United States.

Indeed, the direct election of a President by hundreds of millions of Europeans of different nationalities and languages, and who would thus have the effective direction of a Federation of sovereign States, would not appear to be well adapted either to the present state of Europe or its political culture, since the dominant democratic model in Europe is the parliamentary regime.

The government of the Union raises more complex problems. Institutional debate concerning the Union is currently posed in terms of an 'institutional triangle': the Council, the Commission and the Parliament. In democratic terms, it would be better to speak of the executive and legislative powers of the Union.

The organisation of the government must take into account the complex nature of the European Union: a federation of sovereign States. The Member States must be called upon to participate directly in that government. They will do so through the Council of Ministers of the Union, composed of a representative of each State appointed by the national government to fulfil

this important function full-time. The Council of Ministers of the Union would meet regularly and frequently in Brussels. It would be responsible for all decisions necessary to achieve the Union's objectives in accordance with the general policy defined by the European Council of Heads of State and Government. As a permanent body, the Council of Ministers of the Union must be able to take action. Decisions will thus be made by a double qualified majority, made up of an absolute majority of States representing a majority of the total population of the Union. For certain decisions of particular importance, the Council of Ministers will make decisions by a reinforced qualified majority of two-thirds of its members. According to the nature of the questions dealt with, the competent ministers from Member States will participate in Council meetings. However, only the permanent members of the Council of Ministers of the Union will bear the title of "Ministers of the Union", indicating that they represent the government of the Union.

The governmental function, in a construction as complex as the Union, does not consist only of ministerial decisions. The management, coordination, synchronisation of policies and action taken by multiple committees and a multitude of intervening parties, are not limited to the public authorities but also to 'civil society'. These tasks go far beyond the usual context of administration. They also constitute the substance of the government of modern States, giving rise to the contemporary notion of governance. It has found in the European Union a favoured field of application<sup>1</sup>.

It is for the Commission, the original institution of the European Union, to ensure the good governance of the Union. It is an essential organ of the Union, having multiple responsibilities which will increase with the accession of new Member States, the Commission, in order to reinforce its efficiency, must be structured as a function of its tasks, and not according to considerations of national interest. The composition of the Commission should not necessarily reflect that of the Union (one Commissioner per State Member, for example). The appointment of Commissioners and their independence with respect to State Members, require that their numbers, distribution of tasks and appointment must be determined in accordance with their ability and personality. How else could a Commission of 35 members function without being transforming into a second Council of Ministers? That is not its role. At the heart of the Union, it must remain a purely European institution, detached from the national interests of Member States. Thus, it is the

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<sup>1</sup> See Commission of the European Communities, *European Governance: a White Paper*, Brussels, 25 July 2001.

European Parliament, and not the Council of Ministers, which has the power to control the action of the Commission, and to require the resignation of its members.

As the Council of Ministers and the Commission assume joint responsibility for the government of the Union, their common action, in order to be efficient, must be directed by a sole authority. Just as the Union must have a President to incarnate it, the government of the Union must have a person to lead it. The government will thus be placed under the authority of a Prime Minister of the Union who will preside over the work of the Council of Ministers and guide the action of the Commission. This reduces the risk of conflict between the two institutions which might weaken the government. In order to be legitimate, the nomination of the Prime Minister will also require a double appointment. Chosen by the European Council on the basis of experience and European convictions, the Prime Minister's designation will be subject to the approval of the European Parliament.

Within the Commission, the Prime Minister will have power to appoint deputy prime-ministers to assist him. In the difficult area of international relations, where the interests of Member States are particularly sensitive, the Prime Minister will propose one of the Commissioners to the Council of Ministers to be a High Representative of the Union for common foreign and security policy. The High Representative will also have responsibilities pertaining to foreign policy within the Commission.

In a democratic constitution, a strong executive must be balanced by an active Parliament exercising legislative power and controlling the government. In the present state of the Union, the European parliament only partially fulfils these functions. Nevertheless, its democratic legitimacy is indisputable†: members of the European Parliament are elected by direct, universal suffrage by the citizens of the Union. Its legitimacy is thus strong: the European Parliament emanates from the European people and expresses, through its votes, the general will of all European citizens.

The Parliament must therefore be granted the right to make laws which is, after all, its *raison d'Être*. Currently, the existence of 'pillars', *i.e.*, the areas in which the means of action of the Union vary according to the subject matter, as well as the procedure known as 'co-decision' between the Parliament and the Council, involve a level of complexity that defies reason and creates obstacles to the progress of the Union. These unnecessary 'pillars', cumbersome relics of the community's origins, must disappear from the Constitution so as to grant the European Parliament its full

legislative powers. Of course, the European Union's Constitution must include all the precautions of rationalised parliamentary systems. Nothing is more legitimate in our time and in the European context. Confronted with the complexity and diversity of the problems in the Union, the Parliament will thus lay down the guiding principles to be implemented by the Commission in the exercise of its regulatory power. It will thus be necessary, in order to ensure the coherence and timeliness of European legislation, to preserve the powers of the Council of Ministers, upon proposal by the Commission and with the approval of Parliament, to adopt regulations and directives having legislative value. This is not a new form of co-decision, but rather a similar provision to that existing in the French Constitution, whereby the Parliament authorises the government to make regulations in specific contexts and for limited purposes.

It is for Parliament to vote the budget prepared by the Commission and adopted by the Council of Ministers. Does that mean, however, granting the European Parliament the power to establish European taxes, for example a European V.A.T. on certain products? In the present Federation of sovereign States, national Parliaments would undoubtedly not accept the added cost of European taxes, over and above national taxes, levied by the Parliament of the Union. However, in future the Union will need its own funds voted for by the Parliament at the request of the Council and levied throughout the Union.

It is at this level that the dialectic of opposing forces within the Federation of Sovereign States comes to the fore. On the one hand, the institutions of the Union are naturally inclined to claim ever more power, to constantly enlarge their area of action. The Commission and the Parliament are part of this European dynamic. On the other hand, the Parliaments of Member States mean to preserve their powers and resist the increasing ascendancy of the institutions of the Union. The complexity of the problems dealt with renders even more problematic the division between the areas which concern Union action and those which fall within the competence of the Member States. Both the commercial policy of the Union and its customs policy with respect to States outside the Union fall within its exclusive powers. However, common agricultural policy fall within the concurrent powers of both the Union and Member States. It is clear, therefore, that the delimitation of powers within the Union will be primordial for national parliaments: not only *who* will set the limits but *how* the Member States ensure that Union institutions, like any power holder, do not progressively increase their field of action?

One institutional response might lie in the creation, within the European Parliament, of an upper Chamber composed of representatives of all Member States, as in Germany or the United States. Bi-cameralism is the rule in federal States, but the Union is certainly not a federal State. It remains a Federation of sovereign States, which is very different. In the Union, the national interests of each State Member are represented in the European Council by the head of State or government and, in the Council of Ministers, by a national minister. Members of parliament elected in each State sit in the European Parliament. The voice of the State is thus heard in all the institutions of the Union. However, some see the creation of a second Chamber (a European Senate), as a forum where all the regions of the Union could be directly represented. One could imagine senators from Catalonia, Lombardy, Bavaria, Flanders or Brittany.

This conception which would increase the visibility of the regional bodies of Member States and give them some direct power within the Union, would also change its nature. From a Federation of States, the Union would become a Federation of States and Regions. This would be a new conception of Europe. It could only find its place in the European Constitution if the existence of real transnational European regions were first recognised, for example a Catalonian region stretching across both sides of the Pyrenees, a Rhône-Alps region extending across both sides of the Alps, or a Rhine region straddling the banks of the Rhine.

In the current state of the Union, the creation of a European Senate is not imperative. One must not, however, leave unanswered the legitimate preoccupation of national parliaments to ensure that European legislation does not extend its jurisdiction progressively, to the detriment of national parliaments. Where should the powers of the European Union in areas such as fisheries and consumer protection begin and end? For national parliaments, these are sensitive matters, because the reactions of the electorate are strong. However, community legislation has legal force superior to that of national laws. It is therefore necessary for the European Constitution to both determine the principles underlying the division of powers between the Union and State Members and guarantee their respect.

The principles are clear: the Union may only act when it has received a grant of authority from the State Members, which conserve all residual powers. The Union must only intervene in areas where State action has proved to be ineffective (the principle of subsidiarity) and only to the extent necessary to achieve its purposes (the principle of proportionality).

For these reasons, a list must be established of the exclusive powers of the Union as well as those held concurrently with Member States, all other powers remaining within the exclusive competence of Member States. At most, the Union could intervene in these areas, at State request, in order to complement or coordinate State action. Such a division of powers must be readily modifiable, based on the evolution of the economy, technology and European policies. The areas in which it exercises exclusive and concurrent powers shall thus be set out in an "organic" law, which may be revised more easily than provisions contained in the body of the Constitution.

Respect for the principles established and the powers divided in this manner must be guaranteed. The idea of establishing a special body, a sort of Congress, or permanent Convention, composed of ministers of States, members of the Commission and national and European parliamentarians, has been proposed. This new political institution would be responsible for resolving conflicts concerning the respective powers of the Union and States. However, what is needed is to ensure that these constitutional provisions concerning powers are not misconstrued by the organs of the Union or State Members. Such decisions should be made by the Court of Justice. The Union respects the rule of law and the interpretation of its Constitution must be ensured by the ECJ, which plays the role of a Constitutional Court of the Union. Its case law on the subject of the powers of the Union and Member-States will also clarify the concepts of subsidiarity and proportionality, for the benefit of all parties.

It would be desirable, nonetheless, that such litigation be avoided if at all possible. The Parliaments of Member States must thus be more closely associated with the legislative process of the Union. A Council of National Parliaments composed of parliamentarians from all State Members, appointed by their colleagues, would satisfy this need. It would not be a second deliberating assembly, or a Senate participating in the elaboration of laws. Rather, this Council will examine all bills submitted to the European Parliament in order to ascertain whether they comply with the rules determining the division of powers between the Union and Member States. Its reasoned opinions will be submitted to Parliament. In addition, after the adoption of a law, the Council of National Parliaments will have the right to seize the Court of Justice, if it considers that there has been a violation of the principles relating to powers. In practice, meetings and discussion between the competent commission of the European Parliament and the members of the Council of National Parliaments should lead to common agreement, avoiding the need to seize the Court of Justice. Pointless tensions would thus be avoided between the European Parliament and national parliaments.

A balanced constitution is not necessarily rigid. While the moment has come for the European Union to be endowed with a Constitution, this must not stop its future development. European construction has always progressed through the conviction and imagination of great European leaders guiding their States towards new European vistas. In the future, like today, certain States will want to go further in this great European enterprise. Others, with more lukewarm convictions, will hesitate to join until the experience has borne fruit. The Constitution must therefore allow the more enterprising States to achieve their aims without imposing on the other States the sole options of joining the movement or prohibiting it. One proposal envisages the creation, within the Union, of a *hard core* comprised of States which are prepared to assume the role of a vanguard. This might lead to a new set of tighter institutional links within the European Union, a sort of federal State within a broader Federation of States. However, to create a new Europe of Six, or even twelve States, within a Europe of twenty-five or thirty, would only complicate, if not paralyse the European Union.

The answer lies in the recognition, in the European Constitution, of the concept of closer cooperation. The example of the creation of a single currency illustrates the merits of this approach. By bringing together a significant number of EC members from the beginning, yet remaining open to all those who wish to participate at a later date, monetary union exemplifies closer cooperation, an essential instrument allowing progress within the Union in its current state.

Europe remains a living, human adventure, unique in History. It has created itself as it progresses. Its achievements bear witness to the force of its objectives. When giving it a Constitution, the leaders of the European Union should keep in mind the *motto* that Jean Monnet placed at the beginning of his memoirs†: "*We are not coalescing States, but uniting men*".

We are all Europeans and proud to be so.

## **PREAMBLE**

We, the representatives of the States of Europe, heirs to a long and troubled history, and guardians of a great civilisation, have decided to form together a Union which ensures to Europeans the benefits of peace, democracy, human rights, education and culture, social and economic progress, a protected environment and solidarity.

Consequently, we have concluded the present Treaty which provides the European Union with a Constitution founded on our common values.

**PART I**  
**FOUNDATIONS OF THE EUROPEAN UNION**

Article 1

The European Union is formed by the community of sovereign States which accede to the present Treaty.

Article 2

The European Union is founded on the principles of freedom, equality, democracy and the rule of law, common to all the Member States.

All the citizens of the Union are equal before the law of the Union, without any distinction based on sex, race, national origin, religion, political or philosophical opinions or sexual orientation.

Article 3

The Union considers the Charter of Fundamental Rights to be an integral part of the present Constitutional.

Article 4

The motto of the Union is "PEACE, FREEDOM, SOLIDARITY".

The emblem of the Union is the blue flag stamped with a circle of gold stars.

The hymn of the Union is "Ode to Joy" by Ludwig Van Beethoven.

The currency of the Union is the Euro.

Article 5

Citizenship of the European Union is established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union is additional to national citizenship and does not replace it. The citizens of the Union enjoy the rights provided for in the Constitution.

Article 6

Member States shall take the measures necessary to ensure fulfilment of the obligations arising under the Constitution or resulting from action taken by the institutions of the Union. They contribute to the accomplishment of its mission. They shall abstain from any measure which might impede the attainment of the objectives of the Union.

## Article 7

The European Union has a legal personality under international law distinct from its Member States.

The European Union may conclude agreements with States or international organisations creating reciprocal rights and obligations.

The Union may also conclude agreements establishing associations with one or more States or international organisations.

## **PART II**

### **OBJECTIVES OF THE EUROPEAN UNION**

#### Article 8

The Union shall ensure peace on the European continent. It shall contribute to the maintenance of world peace.

#### Article 9

The Union shall ensure respect for the freedoms and fundamental rights defined in the European Convention for the Protection of Human Rights and Fundamental Freedoms as well as the Charter of Fundamental Rights.

It shall contribute to their promotion and defence throughout the world.

#### Article 10

The Union shall promote the economic and social progress of the Member States, regions and other territorial communities.

It shall ensure their balanced and sustainable development, in particular through a common market without internal borders, economic and monetary union including a single currency, economic and social cohesion and solidarity among the Member States.

The Union shall work to ensure a high level of employment and social protection throughout its territory.

#### Article 11

The Union shall ensure the protection and development of European cultural heritage. It shall respect the national and regional cultural identity and diversity of Member States. It shall contribute to the influence of European culture throughout the world.

#### Article 12

The Union shall contribute to progress in knowledge, scientific research and technology.

### Article 13

The Union shall ensure respect for the environment throughout its territory. It shall work to protect the resources and natural equilibrium of the planet. It shall contribute to the sustainable development of disadvantaged continents and regions.

### Article 14

The Union shall work to establish an area of freedom, security and justice.

The Union shall take all measures necessary to ensure respect for the right of asylum and the free movement of persons.

It shall define a policy of immigration and admittance/asylum complying with international conventions and respecting fundamental rights.

It shall take all appropriate measures to prevent and punish international crime.

It shall counter illegal activities which attack the interests of the Union.

It shall establish the bodies and instruments necessary to counter delinquency/crime.

## Article 15

The Union shall conduct a common foreign and security policy on the international stage, in conformity with the rules of international law and the decisions of the United Nations.

It shall act together with international and regional organisations. It shall ensure the protection of the interests of the Union, the Member States and European citizens.

The Union shall define the principles of a common defence policy and provide the necessary means for its implementation.

## **PART III**

### **POWERS OF THE EUROPEAN UNION**

#### Article 16 Principles

The Union shall act within the framework of the powers granted to it by the Member States in order to attain its objectives. All residual powers shall continue to be exercised by the State Members.

The Union shall respect the principles of subsidiarity and proportionality.

Within the framework of the powers conferred upon it, Union legislation prevails over conflicting legislative provisions of a Member State.

#### Article 17 Division of Powers

The powers of the Union are either exclusive, or exercised concurrently with the Member States.

##### A/ Exclusive Powers

The Union shall have exclusive powers in those areas where, with respect to the agreed objective, action by the Union is defined and conducted exclusively by the authorities of the Union.

##### B/ Concurrent Powers

The Union shall have concurrent powers in those areas where, with respect to the agreed objective, the Union determines the outlines and principles of common policy.

#### Article 18 Distribution of Powers

The exclusive and concurrent powers of the Union shall be set out in an annex to the Constitution. These powers shall be defined in an organic law, which may be revised in accordance with the procedure set out in Article 21 / 81 ???.

#### Article 19 Review of the Exercise of Powers

The institutions of the Union and the State Members shall respect the division of powers set out in the Constitution and its annexes.

The Court of Justice shall ensure respect for the rules relating to these powers. In addition to the ordinary courses of action for breach of these rules, the Council of Ministers, the Commission, the Council of National Parliaments or one hundred European parliamentarians may challenge a norm of the Union prior to its entry into force for breach of the principles of proportionality and subsidiarity. This preliminary challenge shall be heard and decided in accordance with the urgent procedure set out in the Court's Statutes.

#### Article 20 Complementary Powers

In areas falling within the exclusive powers of the Member States, the Union may intervene, at their request or with their agreement, in order to coordinate or complement the action of the Member States.

## **PART IV**

### **LEGAL ACTS OF THE EUROPEAN UNION**

#### Article 21

The following acts are of a constitutional nature:

The provisions of the present Constitution, including the Charter of Fundamental Rights.

#### Article 22

The following acts are of an organic nature:

1. all non-abrogated provisions of prior Treaties and those which may replace them.
2. the provisions set out in the annexes to the Constitution and any organic laws adopted by the Parliament relating to the powers and organisation of the institutions of the Union.

Organic laws are adopted by the Parliament by a qualified majority of three-fifths of its members. They may only be promulgated following a declaration by the Court of Justice that they comply with the Constitution.

#### Article 23

The following acts are of a legislative nature:

1. Laws adopted by the Parliament enacting rules of general application. Laws set out the context and the essential elements of the measures to be taken. The modalities and conditions for implementing laws come within the power of the Commission, acting in the exercise of its regulatory power.

2. Regulations adopted by the Council of Ministers, on a proposal from the Commission and with the agreement of Parliament, with the purpose of achieving specific objectives of the Union. They shall have wholly direct effect within the Member States.

3. Directives adopted by the Council of Ministers, on a proposal from the Commission and with the agreement of Parliament, with the purpose of achieving specific objectives of the Union. They indicate the results to be attained by Member States. The Member States retain the power to determine the appropriate form and means for attaining these results.

Article 24

The following acts are of an administrative nature:

Decisions made by the Commission in the exercise of its regulatory power.

Article 25

The institutions of the Union and the Member States must take the hierarchy of norms into account in the exercise of their respective powers.

The Court of Justice shall ensure respect for the hierarchy of norms.

## **PART V**

### **THE INSTITUTIONS OF THE EUROPEAN UNION**

#### **CHAPTER 1†: THE PRESIDENT OF THE EUROPEAN UNION**

##### **Article 26 Nomination**

The President of the European Union shall be chosen among persons from the Union having rendered eminent services to Europe. On a proposal from the European Council, the President shall be elected by an absolute majority of the members of the European Parliament. The election shall take place by secret and personal ballot, without any debate.

The term of office of the President of the European Union is five years. The term may not be renewed.

The President of the Union shall reside in Brussels.

The President's status shall be defined by an organic law.

##### **Article 27 Functions**

The President of the Union shall preside over sessions of the European Council, but shall not cast votes.

The President of the Union shall represent the Union on the international stage, but shall not take part in the negotiation of treaties or in the formation of the common foreign and security policy of the Union.

The President shall sign, in the name of the Union, treaties concluded with other States and international organizations. He or She shall accredit and receive diplomatic representatives.

The President of the Union shall open sessions of the European Parliament, but shall not take part in its debates. The President of the Union may send written messages to the European Parliament, however, they shall not be the subject of any debate.

## Article 28 Impeachment

Upon the request of the Council of Ministers acting by a qualified majority, the Parliament may, by a two-thirds majority vote of its members, initiate impeachment proceedings against the President of the Union before the Court of Justice of the European Union for serious breaches of the duties inherent in the office. The procedure to be applied before the Court of Justice shall be defined by an organic law.

Should the Court of Justice decide that the President of the Union has committed the acts of which he or she is accused, the Court may remove the President from office.

## Article 29 Vacancy

The term of office of the President of the Union shall end upon death, resignation, removal from office or the intellectual or physical incapacity to discharge the functions of the office.

The Council of Ministers shall take notice of the vacancy of the Presidency and initiate the procedure for election of a new President, in accordance with the provisions of the organic law.

The President of the Parliament shall temporarily discharge the functions of President of the Union until the new President has been elected, but shall not address the Parliament under this title.

## CHAPTER 2: THE EUROPEAN COUNCIL

## Article 30 Composition

The European Council is composed of the Heads of State or Government of the Member State.

## Article 31 Powers

The European Council shall lay down general political guidelines for the Union. It shall provide the Union with the necessary impetuses for its development. It shall define the guiding principles and priorities of common foreign and security policy. It shall adopt common strategies to be implemented by the Union. It shall determine the principles and means of implementing a common defence policy. It shall propose an appropriate person for election as President of the Union. It shall designate the Prime Minister.

## Article 32 Operation

The European Council shall meet in Brussels once every six months or at the request of a majority of its members.

The Prime Minister of the Union, assisted by the High Representative for common foreign and security policy, shall participate in sessions of the European Council, but shall not cast any votes. Decisions of the European Council shall be made by consensus, unless one of the members requests a vote. In that case, the decision shall be made by a reinforced qualified majority being a two-thirds majority of Member States representing at least half of the total population of the European Union. The European Council shall keep the European Parliament informed of the outcome of its meetings.

## CHAPTER 3: THE GOVERNMENT OF THE EUROPEAN UNION

### Article 33

The government of the European Union shall be discharged, under the authority of the Prime Minister, by the Council of Ministers of the Union assisted by the European Commission.

### I. THE PRIME MINISTER OF THE UNION

#### Article 34 Nomination

The Prime Minister shall be chosen by the European Council, among persons from the Union recognised for their experience and attachment to the European cause. This choice shall be submitted for approval to the Parliament, acting by an absolute majority of its members. The Prime Minister shall be appointed for five years. This term may be renewed once. In case of resignation, incapacity or death, the Prime Minister shall be replaced, for the remainder of the term, in accordance with the above nomination procedure.

#### Article 35 Functions

The Prime Minister shall attend European Council meetings.

The Prime Minister shall preside over the Council of Ministers.

The Prime Minister shall lead the Commission, determining its internal organization and the powers of each of its members. The Prime minister may modify this distribution during the term in

office. On his or her proposal, the Commission may elect deputy prime-ministers from among its members.

The Prime Minister shall be assisted by a Secretary-General appointed and revocable by the former.

## II. THE COUNCIL OF MINISTERS OF THE UNION

### Article 36 Composition

The Council of Ministers is a permanent body of the Union. It shall consist of a representative of each Member State having Ministerial status, authorised to commit the government of that Member State.

The members of the Council of Ministers of the Union shall carry the title of Minister of the European Union, independently of any national function.

Members of State governments responsible for specific questions under examination may also participate in the Council of Ministers. However, each State shall only cast one vote in the Council of Ministers.

### Article 37 Operation

The Council of Ministers shall meet regularly, under the presidency of the Prime Minister, to deal with the business of the Union. If circumstances so require, the Council of Ministers may also meet upon convocation by the Prime Minister or at the request of the majority of its members.

The High Representative for common foreign and security policy shall attend meetings of the Council of Ministers. The Prime Minister may also call upon one or more members of the Commission to participate in work of the Council of Ministers, depending on the matters on the Council's agenda. Such Commissioners shall not cast votes.

The Council of Ministers acts by a qualified majority composed of an absolute majority of Member States representing the majority of the total population of the European Union. In the cases set out in the Constitution, the Council of Ministers shall act by a reinforced qualified majority composed of a two-thirds majority of Member States representing the majority of the total population of the European Union.

The seat of the Council of Ministers shall be in Brussels. The services of the Council shall be directed by a Secretary-General appointed by the Prime Minister and revocable by the latter.

An organic law shall define the status of Ministers and the mode of operation of the Council of Ministers.

#### Article 38 Powers

1. The Council of Ministers shall ensure the accomplishment of the Union's objectives, in accordance with to the general guidelines laid down by the European Council.

If an action of the Union appears necessary to accomplish one of the Union's given objectives, the Council of Ministers shall, acting by a reinforced qualified majority on a proposal from the Commission and with the agreement of the European Parliament acting by an absolute majority, take all appropriate measures.

2. The Council of Ministers ensures the unity, consistency and effectiveness of the action of the Union. It ensures that Member States verify the conformity of national policy with common policy.

3. The Council of Ministers shall, on a proposal from the Commission and with the agreement of the Parliament, adopt regulations and directives. It shall confer powers on the Commission for the implementation of its decisions. It shall adopt bills proposed by the Commission and present them to the Parliament.

4. The Council of Ministers shall take all decisions necessary for the definition and conduct of common foreign and security policy, in accordance with the principles and guidelines laid down by the European Council. It shall represent the Union in this area. It shall express the position of the Union in international organizations and international conferences. It shall be assisted by the High Representative. It may designate special representatives for specific missions.

The Council of Ministers shall recommend common strategies to the European Council and adopt the measures necessary for their implementation.

Decisions concerning common foreign and security policy shall be made by the Council of Ministers by a qualified majority. Abstentions by present or represented members shall not prevent the adoption of such decisions. Any member of the Council whose representative abstains is not required to apply the decision, but agrees that it binds the Union.

If a member of the Council of Ministers declares that, for important reasons of national policy which the member enumerates, he or she intends to oppose the adoption of a decision which must be taken by a qualified majority, a vote shall be held by a reinforced qualified majority. The Member State in question shall abstain from any action likely to impede or enter into conflict with the action of the Union based on this decision.

The Council of Ministers shall authorise the Prime Minister, assisted by the High Representative for common foreign and security policy, to enter into negotiations with the aim of concluding agreements with one or more States or international organizations. The Council shall enter into such agreements by a reinforced qualified majority.

#### Article 39 Committees

The Council of Ministers shall be assisted by the Committee of permanent representatives of Member States to the European Union.

The Committee of permanent representatives shall prepare the business of the Council and perform any tasks given to it by the latter.

The Council of Ministers shall decide, on a proposal from the Commission, the establishment of specialised committees in specific areas of Union competence. The duties of such committees, their composition and functioning shall be defined by an organic law

### (III) THE COMMISSION

#### Article 40 Composition

The Commission shall consist of no more than fifteen members who shall be chosen on the grounds of their competence and experience, and whose independence is beyond doubt. Each member of the Commission shall be of a different nationality. They shall, in the general interest of the Union, be completely independent in the performance of their duties. In the performance of their duties, they shall neither seek nor take instructions from any government or body external to the Union. They shall refrain from any action incompatible with their functions. Each Member State undertakes not to influence members of the Commission in the performance of their duties.

Deputy Commissioners may be appointed under the same conditions as the commissioners themselves, to assist them in their functions. Their number shall not exceed that of the commissioners.

On a proposal from the Prime Minister, the Council of Ministers shall, acting by a reinforced qualified majority, determine the list of members of the Commission.

The Commission thus appointed shall be subject to the collective approval of the Parliament acting by an absolute majority vote. In the absence of approval, the Prime Minister shall present a differently composed group to the Parliament.

The members of the Commission shall be appointed for five years. Their term may be renewed once.

The status of members of the Commission shall be defined by an organic law.

#### Article 41 Functions

The Commission shall ensure the governance of the Union. It shall ensure the implementation of the guidelines defined by the European Council. It shall be associated with the work and action of the Council of Ministers. It shall direct the administration of the Union. It shall propose measures contributing to the progress of the Union. It shall ensure the fulfilment of its own decisions. It shall ensure the respect by Member States and by Union institutions of the obligations set out in the Constitution.

The Commission shall exercise the regulatory powers of the Union. Within the limits of its powers, it shall take such action of a general nature as may be necessary to accomplish the objectives of the Union, in accordance with decisions made by the Council of Ministers.

The Commission shall prepare the draft budget of the Union for submission to the Council of Ministers. It shall propose draft regulations and directives to the Council of Ministers, as well as any draft laws it may consider appropriate to present to the European Parliament. Before the Parliament, a representative of the Commission shall assist the Minister of the Union designated to defend texts during debate.

The Commission shall submit an annual report on its activities to the European Parliament. The report shall be subject to public discussion in the presence of the Prime Minister.

#### Article 42 The High Representative

On a proposal from the Prime Minister, the Council of Ministers shall appoint, among members of the Commission, a High Representative of the Union for common foreign and security policy.

Under the authority of the Prime Minister, the High Representative of the Union shall assume responsibility within the Commission for the foreign policy of the Union. He or she shall attend meetings of the Council of Ministers of the Union, without casting any votes. The Representative shall accept all tasks and relevant instructions from the Council of Ministers and shall report to the Prime Minister and the Council of Ministers on the performance of these duties. The Representative may be assisted by special representatives appointed by the Council of Ministers for specific missions.

#### Article 43 Resignation

The functions of a member of the Commission may be terminated individually by voluntary resignation or automatically.

Every member of the Commission shall automatically present his or her resignation if the Prime Minister requests it, with the agreement of the Council of Ministers.

A resigning or deceased member shall be replaced, on a proposal from the Prime Minister, for the remaining duration of the term, by a member appointed by the Council of Ministers acting by a reinforced qualified majority. The Council may decide that there is no need for replacement.

#### Article 44 Operation

The members of the Commission shall perform the functions that are allocated to them by the Prime Minister, under the authority of the latter.

Unless otherwise provided, decisions by the Commission are made by an absolute majority of its members. The mode of organization and operation of the Commission shall be defined by an organic law.

The seat of the Commission shall be in Brussels.

#### Article 45 Censure

If a motion of censure on the activities of the Commission is tabled before the European Parliament shall vote on the motion by a public ballot, not less than three days after the motion has been tabled.

If the motion of censure is carried by a two-thirds majority of the votes cast, representing an absolute majority of the members of Parliament, the members of the Commission shall resign collectively. They shall continue to deal with current business until their replacement. The term of office of the new members shall expire on the date the term of the former members would have expired.

## CHAPTER 4: THE EUROPEAN PARLIAMENT

### Article 46 Powers

The European Parliament shall represent the citizens of the Union. It shall vote the laws of the Union. It shall ratify international agreements to which the Union is a party. It shall elect the President of the Union and approve the nomination of the Prime Minister. It shall authorise the Council of Ministers to adopt the regulations and directives necessary to accomplish the objectives of the Union. Through its debates and recommendations, it shall participate in the formation of policies by the Council of Ministers and the Commission. It shall approve the composition of the college of members of the Commission. It may establish commissions of enquiry. It may also censure the activities of the Commission.

### Article 47 Composition

The Parliament shall consist of representatives elected by direct universal suffrage by the citizens of the Union. The total number of European representatives and the distribution by Member State shall be set out in the table annexed to the Constitution. These provisions shall be determined by an organic law. They shall ensure appropriate representation of each Member State's citizens within the Parliament.

The European representatives shall be elected for five years. An organic law shall define the principles for the electoral system. Member States shall implement them in accordance with their constitutional rules.

The organic law shall determine the status and conditions of exercise of the mandate of European representatives.

### Article 48 European Political Parties

Political parties set up at the European level contribute to the integration and democratisation of the European Union.

The organic law shall guarantee the right of European political parties to participate directly in elections to the European Parliament. It shall define their status, in particular relating to their financial rules.

#### Article 49 Voting

Unless otherwise provided in the Constitution, the Parliament acts by an absolute majority of the votes cast.

All imperative mandates shall be void. The right to vote of members of Parliament is personal.

The organic law shall define those exceptional cases where the delegation of voting rights is authorised. No one may receive a delegation from more than one member.

#### Article 50 Organization

The Parliament shall adopt its own internal rules, by an absolute majority of its members. It shall determine the number of permanent commissions.

The Parliament shall elect its President and officers for the duration of the legislature from among its members, by an absolute majority.

The Parliament shall hold one annual session. It shall meet in extraordinary sessions at the request of the Council of Ministers, acting by an absolute majority of its members.

The agenda of the session shall be decided by common agreement between the Prime Minister and the President of the Parliament.

#### Article 51 Operation

All bills for organic and ordinary laws shall be tabled before the Parliament.

One or more members of Parliament may also table non-government bills before the Parliament. All bills shall be submitted to the Commission for advice.

All bills shall be examined in commission and debated in public session, according to procedure set out in the regulations of Parliament.

The Council of Ministers may withdraw bills under discussion at any time.

After adoption of a bill, the Council of Ministers may request a new vote on the law or certain of its articles. This new vote cannot be refused. It shall be scheduled during the session, or in priority during the next session. The bill must then be adopted by a two-thirds majority of the members of Parliament.

2. Parliament shall adopt the budget of the Union prepared by the Commission and presented by the Council of Ministers. The adoption procedure for budgetary laws shall be defined in an organic law.

3. The Parliament may, at the request of one quarter of its members, decide to establish a commission of enquiry to examine allegations of breach, or the conditions for application, of the law of the Union, unless legal proceedings are already under way concerning the facts in question for as long as the proceedings continue. The mandate of the commission of enquiry shall come to an end with the tabling of its report. The composition and functioning of Parliamentary commissions of enquiry shall be defined by the organic law.

4. The Prime Minister, Ministers of the Union and members of the Commission may address Parliament under the conditions defined in its rules.

5. The Parliament shall respond to petitions that are addressed to it in the manner it considers appropriate, in accordance with its rules.

#### Article 52 Dissolution

The Parliament may be dissolved by a decision of the Council of Ministers made, after advice from the Commission, by a reinforced qualified majority.

A new Parliament shall be elected immediately and cannot be dissolved during the first year following its election.

## CHAPTER 5: THE COUNCIL OF NATIONAL PARLIAMENTS

### Article 53 Composition

The Council of National Parliaments shall consist of four members of parliament from each Member State, appointed for five years by the Parliamentary Assemblies of the Member States. It shall hold an annual session during the session of the European Parliament. An extraordinary session of the Council of National Parliaments may be called by its President, at the request of the Council of Ministers or by an absolute majority of its members.

### Article 54 Organization

The organization and functioning of the Council of National Parliaments, as well as the status of its members, shall be defined by an organic law. The Council of National Parliaments shall adopt its own rules. It shall elect its President and officers from among its members.

### Article 55 Functions

To ensure respect for the rules determining the powers of the Union, the Council of National Parliaments shall receive notice of all bills tabled before Parliament. After deliberation, the Council of National Parliaments shall give its reasoned opinion on the conformity of the bill to the rules determining the respective powers of the Union and the Member States. This opinion shall be communicated to the European Parliament and shall be the subject of a special report during discussion of the bill in Parliament.

After adoption of the law by Parliament but before its promulgation, the Council of National Parliaments may, by a resolution adopted by a simple majority or signed by half of its members within a fifteen day period, initiate the preliminary review provided for in Article 19. The Court of Justice shall hand down its decision within one month.

The Council of National Parliaments shall provide the European Parliament, the Council of Ministers and the Commission with any recommendation or proposal it may consider appropriate for the progress of the Union and the accomplishment of its objectives.

CHAPTER 6: THE COURT OF JUSTICE  
AND THE COURT OF THE EUROPEAN UNION

Article 56

The Court of Justice of the European Union shall ensure respect for the Constitution and the law of the European Union. It shall ensure respect for the division of powers between the Union and the Member States. It shall protect the fundamental rights of citizens of the Union.

The Court of the Union shall participate, within the framework of its jurisdiction, in the exercise of the judicial function of the Court of Justice.

Article 57 Composition

1. The Court of Justice shall consist of one judge from each Member State. It shall be assisted by Advocates-General.

The Judges and Advocates-General shall be chosen from among persons presented by the Member States, whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial office in their respective countries or who are jurisconsults of recognised competence. They shall be appointed for nine years by the Council of Ministers of the Union.

A partial renewal of judges and Advocates-General shall be organised every three years.

The Judges and Advocates-General may be re-appointed.

The Judges shall sit in collegiate chambers according to the rules set out in the Statutes of the Court.

The Judges shall choose the President of the Court of Justice among themselves, for a three year term, which may be renewed.

The role of the Advocates-General is to present reasoned conclusions relating to the cases submitted to the Court, publicly and with impartiality and independence.

The Statutes of the Court shall define the number of Advocates-General and the conditions for their appearance before the Court.

The Court of Justice shall appoint its clerk and define the status of the office.

The Court of Justice shall establish its own procedural rules.

2. The Court of the Union shall consist of at least one judge from each Member State. The number of judges sitting on the Court shall be defined by the Statutes of the Court of Justice. The Court may receive assistance from the Advocates-General under the conditions set out in the Statutes of the Court. The members of the Court shall be chosen from among persons whose independence is beyond doubt and who possess the qualifications required for appointment to judicial office. They shall be appointed for six years by the Council of Ministers, on a proposal from the Commission and after consulting the Parliament without any preliminary debate. Their appointment may be renewed. A partial renewal shall take place every three years.

The Judges shall appoint the President of the Court from among themselves for a three year term, which may be renewed.

The Court shall appoint its clerk. It shall establish its procedural rules in agreement with the Court of Justice.

#### Article 58 Jurisdiction

##### 1. General Jurisdiction

Within the framework of their respective jurisdiction, the Court of Justice and the Court shall ensure respect for the law in the interpretation and application of the Constitution and European legislation.

##### (a) Breaches of the Constitution by Member States:

An alleged breach by a Member State of the obligations it has accepted by virtue of the Constitution may be submitted to the Court of Justice by the Council of Ministers, the Commission, the Parliament or a Member State.

##### (b) Review of Legality:

The Court of Justice shall review the legality of the action of the institutions of the Union.

A petition for avoidance of the action of an institution of the Union may be brought before the Court of Justice by the Council of Ministers, the Commission, the Parliament or a Member State.

Natural and legal persons may also bring an action in relation to acts which concern them directly and individually.

##### (c) Default by the Institutions of the Union:

The Council of Ministers, the Commission, the Parliament or a Member State may bring an action before the Court of Justice in cases where, in violation of the Constitution, one of the Union's institutions abstains to take action.

Natural and legal persons may also bring an action for default in those cases defined in the Statutes of the Court.

(d) Interpretation of the Constitution:

Action may be brought before the Court of Justice during legal proceedings by the national courts of Member States with respect to the interpretation of the Constitution and the law derived from it.

(e) Review of compliance:

The Court of Justice shall ensure respect for the hierarchy of norms and the rules concerning the division of powers set out in the Constitution.

## 2. Specific Jurisdiction

An organic law may grant the Court of Justice jurisdiction over specific categories of litigation.

### Article 59 Jurisdiction of the Court of the Union

The Court shall have jurisdiction to hear, at first instance, certain categories of litigation within the limits and in accordance with the procedure defined by the organic law. The appeals available against decisions of the Court are defined by an organic law.

### Article 60 Procedure

The rules of procedure used before the Court of Justice and the Court, as well as the binding force of their decisions, shall be set out in the Statutes of the Court.

The Statutes of the Court are annexed to the Constitution. They are determined by an organic law.

## CHAPTER 7: THE EUROPEAN UNION PROSECUTOR

### Article 61 Nomination

The European Union Prosecutor shall ensure the protection of the financial interests of the Union.

The Prosecutor shall be appointed by the Council of Ministers, on a proposal from the Commission and after approval by the Parliament, from among persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial office in their respective countries.

The Prosecutor shall be appointed for six years. This appointment may not be renewed.

### Article 62 Functions

The Union Prosecutor is competent to act throughout the territory of the Union in matters relating to fraudulent crimes and all other illegal activity in violation of the financial interests of the Union.

The Prosecutor shall be responsible for the direction and centralisation of all investigation and prosecution of these infractions. The Prosecutor shall be assisted by delegated prosecutors appointed by the Member States who shall be prosecutors or national officials.

The action of the Prosecutor for search and prosecution shall be valid throughout the Union.

An organic law shall define the status of the Union Prosecutor, the conditions for exercise of his functions, the procedural rules applicable to these activities and those governing the admissibility of evidence. The organic law shall set out the appeals that are available before national courts against the action of the Union Prosecutor.

## CHAPTER 8: THE COURT OF AUDITORS OF THE EUROPEAN UNION

### Article 63 Composition

The Court of Auditors shall consist of one member from each Member State.

The members of the Court of Auditors shall be chosen from among persons belonging or having belonged to external audit bodies or who are specifically qualified for this office in their respective countries. Their independence and integrity shall be beyond doubt.

The members of the Court of Auditors shall be appointed for six years by the Council of Ministers, after consulting the Commission. Their appointment may be renewed.

They shall appoint the President of the Court of Auditors from among themselves, for a three year term. This appointment is renewable.

The members of the Court of Auditors shall, in the general interest of the Union, be completely independent in the performance of their duties. In the performance of their duties, they shall neither seek nor accept instructions from any government or other body. They shall refrain from any action incompatible with their duties.

### Article 64 Functions

The Court of Auditors shall audit the accounts of the Union.

The Court of Auditors shall examine the accounts of all revenue and expenditure of the Union. It shall also examine the accounts of all revenue and expenditure of the bodies set up by the Union insofar as their relevant constituent instruments do not preclude such examination.

The Court of Auditors shall prepare an annual report after the end of each financial year. It may also present special reports on specific questions and provide advice at the request of the institutions of the Union.

The Court of Auditors shall assist the Parliament, the Council of Ministers and the Commission in the performance of their duty to review implementation of the budget.

An organic law shall define the means of control employed by the Court of Auditors as well as its cooperation with the institutions of the Union and those of Member States. It shall determine the conditions for elaboration and publication of reports and advice.

The Court of Auditors shall establish its own internal rules. It shall submit them for approval by the Council of Ministers.

## CHAPTER 9: THE OMBUDSMAN OF THE UNION

### Article 65 Nomination

The Ombudsman shall be appointed by the European Parliament from among persons of the European Union whose independence and integrity are beyond doubt.

The Ombudsman shall be appointed for the duration of the legislature. The appointment may be renewed once.

### Article 66 Functions

The Ombudsman shall be empowered to receive complaints from all natural or legal persons concerning instances of misadministration by Union institutions or bodies, with the exception of the Court of justice and the Court of the Union acting in their judicial role.

The Ombudsman shall investigate such complaints. He or she may ask the administration concerned submit observations and propose measures, including conciliation, in order to remedy any injury suffered. The Ombudsman shall keep the Parliament informed of all action undertaken. He shall submit a written activity report to the Parliament every year.

An organic law shall define the status of the Ombudsman and the procedure for performance of his or her duties.

**PART VI**  
**CONSULTATIVE COMMITTEES**

**I. THE ECONOMIC AND SOCIAL COMMITTEE**

**Article 67 Composition**

The Economic and Social Committee shall consist of representatives of all sectors of the social and economic life of the Union.

The members of the Committee shall be appointed for four years, on a proposal by Member States, by the Council of Ministers acting by a qualified majority after advice from the Commission. Their appointment is renewable. The number and distribution between States of the members of the Committee shall be defined by an organic law.

The members of the Committee shall not be bound by any imperative mandate. In the general interest of the Union, they shall be completely independent in the performance of their duties.

**Article 68 Functions**

The Committee shall be consulted by the Council of Ministers, the Commission and the European Parliament at such times and in accordance with such procedure as shall be defined in the organic law.

The Committee may submit advice at its own initiative whenever it considers such action appropriate.

The Committee shall elect its President and officers from among its members.

The organic law shall define the organization and operating procedure of the Committee.

**(II) THE COMMITTEE OF THE REGIONS**

**Article 69 Composition**

The Committee of the Regions shall consist of the representatives of regional and territorial authorities.

The members of the Committee and their deputies shall be appointed for four years, on a proposal from Member States, by the Council of Ministers acting by a qualified majority after advice from the Commission. Their appointment is renewable. They shall not be members of the European Parliament.

The members of the Committee and their deputies must hold elected office in a local or regional authority, or be politically responsible before an elected assembly. Should they lose that office, their participation in the Committee shall end automatically and they shall be replaced by their deputy for the remainder of the term.

The number and distribution between States of the members of the Committee, as well as the procedure for replacement, shall be defined by an organic law.

The members of the Committee and their deputies shall not be bound by any imperative mandate. In the general interest of the Union, they shall be completely independent in the performance of their duties.

#### Article 70 Functions

The Committee of regions shall be consulted by the Council of Ministers, the Commission and the European Parliament at such times and in accordance with such procedure as shall be defined in the organic law.

The Committee may submit advice at its own initiative whenever it considers such action appropriate.

The Committee shall elect its President and officers from among its members.

The organic law shall define the organization and operating procedure of the Committee.

**PART VII**  
**PROVISIONS ON CLOSER COOPERATION**

Article 71 Definition

Within the framework of the Union, these provisions on closer cooperation shall allow Member States to accomplish together common action that furthers the progress of the Union. Closer cooperation action shall only bind the Member States which become parties thereto. Closer cooperation shall not affect the rights of other Member States. It is open to all other Member States.

Article 72 Conditions

The Council of Ministers, acting by a reinforced qualified majority upon the advice of the Commission and after consulting the Parliament, shall authorise Member States which intend to establish closer cooperation between themselves to make use of the institutions of the Union, provided that the cooperation:

- (a) is aimed at furthering the objectives of the Union and at protecting and serving its interests;
- (b) respects the principles of the Constitution, the single institutional framework of the Union and the *acquis communautaire*;
- (c) remains within the limits of the powers of the Union and does not relate to areas falling within the exclusive powers of the Union;
- (d) does not impede the internal market or the economic and social cohesion of the Union;
- (e) does not involve any discrimination between Member States;
- (f) does not concern citizenship of the Union and does not lead to discrimination between the nationals of Member States;
- (g) concerns at least a majority of Member States;
- (h) is open to all Member States and allows them to become parties to the cooperation at any time, provided they comply with the initial decision and all decisions made within that framework.

### Article 73 Implementation of closer cooperation

1. As far as they are concerned, the Member States shall apply the acts and decisions adopted for the implementation of the cooperation in which they participate. Such acts and decisions shall only bind participating Member States. Member States not participating in such cooperation shall not impede the implementation thereof by participating Member States.

2. For the purposes of the adoption of the acts and decisions necessary for the implementation of closer cooperation, the relevant institutional provisions of the Constitution shall apply. However, while all the members of the Council of Ministers may take part in the deliberations, only those representing participating Member States shall take part in the adoption of decisions. The required majority shall be determined solely as a proportion of the votes of the participating members of the Council of Ministers. Unanimity shall be construed with respect to the sole votes of the participating members of the Council.

Expenditure resulting from implementation of the cooperation, other than administrative costs entailed for the institutions, shall be borne by the participating Member States, unless the Council of Ministers, acting unanimously, decides otherwise.

The Council and the Commission shall regularly inform the European Parliament of the development of closer cooperation.

3. The procedure for the implementation of closer cooperation shall be defined by an organic law.

**PART VIII**  
**FINANCIAL PROVISIONS**

Article 74 The Budget

1. The budget of the European Union shall provide for all revenue and expenditure of the Union exhaustively and sincerely.

The financial year shall be the calendar year.

The revenue and expenditure shown in the budget shall be in balance. There shall be no compensation between them.

2. Without prejudice to other revenue, the budget shall be financed wholly from Union resources.

3. Certain expenses may be the subject of long term commitments.

4. The Commission shall prepare the draft budget of the Union.

Proposals for expenditure prepared by the Commission shall be submitted to the Council of Ministers and the Council of National Parliaments.

The Council of Ministers shall adopt such proposals by a qualified majority of its members.

The Parliament shall adopt expenditure in accordance with the procedure set out in an organic law.

5. The Council of Ministers, acting on a proposal from the Commission and after consulting the European Parliament, shall lay down provisions relating to the system of own resources of the European Union, which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements.

Article 75 Budgetary Discipline

With a view to maintaining budgetary discipline, the institutions of the European Union shall not make or accept any proposal for a Union act or any implementation measure which is likely to have an appreciable impact on the budget without the assurance that the proposal or act is capable of being financed within the limit of the Union's own resources.

Article 76 Financial Interests of the European Union

1. The European Union and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Union.

2. The Member States shall take the same measures to counter fraud affecting the financial interests of the European Union as they take to counter fraud affecting their own financial interests.

3. The Member States shall coordinate their action aimed at protecting the financial interests of the European Union against fraud.

**PART IX**  
**MODIFICATION OF THE COMPOSITION OF THE EUROPEAN UNION**  
**AND THE CONSTITUTION**

Article 77 Admission to the Union

Any European State which respects the principles set out in Part I of the present Constitution, may apply to become a member of the Union. It shall address its application to the European Council. The latter shall decide whether to initiate the admission procedure and seize the Council of Ministers of the matter. Admission shall be declared by the Council of Ministers acting by a qualified majority after consulting the Commission and after receiving the assent of the Parliament, which shall act by a two-thirds majority of its members.

The conditions of admission shall be the subject of an agreement between the European Union and the applicant State.

Article 78 Suspension of Member States' Rights

1. At the request of the European Council, or on a proposal from one third of the Member States or the Commission, and after obtaining the assent of the European Parliament acting by an absolute majority of its members, the Council of Ministers acting by a reinforced qualified majority, may determine the existence of a serious and persistent breach by a Member State of the principles set out in Part I of the Constitution. Before making any decision, the Council of Ministers, acting by a reinforced qualified majority, shall invite the government of the Member State to submit its observations.

2. Where such a determination has been made, the Council of Ministers, acting by a reinforced qualified majority, may decide to suspend certain rights deriving from the application of the Constitution to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. The Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

The obligations of the Member State in question shall continue to be binding on that State.

3. The Council of Ministers, acting by a reinforced qualified majority, may later decide to vary measures taken or revoke these measures in response to changes in the situation which led to their being imposed.

4. For the purposes of this Article, the Council shall act without taking into account the vote of the representative of the government of the Member State in question. The qualified majority shall be defined taking into account the absence from the vote of the representative of the government of the Member State in question.

#### Article 79 Exclusion

In the event that a Member State should persist in the serious breach of the principles set out in Part I of the Constitution, despite implementation of the provisions of Article 78 above, the Council of Ministers, at the request of the European Council, may decide to exclude that State from the Union. The decision to exclude a State shall be made unanimously and only after a formal notification, adopted by a reinforced qualified majority of the Council of Ministers after consulting the Commission and receiving the approval of the Parliament acting by a two-thirds majority of its members, has been unsuccessful.

The consequences of the exclusion of a State are dealt with in exactly the same manner as those resulting from the withdrawal of a State.

#### Article 80 Withdrawal by a Member State

Any Member State may denounce this Treaty and give notice of its decision to withdraw from the European Union.

The decision of the Member State shall be made within that State in accordance with the procedure required for amendment of constitutional provisions of the highest level.

The withdrawal of the State shall not take effect until after the end of a time-period to be decided by the European Council.

During this period, the Union and the withdrawing State shall negotiate an agreement defining the withdrawal procedure and its possible consequences for the interests of the Union. The withdrawing State shall be responsible for any loss that may be suffered by the Union due to its withdrawal. In the absence of any agreement between the withdrawing State and the Council of Ministers, the Court of Justice shall be seized of the dispute. It shall also hear any actions relating to the interpretation and execution of withdrawal agreements.

## Article 81 Amendment

The European Council, the Commission, the European Parliament or any Member State may submit to the Council of Ministers a proposal for the amendment of the present Constitution.

After consulting the Member States and the Commission, the Council of Ministers, acting by a decision adopted by a reinforced qualified majority, shall submit an amendment bill to Parliament.

The bill shall be adopted by a two-thirds majority of the members of Parliament.

The texts set out in the annexes to the Constitution may be amended in accordance with the same procedure. In that case, however, the decision of the Council of ministers to submit an amendment bill to Parliament shall be made by a qualified majority and the bill shall be adopted by the Parliament by a three-fifths majority of its members. The same provisions shall apply for all organic laws.

**TITLE X**  
**MISCELLANEOUS PROVISIONS**

Article 82 Working Languages

The working languages used within the institutions of the European Union shall be English, French and German.

Specific provisions governing the use of national languages within the European Council, the Council of Ministers, the European Parliament and any other Union bodies shall be set out in an annex to the present Constitution.

Article 83 Duration

The present Constitution is concluded for a unlimited period.

Article 84 Ratification and Entry into Force

This Constitution shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the European Union at its seat in Brussels. The Constitution shall enter into force on the first day of the twenty-fifth month following the deposit of the fifteenth instrument of ratification by a signatory State having taken that step.

Article 85 Abrogation

The Treaties relating to the European Communities and the European Union are hereby abrogated.

## ANNEX A: THE POWERS OF THE EUROPEAN UNION

### **I- The Union shall have exclusive powers with respect to:**

The monetary policy of the Union

Customs policy

External economic relations

Competition policy

Structural and Cohesion Policies

The legal principles of the internal market

Monetary policy relating to the Euro

- The European regime for the right of asylum
- Financing for the budget of the Union from own resources
- The common foreign and security policy insofar as required by the interests of the Union

In these areas, the Member States shall only intervene at the request of the Union.

## **II - The Union and Member States shall have concurrent powers with respect to:**

### 1. Policies which accompany or complement the single market:

- Agriculture, fisheries
- Consumer protection
- Trans-European transportation and networks
- Communication systems
- The environment
- Research and technological development
- Energy
- Social policy
- Policy on immigration and the status of immigrants
- The promotion of equality between women and men
- The association of overseas countries and territories
- Cooperation in sustainable development throughout the world
- Taxation related to the single market

2. Implementation of the common foreign and security policy of the Union in its transnational aspects.

3. The legal principles of the area of liberty, security and justice.

4. The implementation of police and judicial cooperation in criminal matters.

In these areas, the Union shall lay down general rules and guidelines, and the Member States shall ensure their transposition and implementation within their internal legal orders.

**ANNEX B**  
**FINANCIAL ESTABLISHMENTS OF THE EUROPEAN UNION**

**(I) THE EUROPEAN SYSTEM OF CENTRAL BANKS**

**Composition**

The European System of Central Banks shall consist of the European Central Bank and national central banks.

The European System of Central Banks shall be governed by the decision-making bodies of the European Central Bank, which shall be the Governing Council and the Executive Board.

The Statutes of the European System of Central Banks shall be defined in an organic law. They may be modified by the Council of Ministers acting by a qualified majority upon a recommendation from the European Central Bank presented with the agreement of the Commission and after consulting the Parliament.

1. The main objective of the European System of Central Banks shall be to maintain price stability within the European Union. The European System of Central Banks shall contribute to the accomplishment of the objectives of the Union by supporting the general economic policies of the Union.

2. The basic tasks to be carried out by the European System of Central Banks shall be:

- to define and implement the monetary policy of the European Union;
- to conduct foreign exchange operations consistent with the provisions set out in the protocol annexed to these Statutes/organic law??;
- to hold and manage the official foreign reserves of the Member States, without prejudice to the detention and management, by Member State governments, of rolling currency funds.

**(II) THE EUROPEAN CENTRAL BANK**

The European Central Bank shall have the exclusive right to authorise the issue of banknotes within the European Union. The European Central Bank and the national central banks may issue such notes. The banknotes issued by the European Central Bank and the national central banks shall be the only such notes to have legal tender within the European Union. The Member States may issue coins, subject to approval by the European Central Bank of the volume of the issue.

## Organization

The European Central Bank shall have legal personality.

The Statutes of the European Central Bank shall be set out in an organic law.

The decision-making bodies of the European Central Bank shall be the Governing Council and the Executive Board.

The Governing Council of the European Central Bank shall comprise the members of the Executive Board of the European Central Bank and the Governors of the national central banks.

The Executive Board shall comprise the President, the vice-president and four other members.

The President, the vice-president and the other members of the Executive Board shall be appointed by common accord of the Member State governments at the level of heads of State or government, on a recommendation from the Council of Ministers, after it has consulted the European Parliament and the Governing Council of the European Central Bank, among persons of recognised standing and professional experience in monetary and banking areas.

They shall be appointed for eight years, non renewable.

Only nationals of Member States may be members of the Executive Board.

When exercising the powers and carrying out the tasks and duties conferred upon them by the Treaty establishing the European Union/an organic law<sup>???</sup> and the Statutes of the European System of Central Banks, neither the European Central Bank, nor a national central bank, nor any member of their decision-making bodies shall seek or accept instructions from Union institutions or bodies, from any Member State government or from any other body. The Union's institutions and bodies and the Member State governments undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the European Central Bank or the national central banks in the performance of their tasks.

## The European Investment Bank

The European Investment Bank is a financial establishment endowed with the legal personality. The Members of the European Bank Investment Bank are the Member States.

The task of the European Investment Bank shall be to contribute, by having recourse to the capital markets and using its own resources, to the balanced and steady development of the single market in the interests of the Union. For this purpose it shall, operating on a non-profit basis, give guarantees which facilitate the financing of projects in all sectors of the economy, as provided in an organic law.

In carrying out its task, the European Investment Bank shall facilitate the financing of investment programs with assistance from structural funds and other financial instruments of the Union.

The Statutes of the European Investment Bank shall be set out in an organic law.

## **ANNEX C**

### **~~Protocol on~~ Procedures for implementation of common actions and positions**

## **D ANNEX**

### **Table relating to the number of representatives and their distribution by Member State**

## **ANNEX E**

### **Statutes of the Court of justice of the European Union**

## **ANNEX F: LIST OF ORGANIC LAWS**

Law Relating to the conditions for nomination and the powers of the Ombudsman of the Union

Law relating to the right of European citizens to have access to documents of the European Parliament, the Council of Ministers and the Commission

Law relating to the status and procedure for election of the President

Law relating to the status of Ministers

Law relating to the operating procedure of the Council of Ministers

Law relating to the status of members of the Commission

Law relating to the organization and operating procedure of the Commission

Law relating to the status and conditions for exercise of the mandate of European representative

Law relating to European political parties, their financing and the conditions of their participation in European elections

Law relating to the organization and operating procedure of the Council of National Parliaments

Law relating to the status of members of the Council of National Parliaments.

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