

**COVER NOTE**

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from Praesidium

to The Convention

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**Subject : Preliminary draft Constitutional Treaty**

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Attached is the preliminary draft Constitutional Treaty, drawn up by the Praesidium, which the President will present at the Plenary session on 28 October 2002.

## *Preliminary draft*

*[The aim of this text is to illustrate the possible articulation of a treaty. The inclusion (or non inclusion) in Part I of some articles, and the exact content of others, will depend on the Convention's proceedings. Their treatment in this text is in no way intended to prejudge the result of the Convention's debates.]*

# **TREATY** **ESTABLISHING A CONSTITUTION FOR EUROPE**

## **A. TABLE OF CONTENTS**

### **PREAMBLE**

### **PART ONE: CONSTITUTIONAL STRUCTURE**

#### **Title I: Definition and objectives of the Union**

Article 1: Creation of the [European Community, European Union, United States of Europe, United Europe] <sup>1</sup>

Article 2: Values

Article 3: Objectives

Article 4: Legal personality

#### **Title II: Union citizenship and fundamental rights**

Article 5: Citizenship of the Union

Article 6: Charter of Fundamental Rights

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<sup>1</sup> References to "Union" would be replaced throughout the text by "European Community", "European Union", "United States of Europe" or "United Europe", if it were decided to change the Union's name.

### **Title III: Union competences and actions**

- Article 7: Fundamental principles: conferred competence, subsidiarity, proportionality.
- Article 8: Respect for fundamental principles: the limits of conferred competence. Monitoring subsidiarity and proportionality. Primacy of Community law. Evolution over time.
- Article 9: Categories of competences: definition.
- Article 10: Exclusive competences.
- Article 11: Shared competences.
- Article 12: Areas for supporting action.
- Article 13: Common foreign and security policy; common defence policy; policy on police matters and crime.

### **Title IV: Union institutions**

- Article 14: The institutional structure common to actions conducted by the Union and to those conducted jointly by the Member States within the Union framework.
- Article 15: European Council: composition, role, missions.
- Article 15 bis Presidency of the European Council.
- Article 16: European Parliament: composition, attributions.
- Article 17: Council: composition, attributions.
- Article 17 bis Presidency of the Council.
- Article 18: Commission: composition; attributions (sole power of proposal).
- Article 18 bis Presidency of the Commission.
- Article 19: Congress of the Peoples of Europe.
- Article 20: Court of Justice.
- Article 21: Court of Auditors.
- Article 22: European Central Bank.
- Article 23: The Union's advisory bodies.

**Title V: Implementation of Union action**

Article 24: The instruments of the Union: e.g. European laws, framework laws, European decisions (precise list to reflect the conclusions of Working Group IX).

Article 25: Legislative procedures: adoption of laws and framework laws.

Article 26: Procedures for the adoption of decisions.

Article 27: Procedures for the adoption of implementing measures.

Article 28: Procedures for implementing supporting actions (including programmes), and monitoring them.

Article 29: Common foreign and security policy.

Article 30: Common defence policy.

Article 31: Policy on police matters and crime.

Article 32: Enhanced cooperation.

**Title VI: The democratic life of the Union**

Article 33: The principle of democratic equality among Union citizens.

Article 34: The principle of participatory democracy.

Article 35: Uniform electoral law for European Parliament elections.

Article 36: Transparency of the Union's legislative debates.

Article 37: Voting rules in Union institutions. Implementation of the possibility of "constructive abstention", and its consequences.

**Title VII: Union finances**

Article 38: The Union's resources.

Article 39: The principle of budgetary balance.

Article 40: The Union's budgetary procedure.

**Title VIII: Union action in the world**

Article 41: The external representation of the Union.

**Title IX: The Union and its immediate environment**

Article 42: Privileged relations between the Union and neighbouring States.

**Title X: Union Membership**

Article 43: A Union open to all the European States which strictly respect its values and fundamental rights and accept its rules of operation.

Article 44: Procedure for accession to the Union.

Article 45: Suspension of Union membership rights.

Article 46: Withdrawal from the Union.

**PART TWO: UNION POLICIES AND THEIR IMPLEMENTATION**

*This part would contain the legal bases. For each area it should specify the type of competence (Title III) and the acts and procedures (Title V) to be applied, in line with what is decided for Part I. Technical amendments will be necessary to ensure that Part II correctly matches Part I.*

**A. POLICIES AND INTERNAL ACTION**

**A1. INTERNAL MARKET**

- I. Free movement of persons and services
  - 1. Workers;
  - 2. Freedom of establishment;
  - 3. Freedom to provide services;
  - 4. Visas, asylum and immigration and other policies related to the movement of persons.
- II. Free movement of goods
  - 1. Customs union;
  - 2. Prohibition of quantitative restrictions.

- III. Capital and payments
- IV. Harmonisation of legislation.

## **A2. ECONOMIC AND MONETARY POLICY**

## **A3. POLICIES IN OTHER SPECIFIC AREAS**

- I. Competition rules
- II. Social policy
- III. Economic and social cohesion
- IV. Agriculture and fisheries
- V. Environment
- VI. Consumer protection
- VII. Transport
- VII. Trans-European networks
- IX. R and D.

## **A4. INTERNAL SECURITY**

Policy on police matters, and against crime

## **A5. AREAS WHERE THE UNION MAY TAKE SUPPORTING ACTION**

- I. Employment
- II. Public health
- III. Industry
- IV. Culture
- V. Education, professional training, youth

## **B. EXTERNAL ACTION**

- I. Commercial policy
- II. Development cooperation
- III. External aspects of policies covered in Chapters A1 to A4

IV. Common foreign and security policy

1. Foreign policy
2. Crisis management

V. The conclusion of international agreements

**C. DEFENCE**

**D. THE FUNCTIONING OF THE UNION**

Institutional and procedural provisions; budgetary provisions.<sup>1</sup>

**PART THREE: GENERAL AND FINAL PROVISIONS**

**Last Title:** Repeal of previous treaties. Legal continuity in relation to the European Community and the European Union.

Territorial application

Protocols

Revision procedures

Adoption, ratification, and entry into force

Duration

Languages.

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<sup>1</sup> The extent of the institutional and procedural provisions in this (2nd) Part will depend on the degree of detail in Part 1. One could also envisage that such provisions in this Part would deal only with inter-institutional procedures: provisions concerning arrangements internal to the institutions could be set out in Protocols.

## **B. SUMMARY DESCRIPTION**

### **PART ONE: CONSTITUTIONAL STRUCTURE**

#### **PREAMBLE**

#### **TITLE I: DEFINITION AND OBJECTIVES OF THE UNION**

##### **Article 1**

- Decision to establish [an entity called the European Community, European Union, United States of Europe, United Europe].
- A Union of European States which, while retaining their national identities, closely coordinate their policies at the European level, and administer certain common competences on a federal basis.
- Recognition of the diversity of the Union.
- A Union open to all European States which share the same values and commit themselves to promote them jointly.

##### **Article 2**

This article sets out the values of the Union: human dignity, fundamental rights, democracy, the rule of law, tolerance, respect for obligations and for international law.

##### **Article 3**

###### **Objectives of the Union**

This article establishes the general objectives, such as:

- protection of the common values, interests and independence of the Union
- promotion of economic and social cohesion
- strengthening of the internal market, and of economic and monetary union



- promotion of a high level of employment and a high degree of social protection
- a high level of environmental protection
- encouragement for technological and scientific progress
- creation of an area of liberty, security and justice
- development of a common foreign and security policy, and a common defence policy, to defend and promote the Union's values in the wider world.

These objectives shall be pursued by appropriate means, depending on whether competences are allocated wholly or partly to the Union, or exercised jointly by the Member States.

#### **Article 4**

Explicit recognition of the legal personality of the [European Community/Union, United States of Europe, United Europe]

## **TITLE II: UNION CITIZENSHIP AND FUNDAMENTAL RIGHTS**

#### **Article 5**

This article establishes and defines Union citizenship: every citizen of a Member State is a citizen of the Union; enjoys dual citizenship, national citizenship and European citizenship; and is free to use either, as he or she chooses; with the rights and duties attaching to each.

The article sets out the rights attaching to European citizenship (movement, residence, the right to vote and to stand as a candidate in municipal elections and elections to the European Parliament, diplomatic protection in third countries, right of petition, right to write to, and obtain a reply from, the European institutions in one's own language).

The article establishes the principle that there shall be no discrimination between citizens of the Union on grounds of nationality.

## **Article 6**

The wording of this article will depend on the proceedings of the Working Group on the Charter.

It could be modelled on Article 6 of the Treaty on European Union.

It could:

- either refer to the Charter;
- or state the principle that the Charter is an integral part of the Constitution, with the articles of the Charter being set out in another part of the Treaty or in an annexed protocol;
- or incorporate all the articles of the Charter.

## **TITLE III: UNION COMPETENCE AND ACTIONS**

## **Article 7**

This article sets out the principles of Union action, which must be carried out in accordance with the provisions of the treaty, within the limits of the competences conferred by the treaty, and in compliance with the principles of subsidiarity and proportionality.

## **Article 8**

This article establishes the principle that any competence not conferred on the Union by the Constitution rests with the Member States.

It establishes the primacy of Union law in the exercise of the competences conferred on the Union.

It would set out the rules for effective monitoring of subsidiarity and proportionality. The role of National Parliaments in this respect would be mentioned.

It determines the rules governing the adaptability of the system (Article 308).

It sets out the obligation of loyal cooperation of Member States vis-à-vis the Union, and the principle that the acts of the Institutions are implemented by the Member States.

## **Article 9**

This article lists the categories of Union competence.

## **Article 10**

This article indicates the areas of exclusive Union competence.

## **Article 11**

This article indicates the areas of competence shared between the Union and the Member States. It establishes the principle that, as and when the Union takes action in these areas, the Member States may act only within the limits defined by the Union legislation.

## **Article 12**

This provision indicates the areas in which the Union supports or coordinates action by the Member States, but does not have competence to legislate.

## **Article 13**

In certain areas the Member States may define and pursue common policies, within the Union framework and according to specific rules. This article indicates these areas.

# **TITLE IV: UNION INSTITUTIONS**

## **Article 14**

This article:

- establishes that the Union has a single institutional structure;
- stipulates that this structure shall ensure the consistency and continuity of the policies and activities carried out in order to attain the Union's objectives – activities both in the areas of competence allocated wholly or partly to the Union and in those areas in which competence belongs to the Member States and is jointly exercised by them;
- lists the institutions of the Union;
- establishes the principle whereby each institution acts within the limits of the powers conferred upon it by this treaty, in accordance with the procedures and under the conditions and for the purposes laid down in this treaty in each area;

- enjoins the Institutions to provide and promote open, effective and unostentatious administration;
- establishes the principle of loyal cooperation in relations between the institutions.

### **Article 15**

This article defines the European Council, its composition and its tasks.

### **Article 15 bis**

When the Convention has discussed it, this article could establish the term of office and appointment procedure for the Presidency of the European Council, its role and responsibilities.

### **Article 16**

This article establishes the composition of the European Parliament, the members of which are elected by direct universal suffrage.

It lists the powers of the European Parliament, and provides for the possibility of the European Parliament introducing a motion of censure on the activities of the Commission, and the procedure and consequences of such a motion.

### **Article 17**

This article lists the composition and the duties of the Council, and would refer to the Council's formations.

### **Article 17 bis**

This provision establishes the rule governing the appointment of the Presidency of the Council, its role, responsibilities, and term of office.

### **Article 18**

This article would contain the provisions governing the composition and duties of the Commission (including monopoly of initiative). According to the future deliberations of the Convention, it would envisage the Commission either as a small college or as a larger body, and would set out its decision-making rules.

### **Article 18 bis**

This article would establish the role and appointment procedure for the Presidency of the Commission.

### **Article 19**

This article would raise the possibility of establishing a Congress of the Peoples of Europe, determine its composition and the procedure for appointing its members, and define its powers. (It would be drafted in the light of the Convention's work.)

### **Article 20**

This article sets out the composition and powers of the Court of Justice, and the Court of First Instance, and the principal grounds for bringing action in the Court.

### **Article 21**

This provision sets out the composition and powers of the Court of Auditors, and its mandate.

### **Article 22**

This article would define the composition and tasks of the European Central Bank, as well as the composition of its Governing Council and Executive Board.

### **Article 23**

This provision should establish that the European Parliament, the Council and the Commission will be assisted by an Economic and Social Committee and a Committee of the Regions, organs acting in an advisory capacity.

## **TITLE V : IMPLEMENTATION OF UNION ACTION**

### **Article 24**

This article lists the different instruments available to the Union's institutions for the exercise of their competences.

## **Article 25**

Clear description of the legislative procedures of the Union: procedures for the adoption of laws and framework laws, etc.

## **Article 26**

Clear description of the procedures for the adoption of decisions, etc.

## **Article 27**

Description of implementing procedures in respect of the instruments listed at Article 24, and how their operation is to be monitored.

## **Article 28**

This article should define the procedures for the implementation of supporting actions (including programmes) and the arrangements for monitoring them.

## **Article 29**

This article would set out implementing procedures in the sphere of common foreign and security policy.

## **Article 30**

This article would set out implementing procedures in the sphere of common defence policy.

## **Article 31**

This article would set out implementing procedures for policies on police matters and against crime.

## **Article 32**

This provision should establish:

- the conditions for undertaking enhanced cooperation within the framework of the Treaty;
- if necessary, areas of the Treaty excluded from enhanced cooperation;
- the principle of applying the relevant provisions of the Treaty in adopting the acts necessary for implementing enhanced cooperation;
- the obligations of states participating in enhanced cooperation, and of those not so participating.

## **TITLE VI : THE DEMOCRATIC LIFE OF THE UNION**

### **Article 33**

This article establishes the principle that all Union citizens are equal vis-à-vis its institutions.

### **Article 34**

This article sets out the principle of participatory democracy. The Institutions are to ensure a high level of openness, permitting citizens' organisations of all kinds to play a full part in the Union's affairs.

### **Article 35**

This provision would refer to a protocol containing provisions for elections to the European Parliament by a uniform procedure in all Member States.

### **Article 36**

This provision establishes the rule that the legislative debates of the European Parliament and of the Council in its legislative form shall be public.

### **Article 37**

This provision would establish the voting rules of the Union's institutions, including the definition of qualified majorities, and the implementation of the possibility of "constructive abstention" and its consequences.

## **TITLE VII: THE FINANCES OF THE UNION**

### **Article 38**

This provision states that the Union budget is fully financed by own resources and sets out the procedure for establishing the system of own resources.

### **Article 39**

This provision should contain the principle that the budget should be in balance, as well as provisions concerning budgetary discipline.

### **Article 40**

This article should:

- specify that all Union revenue and expenditure should be the subject of forecasts for each financial year and should be entered in the budget;
- describe the procedure for adopting the budget.

## **TITLE VIII: UNION ACTION IN THE WORLD**

### **Article 41**

This provision should set out who represents the Union in international relations, taking account of competences already exercised by the Community.

In the light of the Convention's future work, it would define the role and future rank of the High Representative for Common Foreign and Security Policy.

## **TITLE IX: THE UNION AND ITS IMMEDIATE ENVIRONMENT**

### **Article 42**

This article could contain provisions defining a privileged relationship between the Union and its neighbouring States, in the event of a decision on the creation of such a relationship.

## **TITLE X: UNION MEMBERSHIP**

### **Article 43**

This article establishes the principle that the Union is open to all European States which share its values and wish to pursue them jointly, which strictly respect fundamental rights, and which accept the Union's rules of operation.



#### **Article 44**

This article establishes the procedure for accession of new member states to the European Union.

#### **Article 45**

This article establishes the procedure for suspension of Union membership rights if a Member State violates the principles and values of the Union.

#### **Article 46**

This article would mention the possibility of establishing a procedure for voluntary withdrawal from the Union by decision of a Member State, and the institutional consequences of such withdrawal.

### **PART TWO: UNION POLICIES AND THEIR IMPLEMENTATION**

*This part would contain the legal bases. For each area it should specify the type of competence (Title III) and the acts and procedures (Title V) to be applied, in line with what is decided for Part I. Technical amendments will be necessary to ensure that Part II correctly matches Part I.*

### **PART THREE: GENERAL AND FINAL PROVISIONS**

#### **Final Title: Article x**

Repeal of previous treaties. Legal continuity in relation to the European Community and the European Union.

#### **Article x + 1**

Territorial application.

#### **Article x + 2**

Protocols: the protocols annexed to the treaty form an integral part of it.

**Article x + 3**

Procedure for revision of the constitutional treaty.

**Article x + 4**

Adoption, ratification, and entry into force of the constitutional treaty.

**Article x + 5**

Duration: the treaty is concluded for an unlimited period.

**Article x + 6**

Languages: in which the Treaty is drawn up and which are authentic.

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