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O Secretário-Geral da Convenção recebeu de Johannes Voggenhuber, membro da Convenção, o contributo que figura em anexo.

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Outline for a European Constitution

# THE UNITY OF EUROPE

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## **Preamble**

WE, THE CITIZENS OF EUROPE AND THEIR STATES,  
ESTABLISH WITH THIS CONSTITUTION

## **The European Union.**

WE FOUND IT ON THE INVIOABLE HUMAN DIGNITY,  
AS A SPHERE OF FREEDOM, JUSTICE, SOLIDARITY,  
PROSPERITY AND SECURITY,  
TO LIVE TOGETHER HENCEFORTH,  
IN THE DIVERSITY OF CULTURES,  
RESPONSIBLE TO THE WORLD AND FUTURE GENERATIONS,  
IN INTERNAL AND EXTERNAL PEACE.

## I.

### **THE UNITY OF EUROPE**

#### **The Constitution establishes the unity of Europe.**

It shall establish European unity in a valid, albeit non-final, form. It bestows a high degree of democratic legitimacy on its laws and its actions. It shall empower and entrust the Union to overcome the historic divisions in Europe by admitting all the European states willing and able to accede to it. It shall render the Union capable to act both internally and in the world at large, and it shall prepare the way for an ecologically and socially sustainable development.

This Constitution shall not create a European federal state. The future development of the Constitution will determine the final goal of European unification. The Union shall therefore not have the right to amend its Constitution on the basis of its own sovereignty, to assume competences, to collect taxes, to incur debts, and to lead wars.

#### **The Constitution of the European Union**

- Shall guarantee the fundamental and civil rights in a sphere of freedom,
- Shall establish a European Democracy and provide the Union with a republican institutional system,
- Shall create a sphere of social security, justice and solidarity,
- Shall create a sphere of internal security in freedom and law,
- Shall firmly establish the internal market and Economic and Monetary Union in a sphere of prosperity and sustainable development,
- Shall develop a European order of peace and a common foreign policy.

#### **One Union, one legal personality, one system of institutions and procedures**

The European Community and all spheres of intergovernmental collaboration shall be integrated into the Constitution of the European Union; it shall be, expanded by a sphere of security, justice and solidarity, and shall acquire a legal personality and a common system of institutions. The Community method shall apply. On account of the qualified majority required for the adoption of common legislation there is no further need for enhanced co-operation, with its risks for the internal unity.

## **Simplification and division into two of the Treaties**

That part of the Treaties which will remain in force shall be simplified and – depending on its legal nature – it shall be incorporated into the Constitution or an EU treaty requiring common legislation.

**The division of competences** between Member States and the Union will not take the form of a rigid catalogue of competences. Article 308 of the TEU shall remain in force and shall apply to all requirements of an ecologically and socially sustainable development of the common market. As a matter of principle, a distinction shall be made between exclusive and shared competences of the Union.

**The Euratom Treaty** shall be integrated into the future EU treaty, as a chapter on a common sustainable energy policy. The long-term withdrawal from nuclear energy, common safety standards for nuclear facilities, strategies for their shut-down and dismantling, and the promotion of renewable energy sources, in particular, shall be tasks of the Union.

## **II.**

### **EUROPE AS A SPHERE OF FREEDOM**

**The Constitution shall establish a European community of fundamental rights**

**The Charter of Fundamental Rights** of the European Union shall constitute Article I. of the Constitution. New rights may be added by amending the Constitution, but existing rights must never be abrogated. The Union shall take all measures commensurate to protect these fundamental and civil rights in international relations.

All persons who feel that their fundamental rights under the Charter have been violated may appeal to the European Court of Justice. A claims-acceptance procedure shall prevent any overburdening of the Court of the Justice.

The European Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

**The proactive equal treatment of women is the objective of all Union policies.**

**The protection and promotion of minorities, languages and cultures shall be firmly established.**

**The Union shall have the right to grant asylum and to award Union citizenship to those it recognizes as refugees.**

**The preservation of media diversity** shall become the special duty of the Union's competition laws. The market dominant position of a media enterprise in a Member State shall be deemed to be a disruption of media diversity in the Union. The Union shall adopt provisions on the incompatibility between holding a political office and owning independent media.

### **III.**

## **A EUROPEAN DEMOCRACY**

**The Constitution shall establish a European Democracy and shall provide the Union with a republican system of institutions and procedures**

*Europe must redesign democracy for a supranational sphere. The Union is not an international organisation. It evidences a high degree of statehood. It is a sovereignty-sharing association and exercises state-like power over the citizens of Europe. Obscuring this development has led to deficits in democracy, to gaps in the protection of the fundamental and civil rights and to a crisis in the acceptance of the Union.*

*The common constitutional tradition of all Member States links any exercise of power to guaranteed fundamental and civil rights; to democratic legitimacy; to the separation of powers between the legislative, executive and judicial branches of government; to the public nature of legislation; to parliamentary and judicial control of all action; and to the preservation of the rule of law. Intergovernmental cooperation does not satisfy these criteria. A republican system of checks and balances is therefore required in the European Union.*

**European Democracy** manifests itself on five levels: in the freedom of individuals, their public commitment and in codetermination for citizens; in the autonomy of towns and local authorities; in the autonomy of the regions; in the sovereignty of Member States and the common Union. Subsidiarity shall be one of the fundamental values of the European Union.

**Acts of legislation of the Union** shall be laws (replacing the current regulations) and framework laws (replacing the current directives). The legislative procedure shall apply to all binding legal norms (the current procedure of co-decision, with modifications in connection with the common foreign and security policy).

**The laws of the Union take precedence over national laws.**

**The legislators of the European Union** shall be the European Parliament and the Legislative Council (formed by the existing General Affairs Council). Parliament, as the directly elected representation of the citizens, shall constitute the first chamber, while the Legislative Council, representing the States, shall constitute the second chamber. The current formations of the Council of Ministers shall constitute the Committees of the Legislative Council.

**The European Parliament** shall enjoy the unrestricted right of codecision in all acts of legislation.

International Treaties of the European Union shall be ratified by the European Parliament.

The European Parliament shall have full budgetary supremacy. The distinction between compulsory and non-compulsory expenses shall no longer apply. The legislative procedure shall also apply to the multi-annual planning mechanism including the financial perspective.

The European Parliament shall exercise unrestricted parliamentary supervision over all administrative acts and policies of the Union.

The European Parliament shall have, along with the Commission, the right of initiative regarding European legislation.

A uniform European electoral law shall be created for elections to the European Parliament, based on the principles of proportional voting. In this connection, it shall be provided that one part of the national mandates is allocated via European lists.

**The Legislative Council** shall decide on all matters of common legislation by a qualified majority vote. *This makes it impossible that individual Member States block the Union by means of a veto, and renders the Union capable of acting.*

The Legislative Council shall observe, without any restriction, the principle of direct public nature of legislation. It shall not be possible for members of the Legislative Council to be represented by others (e.g. civil servants), nor shall it be admissible to assign one's voting right.

On account of its very nature, the Legislative Council - being a chamber of the states - shall have a special political responsibility to preserve subsidiarity. *It is therefore not necessary to create any new institutions for this function.*

Participation of the national parliaments on the European level shall consist in giving legitimacy to the national government representatives in the Council and to exercise control over them. They shall also have a decisive role to play in the procedure to amend the European Constitution.

*Initiatives to re-nationalise the Union, to weaken the Parliament or the Commission (e.g. "European Congress", "European President") are rejected.*

The constitutional regions shall be entitled to participate in the process of shaping the Legislative Council's will.

**The Commission**, being the Executive branch of the European Union, shall be charged with implementing European law. The comitology will be disbanded. The European Parliament and the Legislative Council shall check the Commission for compliance with its competence in secondary legislation (call back procedure).

The Commission's term of office shall be linked to the legislative period of the European Parliament.

The President of the Commission shall be elected by the European Parliament. The Commission shall be instituted by the European Parliament after holding hearings.

The Commission and each of its individual members shall be responsible to the European Parliament. They may be relieved of their posts by a vote of no confidence.

The Commission President shall have a general full authority vis-à-vis his colleagues.

All current legislative functions of the Commission shall be transferred to the legislative institutions.

**The European Court of Justice** shall also be the constitutional court of the Union (with a separate senate.) The overall application of Union law shall be subject to its jurisdiction.

It shall be incumbent upon the European Court of Justice to decide in conflicts over competence and in disputes over subsidiarity. On these matters constitutional regions shall be granted the right to file claims before the European Court of Justice. *A third chamber of Parliament to decide on compliance with subsidiarity is rejected.*

Procedure according to Article 7 of the TEU: In the event that it is established that a Member State has committed serious and continued violations of the principles of the European Union, the Member State may bring the case before the European Court of Justice. Such an action does not have any suspensive effect regarding the measures taken by the European Council.

Collective actions before the ECJ (in particular in environmental legal matters) are permissible.

A European prosecutor shall be instituted for proceedings in case of offences regarding EU finances.

One part of the members of the European Court of Justice shall be appointed by the European Parliament (or all its members must be confirmed by the EP after holding hearings).

The European Council shall have the power to determine the guideline of the common foreign and security policy.

The European Council shall exercise the duties according to Article 13 of the TEU; however, it shall not have any legislative functions.

## Administration of the European Union

The Union shall be served by a regular administration in the Commission, the EP and the Council with a statutory mandate, civil-service statute, duty of loyalty and provisions on activities incompatible with the service.



Public nature, civil society, parties and direct democracy

**A European statute** for parties shall be created; European parties shall be promoted.

**A European law governing associations** shall be created (competence of the European Union).

**Instruments of direct democracy** on the European level (plebiscites regarding legislation, popular referenda) shall be introduced. Non-governmental organisations shall be recognised in their function, which is indispensable for democracy.

## IV.

### **EUROPE AS A SPHERE OF SOCIAL SECURITY, JUSTICE AND SOLIDARITY**

**The Constitution shall create a European social and employment union**

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*The political unity of Europe would remain incomplete and exposed to threat if it were not to become a sphere of social security, justice and solidarity. This sphere is the reply, which the citizens of Europe expect, to the risks posed by globalisation. That political activity be socially responsible is, after democracy, the second fundamental element of European identity. In its social and employment policy, as well as in its fight against poverty and social exclusion, the Union must therefore assume additional tasks within shared responsibilities and develop new instruments.*

**The Union shall adopt general legal provisions** for a sphere of social security, justice and solidarity. The Community method and the legislative procedure shall apply.

**The social systems of the Member States** shall be respected

**The European employment policy** shall be expanded, in the framework of a shared competence.

**Full employment shall become the constitutional objective of the Union.** In this connection, the right of women to gainful employment shall be taken into consideration

**An ongoing Social Dialogue** between employers and employees, on the one hand, and Council, Commission and the Parliament on the other shall become firmly established, as well as the right of the social partners to reach cross-border agreements and to enter into cross-border contracts.

**A European financial equalizations** (by way of a long-term extension of the Structural Funds) shall govern equalizations between favored and disadvantaged regions and urban and rural areas in accordance with common objectives.

## V.

# EUROPE AS A SPHERE OF PROSPERITY AND SUSTAINABLE DEVELOPMENT

## The Common Market and Economic and Monetary Union

**The social and ecological market economy**, and the European social model (on the basis of the revised version of the European Social Charter) shall be fundamental values of the European Union. A sustainable development, an intact environment, preserving the natural heritage, the protection of animals and healthy foodstuffs shall be constitutional objectives of the Union.

**European economic policy** shall be co-ordinated by the Union. This shall also include the sphere of taxation with relevance to the internal market.

**Common social minimum standards** on a high level shall be created to avoid any distortions of competition on the internal market, as well as the erosion of national social systems caused thereby

**Government services for the public** provided by the Member States, as well as their public services of general interest shall be recognised by the Union. Common criteria shall be developed to this end.

**The Pact for Stability, Employment and Growth** shall replace the previous Stability and Growth Pact.

**The objectives of European monetary policy** shall be expanded to include growth and employment as criteria of equal value. The accountability of the European Central Bank and the European Investment Bank vis-à-vis the European Parliament shall be reinforced. The European Investment Bank shall observe the principle of ecological and social sustainability in all its activities.

**The foreign and trade policy of the Union** shall observe the principle of sustainability. The implementation of global ecological and social minimum standards shall be one of the goals of the Union's policy.

## VI.

### **EUROPE AS A SPHERE OF INTERNAL SECURITY IN FREEDOM AND JUSTICE**

The area of intergovernmental cooperation on internal security and the co-ordination of police and justice authorities shall be fully integrated into the Community method.

Any extension of the competence of the European bodies and authorities for internal security, especially the operative powers of Europol, shall be linked to such competence being communitarised, to the legislative procedure, to the legally binding effect of the Charter of Fundamental Rights, and to the access to the European Court of Justice.

**The Europol Convention** shall be incorporated in the Treaties. Europol shall be subject to the rule of law concerning the Freedom of Information and shall be liable for damage under civil law. The immunity of its officers shall be lifted. All bodies connected to internal security shall be integrated into the Commission.

**The common asylum and immigration policy** shall be the competence of the Union.

Recognised refugees and citizens of third countries with the right of residence in one of the Member States shall enjoy the right of the free movement of persons on the territory of the Union. Citizens of third countries with residence and work permits shall enjoy the right of establishment on the territory of the Union.

**The surveillance of the Union's external borders** shall be a shared competence of the Union.

A European arrest warrant and the obligation to extradite a citizen to another Member State shall be linked to common minimum standards regarding fair trial, pre-trial detention and the execution of sentences.

## VII.

### A EUROPEAN ORDER FOR PEACE

#### **The Constitution shall develop a common foreign and security policy**

The legislative procedure shall apply to all legislative acts regarding foreign and security policies (the present procedure of co-decision).

It shall be ensured that the common foreign and security policy and the defence of the European Union shall be implemented jointly, in a sovereign manner and in accordance with international law.

**The civil and preventive solution of conflicts** shall be the constitutional objective of the common foreign and security policy.

**A future common defence of the Union** shall be linked to the objectives of the Charter of the United Nations and the UN's sole right to use force.

The Vice-President of the Commission shall be the High Representative for Foreign Policy. He shall be nominated in agreement with the European Council. He shall respect the Council's right to determine foreign policy guidelines and be responsible to Parliament.

The foreign and defence ministers of the Member States shall form a Security Council of the European Union. The Vice-President of the Commission and High Representative shall preside this Council

The Member States represented on the UN Security Council shall report to the European Security Council prior to any important decisions and shall co-ordinate their policies with the European Union.

**The European Union shall strive to obtain a seat on the UN Security Council.**

The European Union shall assume the joint representation of Member States in international organisations.

**The diplomatic services of the Member States** shall be integrated in several phases and put under the control of to the Union.

**Development policy and development aid are and shall remain tasks of the Union.**

With the implementation of an autonomous, common and democratic foreign and security policy of the Union, Member States shall have the duty to assist each other in case of a military attack from outside.

Agreements and treaties of the Member States must not violate fidelity to the Union.

**Military assistance of third countries**, as part of the common defence, may be granted only upon a request by the Union. In the framework of a common defence against an attack, the supreme command over military action must not be transferred to any third country.

**Military deployment and sanctions** against states within the framework of the common foreign and security policy shall require the consent of the European Parliament.

The decision to participate in military actions, outside the obligation to provide assistance, shall be reserved to every Member State.

## **Procedures to Amend the Constitution and the Treaty**

**Amendments of the Constitution** shall be made upon proposal by a Constitutional Convention and shall be adopted by the Legislative Council by a 3/4 majority of the votes and after the European Parliament has given its approval by means of a 2/3 majority of the seats. They shall enter into force once they have been ratified by 3/4 of the national parliaments.

**The Constitutional Convention** shall be convened by the European Council upon the request of one half of the national parliaments or by two thirds of the members of the European Parliament. The Convention shall be given a mandate by the Parliament and the Legislative Council by means of a qualified majority. The national parliaments shall send two members each, the European Parliament an equal number. The Commission shall nominate two representatives, the heads of state and government one member each. The President of the European Parliament shall chair the Convention. The practice of intergovernmental conferences shall be discontinued.

**Amendments of the Treaty** shall be adopted by means of the co-decision procedure and shall require the qualified majority of the Council.

**An EU-wide referendum shall decide on the adoption of the present Constitution of the European Union.** It shall enter into force with the consent of the majority of the votes and of 3/4 of the Member States. A corresponding amendment of the Treaty shall be adopted at the opening of the Inter-governmental Conference 2003.

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