

European Communities

EUROPEAN PARLIAMENT

Working Documents

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ADDENDUM

to the MOTION FOR A RESOLUTION

tabled by Mr LUSTER and others

pursuant to Rule 47 of the Rules of Procedure

on the drafting of a European Constitution

PE 86.372/Add.

On page_35 add the following new paragraph_13a :

GUARANTEEING EQUAL OPPORTUNITIES

- (1) To ensure equal social opportunities for the citizens of the Union it shall be the task of the Union to eliminate existing differences in prosperity between the regions by systematically improving structures in the backward areas.
- (2) The Union shall take similar action to contribute towards an improvement in the social structures of the needy countries and regions of the world outside the Union, in particular by putting an end to hunger in the world and guaranteeing aid to the developing countries so that they may assume responsibility for their own affairs.
- (3) To support its specific effective social policy, the Union shall set up a permanent study committee which shall have the task of monitoring the medium and long-term factors affecting social and technical development. The committee shall submit its findings and corresponding recommendations in a biennial report to the Parliament of the Union, the Council of the Union, the Regional Council and the Government of the Union.

The European Parliament

- A. having regard to its democratic legitimation by popular election which confers on it the right to take measures to develop a constitution,
- B. conscious that the time is right for the presentation of such a constitution which unlike the Treaties governing the European Community should not be based on an agreement between Member governments but on an irrevocable mandate from the European peoples,
- 1. Instructs its Committee on Institutional Affairs to draw up a draft constitution for the union of the states belonging to the European Community and to take the attached draft as a basis for discussion.

WP0400E
OR. DE.

PE 86.372



JUSTIFICATION FOR THE RESOLUTION
ON
DRAFTING OF A EUROPEAN CONSTITUTION

I. AIM

The authors of the draft constitution wish to show how the European Community can acquire the form of a union by acting on the decisions taken at the summit conferences in 1972 and 1974, the TINDEMANS report of 1975 drawn up at the request of the Heads of State and Government and the BERTRAND report on European Union of 1974. The decisions at the 1972 and 1974 summits call for the sum total of relations between the Member States in the Community to be transformed into a European Union; the other reports referred to above describe the details for achieving this. The creation of the Committee on Institutional Affairs of the European Parliament is intended as an expression of dissatisfaction at the fact that no concrete action has been taken on the declarations of intent by the Heads of State and Government. The draft constitution is meant as a further aid to the work of the Committee on Institutional Affairs. This committee is of course currently working out the details of the new Community Treaty to be drafted by Parliament to subsume and ultimately replace the three existing Treaties. Once Parliament adopts the resolution, a final text is to be drawn up with the assistance of four specially appointed professors. The document attached is also likely to be useful for this work even if it goes further in some cases than Parliament's decisions to date.

This draft is not intended as a counter-proposal to the work of the Committee on Institutional Affairs. Its authors support the work of the committee. The aim of this draft is to represent a model constitution for the complete union of the Member States of the Community.

At the same time it seeks to remedy an omission on the part of the governments of the Member States. Clearly there is no likelihood of the Community moving overnight and in a single stage from cooperation on the basis of international treaties to a federation based on constitutional law and with autonomy vis-à-vis the Member States. This makes it all the more necessary to indicate the form that this final objective might take.

Certain matters may not be covered in the draft constitution. Nevertheless it is useful because it contains a coherent model constitution for the European Union such as hitherto has not been provided by political institutions following the summit conferences nor by academic bodies. As far as the work of the Committee on Institutional Affairs is concerned, this draft should be seen as a contribution by the EPP Group. It should provide criteria for establishing at each stage whether the reforms undertaken by the European Parliament are along the right lines.

At a time in which the European ideal is being threatened by a spirit of resignation and the European 'realpolitik' pursued by the governments of the Member States, this model of a functioning European constitution of the future may serve as an encouragement. The path to European Union may be long but the authors are sure that it can and will be pursued to the end because there is no real alternative.

II. BASIC FEATURES OF THE DRAFT CONSTITUTION

1. This Constitution replaces the three Treaties (ECSC, EEC, Euratom).
The Community of Ten is succeeded by a Federal State.

2. The institutions envisaged are:

Parliament of the Union, Council of the Union (previously Council of Ministers), Government of the Union (previously Commission), President of the Union and Regional Council of the Union.

The ultimate authority of the Union is not the Member States but the peoples of the States of the Union.

3. The accession of further Members will be decided upon by the Union itself.

4. The relationship between the Union and the citizens of the Union is governed by basic rights, which are guaranteed by an independent Union judiciary. Every national of a State of the Union enjoys the status of a citizen of the Union which guarantees him the same rights and basic freedoms throughout the entire territory of the Union by virtue of codified Union basic rights.

5. The rights of ethnic and linguistic minorities, who are able to play a role in the Regional Council of the Union, are guaranteed.

6. The right to use one's mother tongue in official business is guaranteed. Bilingualism (mother tongue and chosen second language) in the schools is guaranteed and seeks to gradually abolish language barriers.

7. There is to be equivalence of national vocational qualifications unless the law of the Union provides otherwise.

8. Every citizen of the Union shall have the right to state benefits irrespective of the Member State concerned.

9. Freedom of education (free choice of public or independent school) is guaranteed.
10. The exercise of political rights is no longer dependent on nationality but on residence in a Member State.
11. The principle of subsidiarity has been used in allocating the duties of state to the Union and the States of the Union, the division of powers and the allocation of financial resources. The principle is that for all state duties, the lowest appropriate level of authority shall be responsible. Duties are only assigned to the Union where this offers greater efficiency so as to conserve public resources while obtaining equally satisfactory or better results.
12. Greater efficiency is also one of the reasons for transferring powers to the Union, e.g. in the following cases: foreign affairs, development aid, financial and monetary policy, environmental and consumer protection, coordination of crime prevention.
13. Legislation, in accordance with the principle of subsidiarity, is essentially a matter for the States of the Union. The Union is only empowered to legislate where the Constitution confers on it explicit legislative powers. In such cases, however, the Union has exclusive competence insofar as these powers have been accorded. Legislative powers are divided into exclusive legislative powers of the states of the Union and exclusive legislative powers of the Union. In the former area, framework legislation is always admissible instead of legislation of detail. In addition there is provision for potential competence. This would enable powers to be transferred to the Union by an act of transferral on the part of the States of the Union under clearly defined circumstances.
14. The areas of Union administration have been restricted to the minimum required by the functions allocated to the Union.
15. The financial resources of the States of the Union and the Union are seen as a whole from which the Union can draw only a certain proportion on terms clearly specified in the constitution.

16. In order to ensure the autonomy of the Union as regards revenue, a Union value-added tax has been created which represents an additional value-added tax which would be calculated on a uniform basis of assessment, collected by the states of the Union and shown separately from other value-added tax.
17. In relation to expenditure, the principle applies that the Union can only provide finance where it has explicit responsibilities.
18. These responsibilities for expenditure include general equalization via the Union budget to compensate for economic and taxation discrepancies between the states of the Union. This is intended to eliminate the need for concealed transfer payments or painful drawn-out negotiations to establish a so-called 'fair net contribution'.
19. The members of the European Parliament represent all citizens of the Union and not just the citizens of their State of union of origin.
20. The basic principle of electoral law is not a rigid allocation of seats according to States of the Union but one seat to every 500,000 population plus any residual fraction.
21. In order to end the dispute on the seat, there is provision for the seat of the European Parliament and the other Union institutions to be determined by the Parliament. The seat chosen in this way should become sovereign Union territory, i.e. not belonging to any State of the Union.
22. The Council of the Union and the Parliament of the Union shall have joint responsibility for legislation, the budget and general political guidelines.

The Council of the Union (previously Council of Ministers) shall take decisions as the representative of the states and Parliament as the representative of the peoples. The decision-making procedure is to be transferred from committees to plenary sessions where the States of the Union will continue to vote in a uniform manner but where votes can only be cast by members of the Council present or their authorized substitutes.

The Members of the Council must be members of the governments of the States of the Union.

23. Every State of the Union shall have as many representatives as it has votes; the number of votes is the same as under Article 148 of the EEC Treaty for qualified majorities. The Council of the Union shall take its decisions in public.
24. The functions of the European Council are to be restricted to the fields of inter-state cooperation.
25. The Union is to be represented at home and abroad by the President of the Union. The office of President of the Union is to rotate between the heads of state in office for periods of twelve months.
26. The offices of the President of the Union and President of the Council of the Union shall rotate, one in alphabetical order of the States of the Union and the other in counter-alphabetical order.
27. The Prime Minister of the Union is to be elected by the Parliament of the Union acting on a proposal from the Council of the Union for the period of the future electoral term. He is to propose ministers of the Union to the President of the Union for appointment. The government of the Union is dependent on the confidence of the Parliament of the Union. It may express a constructive vote of no confidence in the Prime Minister of the Union. Votes of no confidence may also be passed on individual ministers.
28. The Regional Council of the Union is the representative of regional interests within the Union. It also has the right to initiate legislation. The regional representatives co-opt on the basis of a list of proposals from the Government of the Union a number of members corresponding to half the number of elected regional representatives. This is to ensure that the interests of economic and social groups are represented.
29. Union judicial powers are exercised by a Constitutional Court of the Union and by supreme union courts with lower union courts in certain cases.

30. Everyone is entitled to file a constitutional suit with the Constitutional Court of the Union against violations of basic rights of the Union.

31. There is provision for a currency and note issuing bank which is quite independent of the States of the Union or the institutions of the Union.

32. The auxiliary institutions such as the independent European Court of Auditors are to be retained with their present structure and powers.

III. FINAL OBSERVATION

There is no example in history of popular movements towards unification without external pressure. But nor are there any historical parallels for the situation of the peoples of Europe today.

The authors of the draft hope that their contribution will not be seen by the peoples of Europe as an attempt to destroy their identity but as a way of breaking new ground towards a new future.

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CHAPTER I

AREA OF APPLICATION, MEMBERSHIP OF THE UNION, LOYALTY TO THE UNION

Article 1

AREA OF APPLICATION

1. This constitution shall apply directly to the area of application of the Treaty establishing the European Coal and Steel Community, the Treaty establishing the European Economic Community and the Treaty establishing the European Atomic Energy Community and to all citizens of the Union.
2. All nationals of the States of the Union shall be citizens of the Union by virtue of a Union law. The law of the Union shall determine the extent to which nationals of other states or stateless persons shall be endowed with rights and obligations.
3. All citizens of the Union shall enjoy the rights guaranteed by the Union; it is incumbent on all legislative bodies, authorities and Courts to ensure respect therefor.
4. Union law shall override the law of the States of the Union.

Article 2

MEMBERSHIP OF THE UNION

1. Membership of States of the Union to the Union is irrevocable.
2. Any European state can become a member of the Union if it acknowledges this constitution and if its people consent to membership.

Article 3

LOYALTY TO THE UNION

1. There shall be an obligation of mutual loyalty and assistance between the Union and the States of the Union, the States of the Union and the Union, and between the States of the Union.

2. The Union shall guarantee a social order in the States of the Union based on the principles of democracy and the constitutional state.

CHAPTER II

BASIC RIGHTS AND FREEDOMS

Article 4

GUARANTEE OF BASIC RIGHTS AND FREEDOMS

1. The constitution guarantees the following basic rights and freedoms.
2. These basic freedoms shall be inviolable.
3. These rights may only be restricted by laws of the Union or the States of the Union to the extent necessary to ensure the rights of others or this constitutional order.
4. The guarantees of rights and liberties in the constitutions of the States of the Union shall remain in force provided that they do not conflict with the provisions of this constitution. The legislature, administration and judiciary of the Union shall only be subject to this constitution.

BASIC FREEDOMS

1. Everyone shall have the following basic freedoms:

- freedom of conscience, religion and education,
- freedom of thought, belief, opinion and expression of opinion including the freedom of the press and media;

2. Every citizen of the Union shall have the following basic freedoms:

- freedom of peaceful assembly;
- freedom of association.

INVIOABILITY OF PRIVACY

1. The inviolability of the home and the privacy of post, telecommunications and data shall be guaranteed.

2. Restrictions shall only be permissible by virtue of this constitution and the constitutions of the States of the Union.

Article 7

COLLECTIVE INDUSTRIAL RIGHTS

1. The collective industrial rights of strike and lock-out shall be guaranteed; the details and exercise thereof shall be regulated by a Union law.

Article 8

DEMOCRATIC RIGHTS

1. Every citizen shall have the right to vote and stand for election and enjoy access to public office in the State of the Union of residence. The details shall be regulated in a Union law.

Article 9

RIGHT TO FREEDOM OF MOVEMENT, RESIDENCE AND ASSISTANCE

1. Every citizen of the Union shall have the right to enter any State of the Union, to remain there and to leave it. This shall include the right to take up residence and pursue an occupation.

2. Every citizen of the Union, irrespective of his nationality, shall have a claim to public assistance in the State of the Union of residence.

Article 10

LEGAL RIGHTS

1. The Union guarantees the right to life, liberty, inviolability and security of the person. These rights may only be withheld on the basis of a court decision which is in accordance with this constitution and the fundamental principles of law.
2. Capital punishment shall be abolished.
3. Powers of search, apprehension, arrest and the deprivation of liberty may only be exercised on the basis of a law.
4. Any person arrested shall have the right to be informed of the reasons for the arrest immediately and only a judge may decide on the permissibility and continuation of any deprivation of liberty longer than 48 hours.
5. Detained persons may not be subjected to mental nor to physical ill-treatment .
6. Every citizen of the Union shall have the right of petition. He shall have the right in such cases, as in all forms, of formal applications, complaints and legal recourse, to use his mother tongue.

Article 11

LEGAL RIGHTS IN RELATION TO THE PROSECUTION OF CRIME AND COERCIVE MEASURES

Everyone shall have the right to a hearing in court.

An act can be punished only if it was an offence against the law before the act was committed.

No one may be punished for the same act more than once under general penal legislation.

Coercive measures by public authorities may only be carried out pursuant to a law and only in the period following the announcement of legislative intentions to this effect.

Article 12

SOCIAL RIGHTS

1. Every citizen of the Union shall have the right to an education.
2. The freedom of education is guaranteed.
3. All schools shall encourage the knowledge of a second Union language.
4. Every citizen of the Union shall have the right to participate in the working life of his country of residence irrespective of his nationality. Should the exercise of a profession depend on certain requirements or qualifications, qualifications valid in one State of the Union shall be sufficient for all States of the Union.
5. Property and the right of inheritance shall be guaranteed. Their content and limits shall be determined by the laws. The use of property should also serve the public weal. Expropriation shall be permitted only in the public weal. It may be effected only pursuant to a law which shall provide for the nature and extent of the compensation.
6. Every citizen of the Union shall have the right freely to choose their trade, place of work and place of training. Freedom to engage in an occupation can only be restricted by a law.
7. Every citizen of the Union shall have the right of establishment in any Member State for the purpose of engaging in economic activity. Restrictions shall only be permissible by a law of the Union.

Article 13

EQUALITY

1. All persons shall be equal before the law.
2. No one may be prejudiced or favoured because of his sex, his nationality, his origin, his race or his religious or political opinions.
3. Men and women shall receive equal remuneration for the same work.

RIGHTS OF ETHNIC GROUPS AND THEIR MEMBERS

1. Ethnic groups and linguistic minorities shall enjoy the particular protection of the Union.
2. Every citizen of the Union shall have the right to acknowledge freely his membership of an ethnic group and to cultivate the language and culture of the ethnic group.
3. A law of the Union shall regulate the recognition and status of groups.

CHAPTER III

BASES OF THE UNION

CONSTITUTIONAL PRINCIPLES

1. The Union is a democratic, free, constitutional and social community of states.
2. The exercise of executive powers shall be subject to this Constitution and based on the principle of the separation of powers.
3. The legislature shall be subject to the constitution and the executive power and judiciary subject to law and justice.

Article 16

FLAG OF THE UNION

The flag of the Union shall display twelve stars arranged in a circle on a blue background.

Article 17

GUARANTEE OF EXISTENCE

1. The Union shall guarantee the continued existence and constitutional order of the States of the Union.

2. The exercise of executive powers and the discharge of governmental functions shall be incumbent on the States of the Union insofar as this Constitution does not otherwise provide.

Article 18

FOREIGN AFFAIRS

1. Foreign affairs shall be the responsibility of the Union.
2. If a treaty affects the special interests of a State of the Union, this State shall participate in the treaty procedure.
3. Insofar as the States of the Union have the power to legislate, they may, with the consent of the Government of the Union, conclude treaties with foreign states.

Article 19

LEGAL AND ADMINISTRATIVE ASSISTANCE

1. All authorities of the Union and the States of the Union shall render each other legal and administrative assistance.

Article 20

APPLICATION OF INTERNATIONAL LAW

1. The general rules of international law shall be an integral part of the Union law.

2. The Declaration of Human Rights, the European Convention on Human Rights and other international agreements shall become Union law on ratification by the Union.

Article 21

OFFICIALS OF THE UNION, LIABILITY OF THE UNION

1. Officials employed in the institutions of the Union shall be drawn from all nationalities of the States of the Union in appropriate proportion.
2. The Union shall be liable, without prejudice to its right of recourse, for damage caused by its institutions or officials in the exercise of their duties. Details shall be regulated by a Union law.

SANCTIONS BY THE UNION

1. If a State of the Union does not meet its obligations under this Constitution or law of the Union, the President of the Union, acting upon a request from the Government of the Union shall institute proceedings against the State at the Constitutional Court of the Union for action detrimental to the Union.

2. Should the constitutional court of the Union so find, the Parliament of the Union and the Council of the Union acting by a two-thirds majority may exclude the State concerned or suspend its rights in part or in whole. In the Council of the Union, the votes of representatives of the State concerned shall not be counted.

CHAPTER IV

THE PARLIAMENT OF THE UNION

Article 23

MANDATE

1. The members of the Parliament of the Union shall be the representatives of the citizens of the States of the Union. They shall not be bound by orders and instructions and shall be subject only to their conscience.

ELECTORAL PRINCIPLES, RIGHT TO VOTE AND STAND FOR OFFICE

1. The Parliament of the Union shall have as many members as necessary for there to be one seat per half million population plus one for any residual fraction thereof.
2. The members shall be elected in general, direct, free, fair and secret elections for a period of five years.
3. Details shall be regulated by a law of the Union.

Article 25

MEETINGS, PUBLIC NATURE OF SITTINGS AND SEAT

1. The Parliament shall assemble within thirty days after its election. It shall determine the termination and resumption of its meetings and shall draw up its Rules of Procedure.
2. The sittings of the European Parliament shall be public.
3. The Parliament shall determine its seat and that of other institutions of the Union. These premises shall be sovereign Union territory.

PRESIDENT OF PARLIAMENT

1. The Parliament of the Union shall elect its President and VicePresidents.
2. The President shall exercise the proprietary and police powers in the Parliament building. No police action may take place in the premises of the Parliament of the Union without his permission.

Article 27

PRESENCE OF THE GOVERNMENT OF THE UNION

1. The members of the Government of the Union and the Council of the Union shall have access to all meetings of the Parliament of the Union and its committees and must be heard at any time.
2. The Parliament of the Union may demand the presence of any member of the Government of the Union.
3. The members of the government of the Union shall be accountable to members and answer their questions.

INCOMPATIBILITIES, INDEPENDENCE

1. A Member of the European Parliament cannot at the same time be a member of the Government of the Union, the Council of the Union, the government of a State of the Union, the Constitutional Court of the Union or any supreme national court.

2. The members shall be entitled to due remuneration from the funds of the budget of the Union to ensure their independence. They shall have the right to make use free of charge of all publicly-owned forms of transport in the territory of the Union.

3. Details shall be regulated by a Union law.

Article 29

INDEMNITY AND IMMUNITY

1. A member may not be called to account for a vote cast or statement made in his capacity as a member.
2. During his period of office, a member can only be arrested or prosecuted with the consent of Parliament unless he is arrested in the execution of a punishable offence.
3. Any criminal proceedings against a member, any detention and any other restriction of his personal liberty shall be suspended upon the request of Parliament.
4. The right of members to travel to any part of the Union, in particular Parliament's meeting place, may not be restricted for any reason whatsoever.
5. Members may refuse to give evidence concerning persons who have confided facts to them in their capacity as members or to whom they have confided facts in such a capacity, as well as concerning these facts themselves. To the extent that this right to refuse to give evidence exists, no seizure of documents shall be permissible.

SCRUTINY OF ELECTIONS

1. The scrutiny of elections shall be the responsibility of the Parliament of the Union. It shall also decide whether a member has lost his seat.
2. Complaints against Parliament's decisions may be lodged with the Constitutional Court of the Union.
3. Details shall be regulated by a Union law.

COMMITTEES OF INQUIRY

1. Parliament shall have the right, and upon the motion of one-fifth of its members be obliged, to set up a committee of inquiry. A committee of inquiry appointed upon the motion of a minority shall only be set up if there is prima facie evidence of misconduct by institutions of the Union or its members.

2. All courts and all authorities of the Union, and all courts, parliaments and authorities of the States of the Union shall render legal and administrative assistance.

3. The committee of inquiry may collect evidence in public proceedings; it shall have the powers of investigation accorded under the penal laws of the State of the Union in which it meets.

MAJORITIES

1. Decisions of the Parliament of the Union shall require a simple majority unless this Constitution provides otherwise (majority of votes cast).
2. In cases where this Constitution requires a qualified majority, a decision is only taken if it receives the majority of votes of the members of the Parliament of the Union.
3. Any majorities other than those described above must be explicitly required by this Constitution in relation to the specific matter under discussion.

CHAPTER V

THE COUNCIL OF THE UNION

TERMS OF REFERENCE, COMPOSITION

1. The States of the Union shall participate through the Council of the Union in the legislation and administration of the Union in the areas specified in the Constitution.
2. The Council shall consist of members of the governments of the States of the Union which shall appoint and recall them.
3. Each State of the Union shall appoint and delegate as many members as it has votes.
4. The presidency shall be exercised by the members of the Council in turn for a period of twelve months and in the following sequence of States of the Union: Belgium, Denmark, Germany, France, Greece, Ireland, Italy, Luxembourg, Netherlands, United Kingdom.

DECISIONS AND MAJORITIES

1. The Council of the Union shall meet and take decisions in plenary sitting. It may form committees to prepare these sittings.

2. Save as otherwise provided in this constitution, the Council shall take decisions by a majority of its votes.

3. The States of the Union shall have the following number of votes:

Belgium	5
Denmark	3
Germany	10
France	10
Greece	5
Ireland	3
Italy	10
Luxembourg	2
Netherlands	5
United Kingdom	10

4. Where this constitution requires voting by a qualified majority, decisions shall require for their adoption at least 45 votes cast by at least 6 Member States.

5. Majorities other than those above must be explicitly provided for in this constitution in relation to the specific matter.

6. The votes of a State of the Union may only be cast as a block vote and only by members of the Council present or their substitutes.

7. The members of the Council of a State of the Union may only deputize for each other.

8. The Council of the Union shall adopt its rules of procedure.

9. The meetings and voting of the Council shall be public.

PARTICIPATION OF THE GOVERNMENT OF THE UNION

The members of the government of the union shall have the right, and may be required, to attend the meetings of the Council of the Union. They must be heard at any time.

CHAPTER VI

THE EUROPEAN COUNCIL

COMPOSITION AND MEETINGS

1. The European Council is the conference of the Heads of State or Government of the States of the Union which may be attended by the Prime Minister of the Union in an advisory capacity.

2. The President of the Union shall act as chairman; he shall convene the European Council.

TERMS OF REFERENCE

1. The European Council shall consider matters relating to cooperation between the states of the Union at intra-state level.
2. It may address recommendations relating to Union affairs to the institutions of the Union and the Governments of the States of the Union.
3. It may recommend that potential competences for Union legislation be transformed into exclusive competences for Union legislation.

CHAPTER VII

THE PRESIDENT OF THE UNION

Article 38

APPOINTMENT

1. The serving head of state of a State of the Union shall be appointed President of the Union for a term of twelve months.

2. This office shall rotate between the states of the Union in the following sequence: United Kingdom, Netherlands, Luxembourg, Italy, Ireland, Greece, France, Germany, Denmark, Belgium.

Article 39

VICE-PRESIDENT OF THE UNION

1. The Vice-President of the Union shall be the succeeding head of state.

Article 40

DUTIES AND POWERS

1. The President of the Union shall represent the Union in its international relations. He shall accredit and receive diplomatic representatives.
2. The President shall conclude on behalf of the Union treaties with other countries once the institutions of the Union responsible have given their consent in the form of a Union law.
3. The President shall chair the European Council.
4. The President shall appoint and dismiss the Prime Minister of the Union, the ministers of the Union, the judges and officials.
5. The President shall dissolve the parliament of the Union acting on a proposal from the Prime Minister of the Union.
6. The President shall exercise the prerogative of clemency to criminals whose criminal offences extend beyond the jurisdiction of a single State of the Union.

CHAPTER VIII

THE GOVERNMENT OF THE UNION

Article 41

COMPOSITION

1. The Government of the Union shall consist of the Prime Minister of the Union and the ministers of the Union.

2. The ministries of the Union will be set up by decision of the Government of the Union, as required by the Government of the Union to carry out the duties incumbent upon it under this constitution.

ELECTION OF THE PRIME MINISTER OF THE UNION AND APPOINTMENT OF MINISTERS OF THE UNION

1. The Prime Minister of the Union shall be elected for the entire period of office by the Parliament of the Union with a majority of the votes of its members upon the proposal of the Council of the Union. If there is no majority for the proposal of the Council of the Union, the Council of the Union must convene immediately and submit a further proposal. If this proposal also fails to find a majority, the right of proposal shall be transferred to one third of the members of the Parliament of the Union.
2. The Government of the Union shall remain in office until it is replaced.
3. The ministers of the Union shall be appointed and dismissed by the President of the Union upon the proposal of the Prime Minister of the Union.
4. The provisions relating to disqualifications for Members of Parliament shall apply mutatis mutandis to members of the Government of the Union.

RESPONSIBILITY

1. The Prime Minister of the Union shall determine, and be responsible for, the general policy guidelines. Within the limits set by these guidelines, each minister of the Union shall conduct the affairs of his department autonomously and on his own responsibility.

2. The Government of the Union shall decide on differences of opinion between Union ministers.

3. The Prime Minister of the Union shall conduct the affairs of the Government of the Union in accordance with rules of procedure adopted by it.

VOTE OF CONFIDENCE AND VOTE OF NO-CONFIDENCE

1. If a motion of the Government of the Union for a vote of confidence is rejected, the President of the Union may dissolve parliament upon the proposal of the Prime Minister of the Union.

2. The Parliament of the Union can express its lack of confidence in the Prime Minister of the Union only by electing with the majority of its Members a successor who must be appointed to replace the serving Prime Minister of the Union by the President of the Union. In such cases Parliament's right of dissolution lapses.

3. The Parliament of the Union may also pass a vote of no-confidence on an individual minister. The President of the Union must dismiss this minister and appoint a replacement if the Prime Minister of the Union submits a proposal to this effect to the Parliament of the Union within 21 days and if this is adopted by a majority.

CHAPTER IX

THE REGIONAL COUNCIL OF THE UNION

REGIONAL COUNCIL OF THE UNION

1. The Union shall guarantee the autonomy of local authorities. The minimum level of autonomous rights shall be regulated by an organic law.
2. The local authorities may form regional associations, the status of which shall be determined by the organic law.

The regional associations may cross the borders of the States of the Union. Their creation should take account of federal structures which already exist, identical ethnic, cultural or historical traditions and common economic interests.

3. The regional associations shall form a regional council. This shall have the right to delegate three of its members to the Regional Council of the Union.

4. The Regional Council of the Union shall represent the regional associations at Union level. In order to ensure at the same time that the various economic and social groupings are represented at Union level, the regional representatives shall co-opt from a list of proposals submitted by the Government of the Union a number of members, corresponding to half of the members delegated to the Regional Council of the Union by the regional associations.

Article 46

POWERS OF THE REGIONAL COUNCIL OF THE UNION

1. The seat of the Regional Council of the Union shall be Luxembourg.
2. It shall meet twice a year for a week in plenary session.
3. The Regional Council of the Union shall have the right to initiate legislation; it may deliver opinions on Union laws.
4. The Regional Council of the Union shall meet in public.

CHAPTER X

THE LEGISLATURE OF THE UNION

Article 47

LEGISLATION OF THE UNION AND STATES OF THE UNION

1. The States of the Union shall have the right to legislate insofar as this constitution does not confer legislative power on the Union.

2. In matters within the legislative power of the Union, the States of the Union shall have power to legislate only if, and to the extent that, a Union law explicitly so authorizes them. The legislative powers under Article 49 (organic laws) can only be exercised by the Union.

EXCLUSIVE UNION LEGISLATION

Without prejudice to the power to legislate specified in Articles 1(2), 7, 8, 12(5), 14(3), 21(2), 24(3), 28(3), 30(3), 45(1,2), 52(1), 59(2), 61(3), 62(2), 65, 68(2,3), 72(1), 73(2,3,4), 75(2), 81 and 83, the Union shall have power to legislate in the following matters:

1. Foreign affairs and defence including arms coordination and the protection of the civilian population;
2. Citizenship of the Union and the right of naturalization, residence and the establishment of foreigners;
3. Freedom of movement, freedom of establishment and to provide services, immigration, emigration and extradition;
4. Currency, money and coinage, weights and measures as well as the determination of standards of time;
5. Economic law insofar as it is included in the Treaty establishing the European Economic Community, including the right to enact legal measures to maintain, promote and safeguard short-term economic developments aimed at stability and to achieve greater convergence in relation to the budgetary fiscal, capital and financial policies of the Union and the States of the Union; in this sphere a Union law can make the payment of funds by the Union to States of the Union dependent on respect of objectives specified by the former.
6. Competition law;
7. The law relating to the coal and steel industries insofar as this falls within the purview of the Treaty establishing the European Community for Coal and Steel;
8. The law relating to nuclear energy inasmuch as this falls within the purview of the Treaty establishing the European Atomic Community as extended by the laws relating to the security, location, non-military use and liability for nuclear energy complexes;

9. The unity of the customs and commercial territory, treaties on commerce and on navigation, the freedom of movement of goods, services and payments and the exchanges of goods and payments with foreign countries, including customs and other frontier protection;

10. External trade including the conclusion of agreements in this field with third countries or the ratification of multilateral agreements and measures to encourage exports and provide export credits;

11. Air transport, space and international agreements on the economic exploitation of aerospace,

12. The law of the sea, shipping and protection against pollution of international waters, inasmuch as these affect more than one State of the Union;

13. Postal and telecommunications services in terms of common postage stamps, tariffs and trans-Union communication systems;

14. The legal status of persons employed by the Union and by corporate bodies under public law directly subject to the Union;

15. The law relating to environmental protection and consumer protection;

16. The law relating to energy production and safeguarding energy supplies;

17. The law relating to the coordination of the promotion of science and research and its applications;

18. Industrial property rights, copyrights and publishers rights;

19. Cooperation of the Union and the States of the Union in criminal police matters, the establishment of a Union criminal police agency and the international control of crime;

20. Laws relating to arms and explosive materials;

21. Statistics for Union purposes;

22. Legislative powers transferred to the Union under the procedure described in Article 52.

ORGANIC LAWS

1. The Union shall have sole competence to enact organic laws determining the terms of reference, composition, responsibilities and powers of the institutions of the Union.

2. These include.

- (1) The law on the election of the Parliament of the Union
- (2) The law on the European Constitutional Court and the organization of Union courts including the constitution of the courts.
- (3) The law on the Regional Council
- (4) The law on the independent European Court of Auditors
- (5) The law on the budget procedure
- (6) The law on the setting-up of the independent Union bank
- (7) The law on the creation of a Union criminal police agency
- (8) The laws enacted pursuant to Article 68 (2) and (3).
- (9) Legislation under Article 45(1) and (2).

3. Organic laws shall be adopted by the Parliaments of the Union and the Council of the Union with a qualified majority.

FRAMEWORK LEGISLATION

1. A Union law may confine itself to determining solely general principles and objectives (framework legislation). This shall have direct application without prejudice to implementation by legislation of the States of the Union.

2. In cases where Article 48(5), (7) and (8) under the terms of the European Treaties only accord the Community institutions powers of coordination or harmonization, these can only be exercised by the Union in the form of framework legislation.

ENACTMENT OF REGULATIONS

Union law may empower the Government of the Union or the States of the Union to enact implementing rules. The law must specify the substance, purpose and extent of the authorization thus given. The legal basis shall be specified in the regulation. Should the law provide for a further transfer of authorization, the transfer of authorization shall require a regulation.

ARTICLE 52

POTENTIAL COMPETENCES OF THE UNION

1. If there is no provision in this constitution for legislative powers deemed necessary, the Parliament and the Council, acting by a qualified majority, shall adopt a Union law extending the competences and powers of the Union at the initiative of a State of the Union, the Parliament or the Government of the Union.

2. This law shall define the competence being transferred to the Union and the powers for implementation by the Union. A justification shall be required for regulation by the Union. Such justification shall exist if
 - a matter cannot be effectively regulated by the legislation of the individual States of the Union, or

 - the regulation of a matter by one State of the Union could be to the detriment of the interests of other States of the Union or the Union itself, or

 - there is a threat to legal or economic unity, in particular the uniformity of living conditions beyond the territory of a State of the Union

3. The law shall require the consent of the national legislative bodies. Such consent shall be deemed to be given once a number of national parliaments corresponding to a qualified majority in the Council of the Union have given their consent.

4. Once consent has been given, the right transferred shall have comparable status to the provisions of this constitution.

DRAFT LEGISLATION

1. Draft legislation shall be introduced in the Parliament of the Union by the Government of the Union, the Council of the Union, the Regional Council or members of the Parliament. The right to initiate legislation under the provisions of Article 49 is confined to the Government of the Union.

2. Bills shall be submitted to the Council of the Union by Parliament unless they do not originate therefrom; the Council may deliver an opinion within three months.

ARTICLE 54

ADOPTION OF LEGISLATION

1. Union laws shall be adopted by the Parliament of the Union and the Council of the Union.

2. Laws are enacted once the Parliament of the Union and then the Council of the Union so decide.

3. If the Council of the Union reaches no decision on legislation adopted by the Parliament of the Union within three months, the consent of the Council of the Union shall be deemed to have been given.

CONCILIATION COMMITTEE

1. The Council of the Union may, instead of consenting to or rejecting draft legislation from the parliament of the Union, demand that the conciliation committee be convened.
2. The Parliament of the Union and the Government of the Union shall have the same right if the Council of the Union rejects draft legislation adopted by the Parliament.
3. The Parliament of the Union or the Government of the Union must convene a meeting of the Conciliation Committee within two months following the rejection by the Council of the Union.
4. The Conciliation Committee shall consist of an equal number of members of the Parliament of the Union and the Council of the Union and be twice the number of the States of the Union. The members of the Conciliation Committee shall not be bound by instructions.
5. The Conciliation Committee shall reach a decision within one month of application thereto and submit its compromise proposal to the Parliament of the Union and the Council of the Union. If the compromise proposal involves an amendment to the draft legislation, the Parliament of the Union must take a fresh decision. It cannot amend the compromise proposal.
6. The Council of the Union must reach a decision on the decision by the Parliament of the Union at the conclusion of the conciliation procedure within one month or its consent shall be deemed to have been given. Rejection by the Council of the Union shall require a qualified majority. This shall not apply to organic laws as defined in Article 49 (1)

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ARTICLE 56

ENACTMENT OF LAWS OF THE UNION

1. Union laws shall be enacted when the President of the Union observes that the requirements of Article 54 and 55 have been met, and produces and publishes the final text.

ENTRY INTO FORCE AND PROMULGATION

1. The laws of the Union enacted in accordance with the provisions of this constitution shall be published in the Official Journal of the Communities.
2. Save as otherwise provided, laws of the Union shall enter into force 14 days after promulgation.

CHAPTER XI

THE ADMINISTRATION OF JUSTICE

SOVEREIGNTY OF THE JUDICIARY - PRIORITY OF JURISDICTION OF THE STATES OF THE UNION

Judicial power shall be vested in the judges and exercised by the courts of the States of the Union save where this constitution provides for the administration of justice by the Union.

ARTICLE 59

CONSTITUTIONAL COURT OF THE UNION

(1) The constitutional court of the Union shall decide:

(a) In the event of disputes concerning the extent of the rights and duties of a highest institution of the Union or any other party concerned who has been vested with equivalent rights by organic law; proceedings may be initiated by the institutions of the Union.

(b) In the event of disputes on the compatibility of Union law or the law of the states of the Union with other Union law, at the request of the Government of the Union, the government of a State of the Union or onethird of the members of the Parliament of the Union;

(c) In the event of disputes on the rights and duties of the Union and the States of the Union, at the request of the institutions of the Union and the governments of the States of the Union.

(d) On other disputes involving public law, between the Union and the states of the Union or between the various states of the Union, at the request of the Government of the Union or the Governments of the States of the Union.

(e) On complaints of unconstitutionality, which may be entered by any person who claims that one of his basic rights in the Union has been violated by a public authority. A complain of unconstitutionality may also be entered against the judgement of a court in a State of the Union which conflicts with case law of the Union court on the grounds of a violation of the right to equality in the application of Union law.

(f) In cases involving the dismissal or retirement of a Union judge.

2. Details, including in particular the requirements for filing suit, shall be regulated by the organic law on the Constitutional Court of the Union.

3. The Constitutional Court of the Union should also act in such other cases as are assigned to it by Union legislation.

REFERRAL PROCEDURE

The Constitutional Court of the Union shall deliver opinions on matters referred for a ruling by courts of the States of the Union or the Union under Article 64 which believe that a Union law or law of a State of the Union, the validity of which is relevant to a case before it, is unconstitutional or in conflict with Union law.

ARTICLE 61

COMPOSITION

1. The Constitutional Court of the Union shall consist of judges, half of whom are elected by the Parliament of the Union and half by the Council of the Union.
2. The judges may not be members of any other institution of the Union or State of the Union.
3. Details, in particular of cases in which decisions of the Court of Justice of the Union shall be legally binding, shall be regulated by an organic law.

JURISDICTION OF THE UNION

1. Union jurisdiction which is exercised by the Court of Justice of the Union and lower courts of the Union under the terms of the following provisions shall have as its aims :

- (a) To supervise the application and interpretation of Union law in the field of civil law, penal law, industrial law, social law and fiscal law disputes; in such matters the Court of Justice of the Union is empowered to issue preliminary rulings on matters referred to it by courts in the States of the Union.
- (b) In disputes involving public law, with the exception of those specified under (c) to ensure uniformity of law in the application and interpretation of Union law; in such cases it may be invoked as a court of appeal by the parties involved.
- (c) In disputes involving the application and interpretation of competition law, the law of commercial legal protection, the public service of the Union, copyright, publishers rights, trade marks and patent law, jurisdiction shall be exercised exclusively by the courts of the Union through lower Union courts the decisions of which may be contested by recourse to the Court of Justice of the Union.

2. Details shall be regulated by a Union law on the constitution of the courts and legal procedure.

PRELIMINARY RULINGS

1. A court in the state of the Union dealing with a case involving the application and interpretation of Union law as set out in Article 62 (1)(a) must suspend proceedings and request a preliminary ruling from the Court of Justice of the Union.

2. No preliminary ruling need be sought if the Union law in question only permits of one interpretation or the court of the State of the Union is following the interpretation of the Court of Justice of the Union.

UNCONSTITUTIONALITY OF LAWS OF THE UNION

1. If a court considers a law of the Union, the validity of which is relevant to a matter on which it must rule, to be unconstitutional or a law of a state of the Union in breach of Union law, the proceedings must be suspended and an opinion sought from the Constitutional Court of the Union.

Article 65

INDEPENDENCE OF JUDGES

1. The judges shall be independent and subject only to the law.
2. Judges appointed permanently on a full time basis in established positions cannot against their will be dismissed or permanently or temporarily suspended from office or given a different function or retired before the expiration of their term of office except by virtue of a decision of the Constitutional Court of the Union and only on the grounds and in the form provided for by law.
3. Organic legislation may set age limits for the retirement of judges appointed for life.
4. In the event of changes in the structure of courts, judges may be transferred to another court provided they retain their full salary.

Article 66

RIGHT TO LAWFUL JUDGE

Extraordinary courts shall be inadmissible. No-one may be removed from the jurisdiction of his lawful judge.

CHAPTER XII

THE IMPLEMENTATION OF UNION LAWS AND THE ADMINISTRATION OF THE UNION

PRINCIPLE OF ADMINISTRATION BY THE STATES OF THE UNION AND UNION SUPERVISION

1. The States of the Union shall execute Union laws insofar as this constitution does not otherwise provide.
2. The Government of the Union shall supervise implementation. For this purpose it may issue general administrative rules, demand access to files and send commissioners to the highest authorities of the States of the Union.
3. The States of the Union shall bear the costs of administration. Where Union laws provide for payment, they shall also determine whether and to what extent the States of the Union are to be reimbursed from the budget of the Union.

DIRECT UNION ADMINISTRATION

1. The following areas shall be administered directly by the Union :

- Diplomatic service
- Union tax and customs administration
- Union border police
- Union criminal police
- Union development service

2. Where such administration requires direct Union administrative sub-structures, these shall be set up by organic laws.

3. Union corporate bodies under public law or other higher, intermediate and lower authorities of the Union may be established by Union legislation, if new functions arise for the Union in matters in which it has the power to legislate.

BANK OF THE UNION

1. The Union shall establish an autonomous note-issuing and currency bank.
2. It shall be supervised by a Board of Directors, appointed by the Government of the Union for a period of ten years who cannot be removed from office and shall be bound by no instructions.
3. The details shall be regulated by an organic law.

CHAPTER XIII

THE FINANCES OF THE UNION

BUDGETARY PRINCIPLES OF THE UNION AND STATES OF THE UNION

1. The Union and States of the Union shall budget revenue and expenditure autonomously and quite independently insofar as this constitution does not provide otherwise.

2. The expenditure for administration of the duties allocated by this constitution shall be borne by that level of the Union to which the duties are allocated.

REVENUE OF THE UNION AND THE STATES OF THE UNION

1. The revenue from taxation and other imposts shall accrue to the States of the Union, insofar as this constitution does not provide otherwise.

2. The revenue from the following taxes and duties shall accrue to the Union:
 - customs duties
 - agricultural levies
 - other levies which the European Communities are entitled to impose under the Treaties
 - Union value added tax
 - taxation of the income of Union officials
 - other revenue produced by the normal implementation of the Union budget.

3. The Union shall also be entitled to the revenue from its borrowing and lending operations.

JOINT REVENUE

1. Revenue from excise duties on coffee, tea, tobacco, spirituous beverages and import turn-over taxes shall accrue to the Union and the States of the Union from 1.1.1985 jointly and in equal proportions. A law of the Union adopted pursuant to Article 49 (3) and (4) may distribute this amount differently.

2. The above excise duties and import turnover taxes shall no longer be levied on intra-Community transport crossing the borders of the States of the Union as from 1.1.1985.

FISCAL POWERS OF THE UNION

1. The Union shall have the right to legislate on tax matters insofar as they are so authorized by this constitution.

2. The areas in which the Union shall have the right to legislate on tax matters are :
 - customs,
 - agricultural levies,
 - other levies which the European Communities are entitled to impose under the Treaties,
 - turn-over taxes
 - Union value-added tax which shall be based on a uniform basis of assessment of taxable turnover, levied in addition to value added tax and separately entered;
 - taxes on consumption and excise duties insofar as these are common taxes under Article 72.

3. The Union shall have the right to harmonize by framework legislation the taxes levied in the Union and the States of the Union on earnings, business profits, petrol, and bond, cheque and stock exchange transactions.

4. The Union shall have the right to regulate the power to issue loans by a Union law adopted pursuant to Article 49 (3) and (4).

DIVISION OF FINANCIAL RESPONSIBILITIES

1. The expenditure necessary to carry out the duties of public authorities shall be borne by the States of the Union insofar as this constitution does not otherwise provide.

EXCLUSIVE FINANCIAL POWERS OF THE UNION

1. The Union shall have exclusive financial powers in relation to : -
European agricultural marketing and structural policy - development aid and foreign trade including export credits - short and medium-term monetary support - transport infrastructure projects extending beyond the borders of the Union - external disaster relief services - all financial commitments from international agreements concluded by the Union - administrative expenditure of the Community.

2. Exclusive financial powers shall be accorded to the Union by virtue of a Union law for the following areas:
 - industrial restructuring and promotion of innovatory branches of industry
 - arms research, promotion of major military projects, promotion of space travel and the aerospace industry, the promotion of Union-wide telecommunications systems
 - energy research, prospecting for and exploitation of new sources of energy,
 - energy and raw materials stockpiling,
 - general promotion of research

JOINT FINANCIAL POWERS OF THE UNION

1. The Union shall have joint responsibility for financing measures in the fields of :

- regional structural policy
- social policy
- transfrontier environmental protection
- internal transfrontier transport policy
- disaster relief within the Union

2. Co-financing will require multiannual programmes to be drawn up and adopted jointly by the States of the Union and the Union; these shall be adopted by the Union by a decision of the Council of the Union and of a qualified majority of the Parliament of the Union.

3. Community participation may vary between 30 and 70 per cent.

FINANCIAL EQUALIZATION

1. Equalization payments shall be made to less-favoured States of the Union from the Union budget to compensate for differences in economic prosperity and state services.
2. The amounts of the resources available annually for equalization shall be established by decision of the Council of the Union and the Parliament of the Union.
3. The overall amount shall be allocated on the basis of a formula which takes account of per capita gross domestic product, taxation levels, economic growth and the relationship between the contribution to Union revenue and the Community expenditure anticipated for any given country. The formula shall be established as part of the budget procedure in accordance with the provisions relating to the exclusive financial powers of the Community.
4. Financial equalization payments to individual Member States may be made subject to economic and financial preconditions and requirements.

FISCAL ADMINISTRATION OF THE UNION

1. To the extent that taxes or levies accruing to the Union are collected by the authorities of the States of the Union, those authorities shall act as agents of the Union.

2. As such they shall be bound by instructions from the Union Minister of Finance. His supervision shall extend to the legality and expediency of implementation. He may issue administrative rules, require the submission of reports and documents and send commissioners to all authorities.

BUDGETARY PRINCIPLES

1. The financial year shall begin on 1 January and end on 31 December.
2. All revenue and expenditure collected by the States of the Union within their territory on behalf of the Union, or amounts which individuals are required to pay to the Union, or payments by the Union to the States of the Union, third countries or individuals shall be shown in the budget of the Union. Revenue and expenditure shall be balanced. There shall be no direct offsetting of revenue and expenditure. The earmarking of revenue for specific purposes shall be prohibited.
3. The Union shall be entitled to take up loans if so authorized by Union law adopted pursuant to Article 49 (2) and (3). These funds may only be used for investment expenditure.
4. The unit of exchange in all financial relations between the Union and the States of the Union or other persons shall initially be the European Unit of Account and subsequently the European Currency Unit which shall replace national currencies.
5. Details shall be regulated in a financial regulation enacted pursuant to Article 81.

SUPPLEMENTARY BUDGETS

1. Essential and unforeseeable expenditure for which no provision has been made in the budget shall be covered by a supplementary budget which shall require the consent of the Government of the Union.
2. A supplementary budget shall also be drawn up under the terms of paragraph 1 if it becomes apparent that the estimates of revenue on which the budget was based were too high.
3. A Union law involving expenditure which cannot be covered from the current Union budget can only enter into force once the relevant supplementary budget has been adopted.

FINANCIAL REGULATION

1. The financial regulation enacted pursuant to Article 49 (3) and (4) shall regulate

- the drawing up and implementation of the budget
- the presentation of accounts and auditing
- the details of budget procedure
- provisions relating to the responsibility of authorizing officers and accounting officers and the appropriate supervisory measures.

Article 82

PRESENTATION OF THE BUDGET OF THE UNION AND THE BUDGETARY POWERS OF THE INSTITUTIONS

1. The Government of the Union shall present a preliminary draft budget accompanied by an opinion which may contain divergent proposals. This preliminary draft shall include an estimate of revenue and an estimate of expenditure.
2. The Government of the Union shall submit to the Parliament of the Union the preliminary draft budget by 1 September of the year preceding the respective financial year.
3. The Parliament of the Union shall adopt a draft budget with a majority of the votes of its members and forward this to the Council of the Union. The draft budget must be submitted to the Council of the Union by 5 October of the year preceding the respective financial year.
4. The draft shall make a distinction between expenditure for which the Union has exclusive financial competence and expenditure for which the Union has joint financial competence. The Council of the Union may amend the draft submitted by the Parliament of the Union within 45 days and forward the amended draft together with an explanatory statement on amendments to the Parliament of the Union.
5. The Parliament of the Union shall take decisions on amendments within 15 days following its submission by a majority of the votes of its members and, insofar as these relate to expenditure for which it has joint financial competence and financial equalization, with the majority of the votes of its members and three-fifths of the votes cast and accordingly adopt the budget. The Parliament of the Union shall be entitled to amend the amendments of the Council of the Union, but not such as to exceed the allocations which it adopted at its first reading.
6. The budget shall be adopted in the form of a Union law.
7. In derogation from Article 56, at the conclusion of the procedure, the President of the Parliament of the Union shall ascertain that the budget has been finally adopted.

CHAPTER XIV

AMENDMENTS TO THE CONSTITUTION

AMENDMENTS TO THE CONSTITUTION

1. The Constitution may only be amended by a Union law which expressly amends or supplements the text thereof, without prejudice to Article 52.
2. Any such law shall require the affirmative vote of two-thirds of the votes of the members of the Parliament and the Council.
3. Amendments to the Constitution affecting the Union, its institutions, the independence of the States of the Union guaranteed by the Constitution and the principles set out in Article 1(3) and (4), Article 2(2) and Article 3, shall be inadmissible.

CHAPTER XV

TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 84

PERPETUATION OF THE LAW OF THE STATES OF THE UNION AS UNION LAW

Laws of the States of the Union relating to areas of legislation of the Union shall continue to apply within their area of application as regional Union law until such time as a Union law has been enacted in this field.

PERPETUATION OF COMMUNITY LAW

1. The legislation of the European Communities shall continue to exist as Union law inasmuch and to the extent that the Union is authorized to legislate in such matters.

2. Subject to the conditions of paragraph 1, directives issued by the Community shall continue to exist as framework legislation which the States of the Union shall remain authorized to expound.

3. The Government of the Union shall submit within a year following the entry into force of the Constitution a catalogue of the Community law which continues to exist as Union law.

ARTICLE 86

POWERS OF THE UNION IN THE FIELD OF DEFENCE

1. The Union shall regard any armed aggression directed against the territory of any State of the Union as aggression against the Union itself.
2. The commitments of States of the Union under international defence alliances shall remain unaffected. .
3. Pursuant to Article 52 these shall be transferred to the Union if this accedes under Articles 18 and 20 to international defence alliances in the place of States of the Union.

ARTICLE 86a

TRANSITIONAL PROVISIONS ON ELECTIONS TO THE PARLIAMENT OF THE UNION

Article 24 shall apply for a period of 15 years with the proviso that each State of the Union shall be guaranteed a minimum number of seats by the Union electoral law.

ARTICLE 87

ENTRY INTO FORCE OF THE CONSTITUTION

1. The Constitution shall enter into force once it has been ratified by as many Parliaments of the States of the Union as represent two-thirds of the total population of the Union.
2. The Constitution shall apply to States of the Union which have ratified it.
3. The Parliament of the Union shall ascertain that the constitution has been adopted, and produce and publish the final text.

C o m m e n t a r y

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1. Nature of European Union

The 'transformation of the totality of relations to a Union' is understood as an instruction to replace the system created by the three Community treaties, the agreement on European Political Cooperation and the European Monetary System by a new arrangement under a European constitutional law. This would take the following form:

1.1 INSTITUTIONS

The institutions envisaged are

- the Parliament of the Union and the Council of the Union sharing conventional powers in a bicameral system, the Government of the Union, the President of the Union, the Regional Council of the Union, all of which, with the exception of the President of the Union would be autonomous and have full democratic legitimation.

The supreme power of the Union would be the peoples in the Member States forming the Union. This would find expression in the fact that the appointment and dissolution of institutions and their powers would be ultimately determined by the popular will as expressed by a system of representative democracy.

1.2 POWER TO AMEND THE CONSTITUTION

This would be vested in the institutions of the Union.

1.3 ACCESSION BY FURTHER MEMBERS

The accession of additional members would be decided upon by the Union itself by way of an amendment to the constitution (see Articles 2, 83).

2. A EUROPEAN UNION FOR ITS CITIZENS

Union will only be achieved if the people are given an appropriate role. This means that the relationship between the Union and the citizens of the Union should be based on fundamental rights, with an independent Union judiciary ensuring that these are respected. It also means that any national of a Member State would have the status of a citizen of the Union which would confer on him equal rights and basic freedoms throughout the territory of the Union. Ultimately this means that the Union would act as the guarantor of basic rights and freedoms in the Member States.

2.1 SPECIAL FEATURES OF EUROPEAN BASIC RIGHTS

The basic rights and freedoms of the Union must take account of the special features of the Union. This involves:

- guaranteeing the rights of ethnic groups and linguistic minorities, which are represented in the Regional Council of the Union (Articles 14, 45, 46)
- recognition of the fact that the Union embraces different nationalities speaking different languages; the right to use the mother tongue for official business therefore had to be included (Article 10(6)).
- economic, social rights and the right to education:

national vocational qualifications are to be given equal status (Article 11(2)),

every citizen of the Union has the right to public assistance in every Member State (Article 9(2))

every citizen of the Union also has the right to education; this should be regarded as an instruction to the States of the Union (Article 12(1)).

- political rights:

The exercise of political rights is made subject to residence in a Member State rather than nationality.

- rights vis-à-vis the legislature

When developing the jurisdiction of the Union on constitutional affairs and allowing constitutional suits filed by individuals, it was also necessary to provide for a basic right to the equal application of law (Article 59, in particular Article 59(1)(e)).

3. THE UNION VIS-A-VIS THE STATES OF THE UNION

The allocation of duties to the Union and the States of the Union, the division of powers and the allocation of financial resources is based on the principle of subsidiarity. Tasks are only given to the Union where implementation at this level is likely to be more efficient and save public funds while providing equally good or better achievement of its purpose. This principle underlies not only the allocation of legislative powers but also powers in relation to administration, jurisdiction and finance.

Greater efficiency is also the reason for transferring the following duties and powers to the Union:

- representation in foreign affairs
- external economic relations and development aid
- monetary matters including the creation of an autonomous bank of the Union
- posts and telecommunications with a view to common postage stamps, tariffs and including a Union-wide system of communications

- the law relating to the environment and consumer protection
- coordinating the promotion of science and technology and its practical applications
- cooperation on criminal police matters and combatting international crime
- in the economic sphere, legislative powers relating to the promotion and stabilization of short-term economic developments, competition law, unity of customs and trade area, air transport, law of the sea, production and supply of energy etc.

3.1 LEGISLATIVE POWERS

Legislative powers are subdivided into exclusive legislative powers of the Union and exclusive legislative powers of the States of the Union; in the first area legislation may always be enacted in the form of framework legislation rather than legislation of detail. In addition there is provision for potential legislative powers as a means of transferring legislative powers which have been left with the Member States in cases of justified necessity. By the same token, the draft does not exclude the possibility of transferral back of exclusive legislative powers of the Union to the States of the Union: see Article 47(2).

This is meant as a way of securing the necessary flexibility while adhering to the principle of a strict division of legislative powers.

3.2 ADMINISTRATION

Once again the basic principle is the responsibility of the States of the Union. The areas of Union administration have been kept to the minimum needed to carry out the duties entrusted to the Union.

5.5 FINANCES

The financial resources of the Union and the States of the Union are seen as one unit from which the Union can only draw a certain explicitly specified proportion. Any powers to determine the use of the entire financial resources would violate basic federalist principles and the constitutions of the States of the Union.

In order to ensure the autonomy of the Union as regards revenue, a union value-added tax has been created which is an additional value-added tax levied on the basis of a uniform system of assessment, collected by the states of the Union and shown separately from other value-added tax resources. Revenue from certain excise duties are to accrue in equal shares to the Union and the States of the Union as from 1985. From the same period on, no import turnover tax is to be levied at internal frontiers (transition from the country of destination principle to the principle of the country of origin); similarly no equalization duties are to be levied. This is to abolish fiscal obstacles at borders.

As far as expenditure is concerned, the principle is that the Union can only provide finance where it has express powers. A distinction is made between exclusive powers of financing (in this area the States of the Union have no responsibility for financing) and joint financing powers.

A vertical financial equalization is provided for to compensate for discrepancies in the economic and taxation potential of the States of the Union, thus obviating the need for concealed transfer payments or protracted negotiations on a fair net contribution.

4. THE INSTITUTIONS OF THE UNION

4.1 THE EUROPEAN PARLIAMENT

Its mandate is to represent all citizens of the Union and not as has been previously assumed in some quarters to represent the citizens of the States of Union of origin (Article 23).

The basis for an electoral law which is to be adopted by the Parliament and the Council of the Union is set out in Article 24. There should no longer be a rigid system for allocating seats to Member States but one seat per 500,000 population. This would slightly increase the number of Members. The electoral law also specifies that the exercise of the right to vote and the right to stand for office may transcend frontiers.

In order to end the question of the seat, there is provision for the Parliament to determine the seat of the European Parliament and the other institutions of the Union. The seat chosen in this way is to become sovereign Union territory.

4.2 THE COUNCIL OF THE UNION

The most important innovation is that the Council of the Union decision making process is to be transferred from committees to plenary sessions where the States of the Union will still only be able to vote as a bloc but the casting of votes will only be possible by members of the Council present or their substitutes. Every State of the Union has as many representatives as it has votes; the number of votes is as for qualified majorities in Article 148 of the EEC Treaty.

A further innovation is that the Council of the Union normally takes decisions at meetings open to the public.

4.3 THE EUROPEAN COUNCIL

As the present structural weakness of a decision-making procedure split up among the specialist councils has been eliminated, there is no need in future for the European Council to act as the coordinating and executive institution of the union, i.e. virtually as the plenary session of the Council of Ministers. The European Council can therefore largely restrict itself to the field of intra-state cooperation.

4.4 THE PRESIDENT OF THE UNION

The President of the Union is appointed from the Heads of State in office for a period of 12 months. He represents the Union both internally and externally.

4.5 THE GOVERNMENT OF THE UNION

The Prime Minister of the Union is elected by the Parliament of the Union acting on the proposal from the Council of the Union for the duration of an electoral period. He proposes to the President of the Union candidates for appointment as Ministers of the Union. The Government of the Union requires the confidence of the Parliament of the Union. The vote of constructive no-confidence against the Prime Minister of the Union follows the model of the German Basic Law. Votes of no-confidence may also be passed on individual ministers. No Member of Parliament may become a minister.

4.6 THE REGIONAL COUNCIL OF THE UNION

The Regional Council of the Union represents the regional interests within the Union and has the right to initiate legislation. On the basis of a list of proposals from the Government of the Union the regional representatives will co-opt a number of members equivalent to half the elected regional representatives. This is to ensure representation of economic and social groups, as previously in the Economic and Social Committee.

4.7 UNION LEGISLATION

Union legislation is firstly exercised by a Constitutional Court of the Union and secondly by supreme Union courts which in certain cases will have lower Union courts. A constitutional suit may be filed with the Constitutional Court of the Union by any person who claims that one of his basic Union rights has been violated.

4.8 BANK OF THE UNION

An independent currency and note-issuing bank is to be set up as a new institution of the Union. Its task will be to ensure stability of the currency; its members should therefore be fully autonomous politically.

4.9 SUBSIDIARY INSTITUTIONS

The existing subsidiary institutions, such as the European Court of Auditors, are to be retained with their present structure and powers.

5. ALLOCATION OF POWERS BETWEEN INSTITUTIONS

5.1 LEGISLATIVE POWERS

The most important innovation is the exercise of legislative sovereignty by the Parliament of the Union and to the Council of the Union jointly, possibly with a subsequent conciliation procedure. The basic principle is that laws can only be enacted if adopted by the Parliament of the Union and subsequently the Council of the Union. Once the conciliation procedure has taken place, however, a decision to reject a bill by the Council of the Union requires a qualified majority.

5.2 MAJORITIES

The draft specifies which areas for decision require which majorities and also contains provisions on qualified majorities for the Parliament of the Union and for the Council of the Union (Article 32, Article 34). The main area requiring qualified majorities is what are known as organic laws (Article 49); these are laws which regulate the details of institutional cooperation within the Union at sub-constitutional level.

6. TRANSITIONAL AND FINAL PROVISIONS

6.1 The method of adopting the constitution has deliberately been left open. Ideally, the States of the Union should authorize the Parliament which is to be elected in 1984 (either in combination with or separately from the electoral law) to develop a constitution in collaboration with national parliaments.

The era of European integration, as defined and encouraged by the governments of the Member States, has come to an end. The fact that since the '70s no satisfactory answers have been forthcoming from the governments to the new challenges, in no way detracts from the historic merit of the foundation they have created. It is therefore only just that the peoples of Europe themselves should decide on the future destiny of European integration.

6.2 Apart from technical aspects concerning the continued existence of areas of law which are now to fall under other legislative competences, attention should also be given to the difficult question of inclusion of the Union in the defence sector. In order not to pre-empt developments in this field, the draft contains provisions which leave the question open. At the same time there is a statement of the obvious principle that any aggression towards a State of the Union will be regarded as aggression towards the Union itself.

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