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**PROPOSALS FOR AMENDMENTS TO THE DRAFT ARTICLES OF THE
TREATY ESTABLISHING A CONSTITUTION FOR EUROPE**

ART. 14 – 23: GENERAL ASSESSMENT

1. It should be an objective of the reform of the Council to reduce the burden of the European Council and limit its work to the definition of guidelines and exercising overarching responsibilities. In the few cases where there is a recourse to the European Council due to an unsolvable conflict among Member States in the Council, the European Council should be able to meet as the Council and use the ordinary procedures.
2. The job description of the “President” of the European Council is not very clear. It is not even convincing that a full-time elected European Council President is needed should one of the main tasks of the General Affairs Council be to prepare the meetings of the European Council. It seems to be reasonable to limit the role of the proposed European President to that of a real Chairman of the European Council and not to expand too much of its role into the field of foreign, security and defence policy.
3. Instead, the role of the European Foreign Minister should be strengthened. By being embedded in the European Commission as Vice-President, he could play a strong role in external relations and foreign, security and defence policy when having, at the same time, recourse to the respective units in the Council Secretariat and also to the Union Delegations worldwide. This needs to be clarified.
4. The role of the European Parliament needs to be strengthened. This applies to election procedures (e.g. Commission President, Foreign Minister) and the ordinary control and legislative functions of the Parliament.

PART I OF THE CONSTITUTION

TITLE IV: The Union's Institutions, Organisations and Bodies¹

Article 14 : The Union's Institutions

1. The Union shall be served by a single institutional framework which shall aim to:

- advance the objectives of the Union,
- promote the values of the Union,
- serve the interests of the Union, its citizens and its Member States, and ensure the consistency, effectiveness and continuity of the policies and actions which it undertakes in pursuit of its objectives.

2. This institutional framework comprises:²

The European Parliament,

~~The European Council,~~

The Council of Ministers,

The European Commission,

The Court of Justice of the European Union,

~~The European Central Bank,~~

The Court of Auditors.

3. Each institution shall act within the limits of the powers conferred on it in the Constitution, and in conformity with the procedures and conditions set out in it. The institutions shall practice full mutual cooperation.³

¹ This amendment of the wording of title IV is important to make clear that there are institutions and other bodies of the Union. Institutions in the sense of organs of the Union are more strictly bound to the rules laid down in the Constitution. It implies control by the European Parliament and answerability to the European Court of Justice.

² The European Council should not be an institution in the sense of an organ of the European Union as long as it seems to be unrealistic that it will be bound to the control of the European Parliament and checked by the European Court of Justice and, at the same time, there is the risk of a watering-down of the ordinary procedures by the high-ranking composition of the European Council. Concerning the ECB (European Central Bank), there is no doubt that it is one of the important bodies of the EU. But it is less an organ and more an instrument for administering the Euro and doing so by strictly following the principle of price stability.

³ p.m.: a provision along the following lines "The institutions shall be supported, in discharging their tasks, by an open, efficient and independent public service" should appear elsewhere in the Constitution.

Article 15 : The European Parliament

1. The European Parliament shall form the House of Citizens and, jointly with the Council, enact legislation, as well as exercise functions of political control and consultation as laid down in the Constitution. It shall elect the President of the European Commission.⁴

2. The European Parliament shall be directly elected by universal suffrage of European citizens in free and secret ballot for a term of five years. Its members shall not exceed seven hundred in number. Representation of European citizens shall be degressively proportional, with a minimum threshold of four members per Member State. The number of representatives elected in each Member State shall be as follows:

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3. The European Parliament shall elect its President and its officers from among its members, for a term of five years.

4. The European Parliament shall control the European Commission.

5. The European Parliament may, acting by a majority of its members, request the Commission to submit any appropriate proposal on matters on which it considers that a Union Act is required for the purpose of implementing this Constitution.⁶

7. The European Parliament may, by a motion of censure with a two-third majority of its members [of the votes cast], force the Commission to resign as a body.

Article 16 : The European Council

1. The European Council shall provide the Union with the necessary impetus for its development, and shall define the its general political ~~directions and priorities~~ guidelines for this development.⁷

⁴ The character of the European Parliament as the House of Citizens should be stressed.

⁵ So far, the Constitution does not include any provision on the distribution of seats per country within the European Parliament. This has been the case in all treaties up to date and should also be the case in the European Constitution.

⁶ Right of the Parliament to challenge the Commission to submit a proposal in analogy to Art. 192 ECT.

2. The European Council shall consist of the Heads of State or Government of the Member States, together with its ~~President~~Chairman and the President of the Commission. The Foreign Minister shall take part in its work.⁸

3. Within the European Council, its Chairman, the President of the Commission and the Foreign Minister do not vote. Should the Chairman of the European Council be an acting Head of State or Government, he/she shall exercise his/her right of voting.⁹

~~3.4.~~ The European Council shall meet ~~quarterly~~ at least two times a year, convened by its ~~President~~Chairman. When the agenda so requires, its members may decide to be assisted by a minister, and, in the case of the President of the Commission, a Commissioner. When the situation so requires, the ~~President~~Chairman shall convene an additional meeting of the European Council.

~~4.5. Except where the Constitution provides otherwise, decisions of the European Council shall be taken by consensus.~~ The European Council decides on the guidelines for the Union by consensus. Should it meet in the formation of the Council, decision-making and procedures as laid down for the Council in this Constitution shall be applied.¹⁰

Article 16a : The European Council Chair

1. The European Council shall elect its ~~President~~Chairman, by qualified majority, for a term of two and a half years, renewable once. The person elected must be, or have been for at least two years, a member of the European Council. In cases of serious malpractice, the European Council can end his mandate according to the same procedure. On issues concerning its common foreign and security policy he ~~shall~~may ensure in close coordination with the work

⁷ The political directions and priorities could be misunderstood as going too far already into legislative matters which should be exclusively dedicated to the Council. It would therefore make sense to use the old wording of Art. 4 of the Union Treaty.

⁸ The term 'Chairman of the European Council' seems to be more appropriate than 'president' in view of the manifold resistance against the idea of a "European President".

⁹ It should be made clear that the Foreign Minister and the President of the Commission do not have voting rights. The same applies to the Chairman if he is an outsider, respectively not a member of the European Council. On the other hand, it should be made clear with a view to Art. 16a (1) that a Head of State or Government, acting as Chairman of the European Council, would of course have his right to vote.

¹⁰ It should be made clear that the European Council is a superstructure and not an ordinary decision-making body of the European Union.

of the Minister for Foreign Affairs that the Union at ~~his~~ the Chairman's level is effectively represented in the wider world.¹¹

2. The ~~President~~ Chairman of the European Council shall chair it and drive forward its work, ensuring proper preparation and continuity. He shall endeavour to facilitate cohesion and consensus within the European Council. He shall present a report to the European Parliament after each of its meetings.

~~3.~~ 3. The European Council may decide by consensus to create a board consisting of three of its members chosen according to a system of equitable rotation. 11¹²

~~4. The President of the European Council may not be a member of another European institution or hold a national mandate.~~¹³

Article 17 : The Council of Ministers

1. The Council of Ministers shall form the House of States, whenever it enacts; jointly with the European Parliament, ~~enact~~ legislation, and shall carry out policy-making and coordinating functions, as laid down in the Constitution, without prejudice to the competences of the Commission and in cooperation with her.¹⁴

¹¹ The centre of gravity of the foreign policy of the Union should lie with the new Minister for Foreign Affairs. Of course, the Chairman of the European Council can represent the Union on a presidential level. However, he should do so only where required. Therefore, close cooperation and coordination between the Chairman of the Council and the Foreign Minister seems to be necessary and should be stressed in the Constitution.

¹² It may not be necessary to create a Board should the Foreign Minister carry the main responsibility for the Union's foreign policy and when, as laid down in Art. 17a, the General Affairs Council will dedicate most of its time to preparing European Council meetings. This all will lead to relief for the Chairman of the European Council and it would be redundant to create a Board consisting of 3 European Council members for his support. This would be even more the case if he would be a full-time chairman. Maintaining this paragraph would only make sense if it would lead to a sort of reassurance for a minimum of rotation at the Union's highest level (through a Board). But this would require defining more precisely the tasks of the Board/Praesidium. Taking all these points into consideration, it would make more sense to delete this paragraph.

¹³ Paragraph 4 should be deleted. This paragraph is not consistent with paragraph 1 of Art. 16a which stipulates that a chairman of the European Council could be elected out of the members of the European Council (who would of course hold a national mandate). Additionally, when deleting this paragraph, the option for electing the Commission President is reserved.

¹⁴ It should be stressed that the Council of Ministers acts as the House of States in exercising his legislative functions. Also, traditional treaty language with respect to the competences of the Commission as the main executive body should be respected.

2. The Council of Ministers shall consist of a representative of each Member State at ministerial level for each of its formations. Only this representative may commit the Member State in question, and cast its vote.

~~3. Except where the Constitution provides otherwise, decisions of the Council shall be taken by qualified majority.~~¹⁵

3. The Council may request the Commission to undertake any studies the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals.¹⁶

Article 17a : Council formations

1. The General Affairs Council shall ensure consistency in the work of the Council ~~of Ministers~~ and coordinate the various chairs of the council formations in order to ensure coherence and continuity. With the participation of the Commission, it shall prepare meetings of the European Council.

2. The Legislative Council shall consider and, jointly with the European Parliament, enact European laws and European framework laws, in accordance with the provisions of the Constitution. Each Member State's ministerial representative may be assisted by one or, if necessary, two specialist ministers, reflecting the business on the Council agenda.

3. The Foreign Affairs Council shall, on the basis of strategic guidelines laid down by the European Council, flesh out the Union's external policies as well as the Common Foreign, Security and Defence Policy, and ensure that its actions are consistent. It shall be chaired by the Union's Foreign Minister.¹⁷

4. The Council shall also meet in the configuration of an Economic and Financial Affairs

¹⁵ See Art. 17b.

¹⁶ The right of requesting the Commission should be mentioned for the Council (see Art. 208 ECT) in the same way as the European Parliament has this right.

¹⁷ It should be made clear that the Council, in following the guidelines of the European Council, will cover the whole range of external policies as well as of the Common Foreign, Security and Defence Policy. As it is formulated now in the Constitution it could be misinterpreted in a sense that foreign and security policy would be a task of the European Council and its Chairman.

Council, and a Council on Justice and Security.

5. The Council, in its General Affairs formation, may decide on further formations.

6. The European Council may decide by ~~consensus-qualified majority~~ that the ~~Presidency Chair~~ of a Council formation, other than that of Foreign Affairs, should be undertaken by a ~~minister of a~~ Member State for a period of at least a year ~~and two and a half years in the maximum~~, taking into account European political and geographical balance and the diversity of all Member States. ~~The European Council may decide by the same procedure that the Commission President or the Vice-Presidents of the Commission could chair Council formations other than that of Foreign Affairs.~~¹⁸

Article 17b : Qualified majority

1. When the European Council or the Council take decisions by qualified majority, such a majority shall consist of the majority of Member States, representing at least three fifths of the population of the Union.

~~[2. Within the European Council, its President and the President of the Commission do not vote.]~~¹⁹

Article 18 : The European Commission

1. The European Commission shall as the executive power²⁰ safeguard the general European interest. It shall ensure the application of the Constitution, and steps taken by the institutions under the Constitution. It shall also exercise coordinating, executive and management functions as laid down in the Constitution.

¹⁸ The possibility of electing chairmen for individual Council formations should focus on ministers belonging to that Council formation and limit their term up to two and a half years in the maximum. Also, the possibility of electing Commissioners into the chair of a Council should be kept open.

¹⁹ This paragraph has been removed in an amended form to Art. 16. 3.

²⁰ The executive role of the Commission should be strengthened.

2. Except where the Constitution provides otherwise, Union acts can be adopted only on the basis of a Commission proposal.

3. The Commission shall consist of a President and up to fourteen other members. It may call on the help of Associate Commissioners. Only nationals of member states may be members of the Commission. The Commission decides with the majority of its members.²¹

4. In carrying out its responsibilities, the Commission shall be completely independent. In the discharge of their duties members of the Commission shall neither seek nor take instructions from any government or other body.

5. The Commission shall formulate recommendations or deliver opinions on matters dealt with in this Constitution, if it expressly so provides or if the Commission considers it necessary.²²

Article 18a : The President of the European Commission

1. Taking into account the result of the elections to the European Parliament, the European Council, deciding by qualified majority, shall put forward to the European Parliament its proposed candidate for the Presidency of the Commission. This candidate shall be elected for five years by the newly elected European Parliament at its first session by a majority of its members. If this candidate does not receive the required majority support, the European Council shall within one month put forward a new candidate, following the same election procedure and criteria as before.²³

2. Each Member State shall submit a list of three persons, of which at least one must be a woman, whom it considers qualified to be a European Commissioner. The President-elect, taking into account the candidate for the Foreign Minister and the role of European political and geographical balance, shall, from among the names submitted, select as members of the

²¹ The traditional stipulations that only nationals of Member States could become Commissioners and that the Commission decides by the majority of its members were missing.

²² The role of the Commission as a driving force of integration should be strengthened.

²³ It is necessary that the President of the Commission will be elected on the background of the results of the elections to the European Parliament. It is also important that he will be elected for 5 years and that this will be done by the European Parliament at its first session after the elections. Otherwise there is no clear link to the results of the elections and to any provision in terms of timing.

Commission for a period of five years up to thirteen persons chosen for their competence, European commitment, and guaranteed independence. The President and the persons so nominated for membership of the Commission shall be submitted as a body to a vote of approval by the European Parliament, after having been interviewed individually by the European Parliament.

3. The Commission, as a body, shall be responsible to the European Parliament. Under the procedures set out at Art. ~~X15(7)~~ of the Constitution, it may pass a censure motion on the Commission. If such a motion is passed, the members of the Commission must all resign. They shall continue to handle everyday business until their successors are nominated.

4. The Commission shall work to guidelines laid down by its President. He shall decide its internal organisation, ensuring that it acts consistently, efficiently and on a collegiate basis. He shall appoint, after obtaining the approval of the College, vice-presidents from among the members of the Commission.

5. The President may appoint Associate Commissioners, chosen according to the same criteria as apply for members of the Commission. Their number must not exceed the number of members of the Commission.

Article 19 : The Foreign Minister

1. The European Council, deciding by qualified majority, with the agreement of the President of the Commission and after consulting the European Parliament²⁴, shall appoint the Union's Foreign Minister. He shall conduct the Union's common foreign and security policy.

2. The Foreign Minister shall contribute by his proposals to the development of the common foreign policy, which he shall carry out as mandated by the Council. The same shall apply to the common security and defence policy.

²⁴ The rights of the European Parliament in the inauguration of the Commission should be expanded. The role of the future Foreign Minister of the EU may be of a significance that it appears to be impossible that his appointment will take place without any deeper involvement of the European Parliament.

3. The Foreign Minister shall be one of the Vice-Presidents of the Commission. He shall be responsible there for handling external relations and for co-ordinating other aspects of the Union's external action. In exercising these responsibilities within the Commission, and only for these responsibilities, he shall be bound by Commission procedures.

4. The Foreign Minister will be the Head of the Delegations of the Commission which will be called Delegations of the European Union. He shall be responsible for the external relations competence of the Commission and for the whole range of foreign, security and defence policy, for which the relevant units of the Secretariat General are closely working with him.²⁵

Article 20 : The Court of Justice of the European Union

1. The Court of Justice, including the High Court, shall ensure respect for the Constitution and Union law. The Member States shall provide rights of appeal sufficient to ensure effective legal protection in the field of Union law.

2. The Court of Justice shall consist of one judge from each Member State, and shall be assisted by Advocates-General. The High Court shall include at least one judge per Member State: the number shall be fixed by the Statute of the Court of Justice. The judges of the Court of Justice and the High Court, and the Advocates-General of the Court of Justice, chosen from persons whose independence is beyond doubt and who satisfy the conditions set out at Article [XX] of Part II, shall be appointed by ~~common accord of the governments of the Member States~~ the Council, after assent of the European Parliament, for a term of six years²⁶, renewable.

3. The Court of Justice shall be competent for :

- ruling on actions brought by the Commission, a Member State, an institution or a natural or legal person in the cases and according to the modalities foreseen in article [YY] of Part II;

²⁵ The whole Art. 19 on the Foreign Minister of the European Union is rather vague. His responsibilities should be made clearer. It should not be open to discussion whether he has a grip on the traditional External Relations DG of the Commission or the respective units dealing with foreign and security policy and external relations in the Secretariat General. It should also be mentioned here that he is the Head of the future worldwide delegations of the Union.

²⁶ For the Court of Justice the Discussion Circle, chaired by Mr Vitorino, also examined the possibility of a non-renewable mandate of 9 or 12 years.

- preliminary rulings, at the request of Member State courts, on the interpretation of Union law or the validity of acts adopted by the institutions;
- ruling on appeals on decisions given by the High Court or exceptionally reviewing these decisions under conditions laid down in the Statute of the Court.

Article ~~21~~22 : The European Central Bank²⁷

1. The European Central Bank shall direct the European System of Central Banks, of which it, alongside the national central banks, forms part.
2. The primary objective of the Bank shall be to maintain price stability. Without prejudice to the objective of price stability, it shall support general economic policies in the Union with a view to contributing to the achievement of the Union's objectives.
3. The Bank shall define and implement the monetary policy of the Union. It alone may authorise the issue of the Union currency, the Euro. It shall conduct other Central Bank tasks according to the provisions of Part II of the Constitution.
4. The Bank shall have legal personality. In the exercise of its powers and for its finances, it shall be independent. Union institutions and bodies, and the governments of the Member States, shall ~~undertake to~~ fully respect this principle.
5. The Bank shall adopt such measures as are necessary to carry out its tasks in accordance with the provisions of Articles [A-B] of Part II of the Constitution, and with the conditions laid down in the Statutes of the Bank and of the European System of Central Banks. In accordance with these same provisions, those Member States which have not adopted the Euro, and their central banks, shall retain their powers in monetary matters.
6. Within its areas of competence, the Bank shall be consulted on all proposed Union acts, and all proposals for regulation at national level; and may give an opinion.

²⁷ Since the European Central Bank should not be an institution in the sense of an organ of the Union this article should be moved to Art. 22 and the article on the Court of Auditors should be put upwards and become Art. 21. The idea is to make the separation clearer between institutions (organs) of the Union and other bodies or agencies.

7. The organs of the Bank, their composition and operating methods are set out in articles X to Y of Part II, as well as in the Statute of the Bank.

Article ~~222~~21 : The Court of Auditors

1. The Court of Auditors shall carry out the audit of the Union.
2. It shall examine the accounts of all Union revenue and expenditure, and shall ensure good financial management.
3. It shall consist of one national of each Member State. In the performance of their duties, its members shall be completely independent.

Article 23 : The Union's Advisory Bodies

1. The European Parliament, the Council ~~of Ministers~~ and the Commission shall be assisted by a Committee of the Regions and an Economic and Social Committee, exercising advisory functions.
2. The Committee of the Regions shall consist of representatives of regional and local bodies who have either been elected to a regional or local authority or are politically accountable to an elected assembly.
3. The Economic and Social Committee shall consist of representatives of organisations of employers, of the employed, and of others in representative civil society, notably in socio-economic, civic, professional, environmental and cultural areas.
4. The members of the Committee of the Regions and the Economic and Social Committee must not be bound by any mandatory instructions. They shall be completely independent, in the performance of their duties, in the Union's general interest.

5. Rules governing the composition of these Committees, the designation of their members, their powers and their operations, are set out in Articles XY of Part II of the Constitution. The rules governing their composition shall be reviewed at regular intervals by the Council, on the basis of a Commission proposal, in the light of economic, social and demographic developments within the Union.

~~Article X : to be inserted in Title VI on "The Union's Democratic Life"²⁸~~

~~1. The Congress of the Peoples of Europe shall provide a forum for contact and consultation in European political life. It shall meet at least once a year. Its meetings shall be public. The President of the European Parliament shall convene and chair them.~~

~~2. The Congress shall not intervene in the Council's legislative procedure.~~

~~3. The President of the European Council shall report on the State of the Union. The President of the Commission shall present the annual legislative programme.~~

~~4. One third of the Congress shall be members of the European Parliament: two thirds shall be representatives of national Parliaments. The total shall not exceed seven hundred.~~

²⁸ This Article should be deleted. Instead, COSAC may be mentioned as an appropriate body for linking the European Parliament with national parliaments. This should be done by adding a respective paragraph to Article 15 of the first part of this Constitution.