



## **A Proposal for a Revised Constitutional Treaty April 2006**

*NOTE: The provisions in this proposal cross refer where appropriate to the Treaty Establishing a Constitution for Europe (TECE) and to the Basic 'Constitutional' Treaty for the European Union of the European Constitutional Group dated 8 June 2003 (ECG). The order of the provisions generally follows TECE.*

**Preamble.** The Heads of State of the Member Governments of the European Union offer to their peoples and to their parliaments for their approval the following Constitutional Treaty. Subject to their consent, the Constitutional Treaty sets out the principles and procedures under which the European Union will strive to provide an area of freedom, peace, cooperation and the rule of law for its citizens. They therefore have designated as their plenipotentiaries etc...

### **PART I MAIN PROVISIONS**

#### ***Article 1*** **Objectives**

1. Reflecting the will of the citizens and States of Europe to build a common future, this Constitutional Treaty establishes the principles and procedures under which the European Union shall operate. (ref. TECE Art.1-1).
2. The Union is founded on the values of respect for human dignity, freedom, democracy, equality before the law and respect for human rights, including the rights of persons belonging to minorities. (ref. TECE Art. 1-2).
3. The Union's aim is to promote peace and the democratic and market freedoms of its peoples.(ref. TECE Art.1-3 para.1.).
4. The Union shall safeguard for its citizens an area of freedom, security and justice without internal frontiers, and an internal market where competition is free and undistorted. (ref. TECE Art. 1-3 para.2).
5. In its relations with the wider world, the Union shall contribute to the development of international order, including respect for the principles of the United Nations Charter.(ref. TECE Art.1-3 para.4).

6. The Union shall pursue its objectives within the limits of the competences which are conferred upon it in this Constitutional Treaty. (ref. TECE Art.1-3 para.5).

7. The Union shall have legal personality. (Ref. TECE Art.1-7).

## ***Article 2***

### **Fundamental Freedoms and Citizenship**

1. The free movement of persons, services, goods and capital, and freedom of establishment shall be guaranteed within and by the Union, in accordance with the Constitutional Treaty. (ref. TECE Art.1-4 para.1)

2. The Union shall recognise the rights drawn from the Charter of Fundamental Rights which are set out in Part II. (ref. TECE Art.1-9 para.1).

3. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Constitutional Treaty. (ref. TECE Art.1-9 para.2).

4. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law. (ref. TECE Art.1-9 para.3).

5. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship and shall not replace it.(ref. TECE Art.1-10 para.1).

6. Citizens of the Union shall enjoy the rights set out in Part II of this Constitutional Treaty. (ref TECE Art.1-10 para.2).

7. These rights shall be exercised in accordance with the conditions and limits defined by the Constitutional Treaty and by the measures adopted thereunder.(ref. TECE Art.1-10 para.2 cont.).

## ***Article 3***

### **The Exercise of Union Competences**

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality. (ref. TECE Art.I-II para.1).

2. Under the principle of conferral, the Union shall act within the limits of the competences expressly conferred upon it by the Member States in the Constitutional Treaty to attain the objectives set out in the Constitutional Treaty. Competences not conferred upon the Union in the Constitutional Treaty remain with the Member

States. The Union and its institutions shall not act on the basis of ‘implied’ powers. (ref. TECE Art.I-II para.2).

3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall not act in cases where the public policy concerned can be carried out by Member States acting individually or in small groupings. (ref. TECE Art.I-II para.3 and ECG Art.6 para.i).

4. The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments shall ensure compliance with that principle in accordance with the procedure set out in that Protocol.<sup>1</sup> Specifically, in cases where Union measures are envisaged they shall be prepared and implemented according to the following procedures: (ref. TECE Art.I-II para.3cont).

5. Any proposed framework law or regulation with a significant economic effect (including those envisaged as part of an international treaty or commitment) must be supported by an assessment of its impact and a justification of why a Union measure rather than other methods of achieving comparable results including market remedies has been chosen;

The assessments must be made publicly available in time for independent peer review as well as democratic scrutiny;

The assumptions on which assessments have been carried out must also be made public so that the assessments can be reproduced in the scrutiny process. (ref. ECG Art.6 para vi).

6. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to abide by the provisions of the Constitutional Treaty. (ref. TECE Art.I-II para.4.)

7. The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. (ref. TECE Art. I-II para.4.)

8. When the Constitutional Treaty confers on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts. In this area union law has primacy. (ref. TECE Art.1-12 para.1 see also TECE Art.1-6).

9. When the Constitutional Treaty confers on the Union a competence shared with the Member States in a specific area, both the Union and the Member States may legislate and adopt legally binding acts in that area. In the event of conflict between Union law and the law of a Member State in the same area a special court shall adjudicate.(ref. ECG Art.6 para.

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<sup>1</sup> Protocol to be amended to reflect para.5 below and the representation of national parliaments through a second chamber. (Art.5 para.7 below).

iii and ECG Art.7 para.vi).

10. The Union shall not act in cases where powers are expressly reserved to the Member States or otherwise not specified. In all such areas the law of Member States has primacy. (ref. ECG Art.6 para.iii).

11. Without superceding the three areas of competence stated above, in certain areas of public policy the Member States may regard their actions as being of common concern. These areas are specified below. They may in certain circumstances lead to common action being taken under the rules set out in this Constitutional Treaty. (ref. TECE Art.1-12 para.4)

12. The scope of and arrangements for exercising the Union's competences shall be determined by the provisions relating to each area in Part III. (ref. TECE Art.1-12 para.6).

#### ***Article 4***

#### **The Division of Competence**

1. The Union shall have exclusive competence in the following areas:

(a) customs union;

(b) monetary policy for the Member States whose currency is the euro;

(c) common commercial policy. (ref. TECE Art.1-13. para.1).

2. The Union shall share competence with the Member States where the Constitutional Treaty confers on it a competence which does not relate to the areas above. Shared competence between the Union and the Member States applies in the following principal areas:

(a) internal market including competition policy;

(b) fisheries,

(c) environment in cases where actions taken by one Member State have a demonstrable negative impact on others. (ref. TECE Art.1-14 paras.1&2).

3. In all areas not specified above, competences are reserved to the Member States. Specific areas of competence reserved to the Member States include:

(a) freedom of contract in their labour markets; the definition of the social objectives of services of general interest; social policy defined to include state retirement provisions and eligibility, state education policy including eligibility, state health policy including eligibility and other measures Member States have designed to combat poverty, all forms of discrimination and social exclusion suited to their own circumstances as long as they do not conflict with the four freedoms. (ref. ECG Art.6 para.iv)

(b) Taxation policy is reserved to the Member States. Accordingly matters concerning the tax systems of Member States or the rates and levels at which taxes are levied are to be decided within each Member State. (ref. ECG Art.6 para.v).

4. The economic policies of the Member States are a matter of mutual interest. Accordingly, Finance Ministers in the Council of Ministers shall submit their policies to mutual examination, avoid excessive government deficits, and conduct economic policies favourable to an efficient allocation of resources so as to achieve sustainable and non-inflationary growth. Official bodies of the Member States are not permitted to borrow from the European Central Bank. Specific provisions shall apply to those Member States whose currency is the euro in addition to a general undertaking to support the duties of the European Central Bank to maintain price stability. (ref. TEC Art. 1-15 & ECG Art.4 para.iii).

5. The Member States shall regard their foreign and security policies as matters of common concern. This may lead to common policies in these areas. (ref. TEC Art.1-16 & ECG Art.5. para.i).

6. In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct a policy together that reflects their common concern to assist emerging economies; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs. (ref. TECE Art.1-14 para.4).

7. The Union shall have the power to conclude international agreements alongside Member States, or in place of Member States, where Member States unanimously agree on a case by case basis that a Union agreement adds to the credibility of the agreement and the likelihood that it will be observed. (ref. TECE Art.1-13 para.2).

8. If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States. (ref. TECE Art.1-41 para.7).

9. Commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation. (ref. TECE Art.1-41 para 7 cont).

10. The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. (ref. TECE Art.1-43 para.1).

## **Article 5**

### **The Union's institutions**

1. The Union shall have an institutional framework organised according to democratic principles and respecting the separation of powers.

This institutional framework comprises:

- The European Parliament,
  - The European Council,
  - The Council of Ministers (hereinafter referred to as the `Council'),
  - The European Commission (hereinafter referred to as the `Commission'),
  - A Court of Review.
  - The Court of Justice of the European Union.
  - The European Central Bank and other Independent Institutions.
- (ref. TECE Art.1-19 para.1).

2. Each institution shall act within the limits of the powers conferred on it in the Constitutional Treaty, and in conformity with the procedures and conditions set out in it. (ref. TECE Art.1-19 para.2).

### **The European Parliament**

3. The European Parliament shall consist of two bodies; a directly elected Assembly (First Chamber) and a body drawn from national parliaments (Second Chamber). Together they shall exercise legislative control. (ref. TECE Art.1-20 para.1 and ECG Art.7 iv sub para 1).

4. The First Chamber shall be composed of representatives of the Union's citizens. They shall not exceed five hundred in number. Representation of citizens shall be degressively proportional, with a minimum threshold of two members per Member State. No Member State shall be allocated more than fifty seats. (ref. TECE Art.1-20 para.2. and ECG Art.7 para. v sub para 9).

5. The First Chamber shall have the right of taking the legislative initiative by requesting the Council to submit a proposal. It may subsequently approve, amend, within the scope of the legislation or block the proposed law. (ECG Art.7 para.iv)

6. The members of the First Chamber shall be elected for a term of five years by direct universal suffrage in a free and secret ballot. (ref. TECE Art.1-20 para.3).

7. The Second Chamber shall ensure that all proposals submitted by the Council are consistent with the provisions of this Constitutional Treaty governing the use of Union competences, notably the principles of subsidiarity and proportionality. It may block proposals that are not in its opinion consistent. (ref. ECG Art.7 iv subpara.3).

8. The European Parliament and national parliaments shall be regularly consulted on the main aspects and basic choices of any common foreign and security policy. They shall be kept informed of how they evolve. (ref. TECE Art.1-41 para 8).

## **The European Council**

9. The European Council shall define the general political directions and priorities of the Union. (ref. TECE Art.1-21 para.1)

10. It has the exclusive right to propose legislation at the request of a Chamber of the Parliament. It may veto laws passed by the Parliament. (ref. ECG Art.7 para. i).

11. The European Council shall identify the Union's strategic interests and determine the objectives of any common foreign and security policies. The Council shall frame these policies within the framework of the strategic guidelines established by the European Council. (ref. TECE Art.1-40 para.2).

12. The European Council shall consist of the Heads of State or Government of the Member States, together with its President and the President of the Commission. (ref. TECE Art.1-21 para 2).

13. The European Council shall elect its President, by a qualified majority, for a term of two and a half years, renewable once. In the event of an impediment or serious misconduct, the European Council can end his or her term of office in accordance with the same procedure. (ref. TECE Art.1-22 para.1. and ECG Art.7 para.i).

14. The President of the European Council shall, at his or her level and in that capacity, ensure the external representation of the Union on issues concerning its common foreign and security policy. (ref. TECE Art. 1-22 para 2).

## **The Council of Ministers**

15. The Council shall, jointly with the European Commission, prepare legislative and budgetary proposals for consideration by the European Parliament.

16 The Council shall carry out policy-making and coordinating functions as laid down in the Constitutional Treaty. (ref. TECE Art.1-23 para.1 and ECG Art.7 para.ii).

17. The Council shall consist of a representative of each Member State at ministerial level, who may commit the government of the Member State in question and cast its vote. (ref. TECE Art.1-23 para.2).

18. The Council shall meet in different configurations so as to ensure that the objectives set by the European Council are implemented.(ref. TECE Art.1-24 para.1).

19. A Committee of Permanent Representatives of the Governments of the Member States shall be responsible for preparing the work of the Council. (ref. TECE Art.1-24 para.5).

20. The Council shall act by a qualified majority except where the Constitutional Treaty provides otherwise.(ref. TECE Art.1-23 para.3).

21. A qualified majority shall be defined as at least two thirds of the members of the Council, and representing Member States comprising at least two thirds of the population of the Union. (ref. ECG Art.9 para.i).

22. A blocking minority must include at least four Council members, failing which the qualified majority shall be deemed attained. (ref. TECE Art.1-25 para.1 subpara.2).

23. The same thresholds shall apply to the European Council when it is acting by a qualified majority.

24. Within the European Council, the President of the Commission shall not take part in the vote. (ref. TECE Art.1-25. para.4).

25. European decisions relating to any common foreign and security policy shall be adopted by the European Council and the Council unanimously, . The European Council and the Council shall act on an initiative from a Member State European framework laws shall be excluded. (ref. TECE Art.1-40 para.6).

### **The European Commission**

26. The Commission shall execute the budget and manage programmes. It shall exercise coordinating, executive and management functions, as stipulated by the European Council. With the exception of foreign and security policy, and other cases provided for in the Constitutional Treaty, it shall help ensure the Union's external representation. (ref. TECE Art.1-26 para.1 and ECG Art.7 para. iii)

27. The Commission's term of office shall be five years and not exceed two terms.

28. The members of the Commission shall be chosen on the ground of their general competence. (ref. TECE Art.1-26 para 4.)

29. It shall consist of one national of each Member State, including its President. (ref. TECE Art.1-26 para 5).

30. The Commission shall be fully associated with the work of the Council and support the strategic objectives set by the European Council. In the event of malfeasance a Commissioner may be dismissed by the European Council. (ref. ECG Art.7 para.iii).

31. The Commission shall answer to the European Parliament as and when called upon to assist hearings or inquiries. (ref. TECE Art.1-26 para.8).

### **Courts**

32. The Court of Justice of the European Union shall interpret the law of the Union with the exception of those laws involving the interpretation of Human Rights or the distribution

of competences between the Union and Member States. (ref. TECE Art. 1-29 para.1 and ECG art.7 para. vi).

Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law. (ref. TECE Art.1-29 para.1 subpara.2).

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

34. The Judges and the Advocates-General of the Court of justice shall be chosen from persons whose independence is beyond doubt. They shall be appointed by common accord of the governments of the Member States for six years. Retiring Judges and Advocates-General may not be reappointed. (Ref. TECE Art. 1-29 para.2 and ECG Art.7 para. vi).

35. The Court of Justice of the European Union shall in accordance with Part III:

(a) rule on actions brought by a Member State, an institution or a natural or legal person;

(b) rule in other cases provided for in the Constitutional Treaty. (ref. TECE Art.1-29 para.3).

36. The European Court of Human Rights shall hear all cases involving human rights aspects of European Laws and institutions in cases not decided in the Member States themselves. (ref. ECG Art.7 para. vi sub para.2)

37. A Court of Review composed of justices designated by the highest courts of member states shall hear all cases potentially involving the distribution of competences between the Member States and the Union. (ref. ECG Art.7 para.vi sub para 3)

### **The European Central Bank and Other Independent Institutions.**

38. The European Central Bank, together with the national central banks, shall constitute the European System of Central Banks. The European Central Bank, together with the national central banks of the Member States whose currency is the euro, which constitute the Eurosystem, shall conduct the monetary policy of the Union. (ref. TECE Art. 1-30 paras.1-4).

39. The European System of Central Banks shall be governed by the decision-making bodies of the European Central Bank. The primary objective of the European System of Central Banks shall be to maintain price stability. Without prejudice to that objective, it shall support the general economic policies in the Union in order to contribute to the achievement of the latter's objectives. It shall conduct other Central Bank tasks in accordance with Part III and the Statute of the European System of Central Banks and of the European Central Bank.

40. The European Central Bank is an institution. It shall have legal personality. It alone may authorise the issue of the euro. It shall be independent in the exercise of its powers and in the management of its finances. Union institutions, bodies, offices and agencies and the governments of the Member States shall respect that independence.

41. The European Central Bank shall adopt such measures as are necessary to carry out its tasks in accordance with the relevant articles in Part III. and with the conditions laid down in the Statute of the European System of Central Banks and of the European Central Bank. In accordance with these same Articles, those Member States whose currency is not the euro, and their central banks, shall retain their powers in monetary matters.

42. An independent Competition Authority shall decide cases involving restrictive practices in the Union. It shall not take instructions from any other institution.(ref. ECG Art.7 para.vi subpara.4).

43. The Court of Auditors is an independent institution. It shall carry out the Union's audit. (ref. TECE Art.1-31 paras 1-3)

44. It shall examine the accounts of all Union revenue and expenditure, and shall ensure good financial management. It shall audit the performance of Union measures to ensure that they fulfill their intent. (ref. ECG Art.7 para.vi subpara.5).

45. In the event of adverse findings it shall have the power to suspend Union expenditure programmes or legislative measures subject to the approval of the Second Chamber of the European Parliament. (ref. ECG Art.7 para.iv subpara.5).

46. It shall consist of one national of each Member State drawn from the audit authorities in the Member States. Its members shall be completely independent in the performance of their duties, in the Union's general interest.

## ***Article 6***

### **The legislative acts and processes of the Union**

1. To exercise the Union's competences the institutions shall use as legal instruments, in accordance with Part III, European framework laws, European regulations, European recommendations and opinions. (ref. TECE Art.1-33 para.1 and ECG Art.6 para.ii).

2. A European framework law shall be a legislative act binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

3. A European regulation shall be a non-legislative act of general application for the implementation of legislative acts.. It may either be binding in its entirety and directly applicable in all Member States, or be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

4. Recommendations and opinions shall have no binding force.

5. European framework laws shall be adopted jointly by the European Parliament and the Council under the ordinary legislative procedure as set out above. (Art 5). If the Council and Parliament cannot reach agreement on an act, it shall not be adopted.

6. The First Chamber shall not block any proposal from the Council that simplifies or annuls previous legislation and that has received the approval of the Second Chamber representing national parliaments. (ref. ECG Art.7 para.iv).

7. The Council and the Commission on behalf of the Council, and the European Central Bank in the specific cases provided for in the constitutional treaty, shall adopt European regulations.

8. The Council shall adopt recommendations.

9. European framework laws may delegate to the Commission and to the regulatory bodies of the Member States the power to adopt delegated European regulations to supplement or amend certain non-essential elements of the framework law. (ref. TECE Art.1-36).

The objectives, content, scope and duration of the delegation of power shall be explicitly defined in the framework laws. The essential elements of an area shall be reserved for the framework law and accordingly shall not be the subject of a delegation of power.

10. European framework laws shall explicitly lay down the conditions to which the delegation is subject; these conditions may be as follows:

(a) Either chamber of the European Parliament or the Council may decide to revoke the delegation;

(b) the delegated European regulation may enter into force only if no objection has been expressed by either of the two chambers of the European Parliament, or by the Council within a period set by the European framework law.

For the purposes of (a) and (b), each Chamber of the European Parliament shall act by a majority of its component members, and the Council by a qualified majority.

11. Member States shall adopt all measures of national law necessary to implement legally binding Union acts. A formation of the Council shall exercise oversight with the

assistance of the Commission so as to ensure that implementation achieves equal legal effect in each member state.

12. In the event of uneven implementation the Second Chamber may suspend the law or regulation.

13. Member States which wish to establish enhanced cooperation between themselves within the framework of the Union's non-exclusive competences may cooperate outside the procedures and institutions laid down in this Constitutional Treaty. (ref. ECG Art.9 para.v and TECE Art.1-44).

14. Member States engaging in enhanced cooperation undertake to keep the European Council Informed.

### ***Article 7***

#### **Participatory Democracy**

1. Any qualified minority of national parliaments (one third) or of the population of the Union (one quarter of one percent) may petition for a referendum on any law or act of the Union that in their opinion violates the limits established by this constitutional treaty. The results shall be binding when supported by a two thirds majority of voters in a majority of Member states. (ref. TECE Art.1-47 para.4 and ECG Art.10 para.ii).

2. A European Ombudsman elected by the European Parliament shall receive, examine and report on complaints about maladministration in the activities of the Union institutions, bodies, offices or agencies, under the conditions laid down in the Constitutional treaty. The European Ombudsman shall be completely independent in the performance of his or her duties. (ref. TECE Art.1-49).

3. In order to promote good governance and ensure the participation of civil society, the Union institutions, bodies, offices and agencies shall conduct their work as openly as possible. (ref. TECE Art.1-50 para.1).

4. The European Parliament shall meet in public, as shall the Council when considering and voting on a draft legislative act. (ref. TECE Art.1-50 para.2).

5. Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament. (ref. TECE 11-104).

### ***Article 8***

#### **Budgetary and financial principles**

1. The annual expenditures of the Union shall be decided within the limits established by a five year multi-annual framework. The limit shall be expressed as a proportion of the Union's GDP.(ref. TECE Art.1-55 and ECG Art. 8 para.i).

2. In accordance with the reservation of competences set out in Art.4 above, any increases to the limits of the financial framework of the Union (expressed as a proportion of the GDP of the Union) shall require the support of a simple majority of voters in each of the net contributing countries. (ref. ECG Art.10 para iii).

3. The annual budget shall be in balance. Its composition shall be decided by the Council subject to the approval of the European Parliament. (ref. TECE Art.1-53 para.2 & ECG Art.8 para.iii)

4. Funding levels for the five year frameworks shall be decided unanimously by the Member States, subject to the approval of appropriations by their parliaments.(ref. ECG Art.8 para.iv).

5. With a view to maintaining budgetary discipline, the Union shall not adopt any act which is likely to have appreciable implications for the budget without providing an assurance that the expenditure arising from such an act is capable of being financed within the limit of the Union's multiannual financial framework. Any member state which proposes an increase in expenditure must accompany it with a proposal for a corresponding decrease elsewhere in the budget. ((ref. TECE Art.1-53 para.5).

6. The Union shall have no power to tax. Funding shall be provided by Member States in accordance with their relative capacity to pay as measured by the size of their gross public expenditures. (ref. TECE Art.1-54 para. 2 & ECG Art.8 para. ii).

7. Member States undertake to provide the Union through their contributions with the means necessary to attain the objectives and policies the European Council has set. (ref. TECE Art.1-54 para.1).

## ***Article 9***

### **Union Membership**

1. The Union shall be open to all European States which respect the values referred to in Article 1-2, and are committed to promoting them together.(ref. TECE Art.1-58 para.1).

2. Any European State which wishes to become a member of the Union shall address its application to the Council. The European Parliament and national Parliaments shall be notified of this application. The Council shall act unanimously after consulting the Commission and after obtaining the consent of the European Parliament, which shall act by a majority of its component members. The conditions and arrangements for admission shall be the subject of an agreement between the Member States and the candidate State. That agreement shall be subject to ratification by each contracting State, in accordance with its respective constitutional requirements.(ref. TECE Art.1-58 para.2).

3. A member state may have its membership suspended if the European Court of Human Rights determines that it is in material and persistent breach of the European Convention on Human Rights.(ref. ECG Art.2 para.vi).

4. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements. (ref. TECE Art. 1-60 para.1).

5. In such a case the Union and the seceding state shall maintain in force the free exchange of goods, services, capital and the free movement of people unless the seceding state introduces a policy against the four freedoms. (ref. ECG Art.2 para.v).

## **PART II**

### **THE CHARTER OF FUNDAMENTAL RIGHTS OF THE UNION**

#### **Preamble**

The peoples of Europe, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

To this end, it is necessary to ensure that Union institutions and procedures recognize the rights to be found within the Member States concerning the exercise of powers as well as in the obligations of Member States under the European Convention for the Protection of Human Rights and Fundamental Freedoms and the selected articles of the Charter of Fundamental Rights of the Union set out below.

In this context if domestic remedies have been exhausted, their peoples may call upon the protections and procedures offered under the European Convention of Human Rights. (ref. TECE Part II Preamble and ECG Art.3 para. i).

The Union therefore shall respect the rights, set out hereafter relevant to the way in which powers are exercised by Union institutions and by Member States executing Union measures.

#### **Article 1**

##### **Freedom of thought, conscience and religion (ref. TECE 11-70)**

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community

with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

#### ***Article 2***

#### **Freedom of expression and information (ref. TECE 11-71)**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

2. The freedom and pluralism of the media shall be respected.

#### ***Article 3***

#### **Freedom of assembly and of association (ref. TECE 11-72)**

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests. Nobody shall be required to join a union.

#### ***Article 4***

#### **Freedom of the arts and sciences (ref. TECE Art. 11-73)**

1. The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

#### ***Article 5***

#### **Right to property (ref. TECE Art.11-77)**

Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.

#### ***Article 6***

#### **Equality before the law (ref. TECE Art.11-80)**

Everyone is equal before the law.

*Article 7*

**Cultural, religious and linguistic diversity (ref. TECE Art.11-82)**

The Union shall respect cultural, religious and linguistic diversity.

*Article 8*

**Right to vote and to stand as a candidate. (ref. TECE Arts.11-99 & 11-100)**

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.

2. Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

*Article 9*

**Right to good administration (ref. TECE Art.11-101 &102)**

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

2. This right includes:

(a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

(b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

(c) the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Constitutional Treaty and must have an answer in the same language.

5. Everyone has the right to the protection of personal data concerning him or her.

6. European framework laws shall lay down the rules relating to the protection of individuals with regard to the processing of personal data by Union institutions, bodies, offices and agencies, and by the Member States when carrying out activities which fall within the scope of Union law, and the rules relating to the

free movement of such data. Compliance with these rules shall be subject to the control of independent authorities.

7. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State shall have a right of access to documents of the Union institutions, bodies, offices and agencies, whatever their medium.

8. Each institution, body, office or agency shall determine in its own rules of procedure specific provisions regarding access to its documents.

### ***Article 10***

#### **Freedom of movement and of residence (ref. TECE Art.11-105)**

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.

2. Freedom of movement and residence may be granted, in accordance with the Constitutional Treaty, to nationals of third countries legally resident in the territory of a Member State.

### ***Article 11***

#### **Diplomatic and consular protection (ref. TECE Art.11-106)**

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

### ***Article 12***

#### **Right to an effective remedy (ref. TECE Art.11-107)**

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

### ***Article 13***

#### **Interpretation and Application**

1. The provisions set out above are addressed to the manner in which the institutions, bodies, offices and agencies of the Union exercise their powers with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and apply them in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the other Parts of the Constitutional Treaty. (ref TECE Art.11 -111-114).

2. The provisions set out above do not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks defined in the other Parts of the Constitutional Treaty.

3. Rights recognised above for which provision is made in other Parts of the Constitutional Treaty shall be exercised under the conditions and within the limits defined by these relevant Parts.

4. Insofar as the rights set out above correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. .

5. Since the rights set out above result from the constitutional traditions common to the Member States, those rights shall be interpreted in the first instance by the Member States themselves.

6. Courts of the Member States may give right to refer their decisions to the Court of Human Rights.

7. Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

8. Nothing omitted from the provisions set out above may prevent Member States from incorporating other provisions from the European Charter of Fundamental Rights into their own domestic law.

**PART III**  
**TITLE I**  
**THE POLICIES OF THE UNION**

*Article 111-1 (ex III-130 to 153)*

**Internal market**

1. The Union shall adopt measures with the aim of establishing and ensuring the functioning of the internal market (ex-130 (1)). The internal market shall comprise an area without internal frontiers in which the free movement of persons, services, goods and capital is ensured (ex-130 (2)).
2. Workers shall have the right to move freely within the Union. Any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment shall be prohibited. In the field of social security, European laws shall secure aggregation of benefits under the laws of the different countries for employed and self-employed migrant workers and their dependants (ex-133, 136).
3. Restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries and to companies formed in accordance with the law of a Member State and having their office or principal place of business within the Union (ex-137, 142).
4. Restrictions on the freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended (ex-144 (1)).
5. The Union shall comprise a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries. Quantitative restrictions on imports and exports and all measures having equivalent effect shall be prohibited between the Member States (ex-181, 153). In its common trade policy the Union shall always strive for the free movement of goods and services (ECG Art. 5 (v)).
6. Member States shall adjust any state monopolies of a commercial character so as to ensure that no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Member States (ex-155 (1)).
7. Restrictions both on the movement of capital and on payments between Member States and between Member States and third countries shall be prohibited (ex-156 (1)).
8. Restrictions on the free use and full convertibility of currencies within the Union shall be prohibited (ECG Art. 4 (i)).

**Article 111-2 (ex III-161 to 176)**

**Rules on competition**

1. The Union shall secure free competition by implementing effective rules against cross border restrictive practices and by protecting it against distorting action of state institutions (ECG Art. 4 (iv) and 6 (iii)).
2. Any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the internal market (ex-167 (1)).
3. No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation in excess of that imposed directly or indirectly on similar domestic products or of such a nature as to afford indirect protection to other products (ex-170 (1)).
4. The rules of competition under this Article will be enforced by an Independent Competition Authority appointed by the Council (ECG Art. 7 (vi)).

**Article 111-3 (ex III-177 to 234)**

**Economic and environmental policy**

1. Member States shall regard their economic policies as a matter of mutual interest and exchange information about them in the Council (ex-179 (1)).
2. The Council, on the basis of reports submitted by the Commission, may monitor economic developments in each Member State and in the Union and shall regularly carry out an overall assessment (ex-179 (3)).
3. Member States shall avoid excessive deficits. The Commission shall monitor the development of the budgetary situation in the member states. If the budget deficit of a Member State exceeds 3 per cent of Gross Domestic Product, the Council shall adopt, without undue delay, recommendations addressed to the Member State concerned with a view to bringing that situation to an end within a given period. The recommendations shall be made public. If the Member State fails to put the Council's recommendations into practice within twelve months, the Member State will lose its voting right in the Council under this Article (ex-184 modified).
4. The European Central Bank has the primary objective of maintaining price level stability in the euro-area, more specifically of keeping the increase of the harmonised index of consumer prices published by the European Statistical Office between zero and two per cent. In carrying out this task it shall not seek or take instructions from any other institution or person. In particular it shall not take instructions with regard to the exchange rate. It may not lend to official bodies of the Member States nor to the Union.

The members of the Governing Board shall have tenure up to the statutory retirement age. The members of the Governing Board are accountable for achieving the constitutional objective of price level stability. If the inflation rate of the Euro exceeds three per cent per annum over a period of four years, the Governing Council may be dismissed by the two chambers of Parliament acting jointly (ECG Art. 7 (v)).

The Statute of the European Central Bank may be amended and new member states may be admitted to the euro-area, by a unanimous decision of the European Council (status quo).

5. The Union shall define and implement a common fisheries policy with the aim to introduce property rights (ex-225 (1)). Decisions require unanimity in the Council.

6. Union policy on the environment shall be confined to cross border spillovers affecting a majority of the Member States. It shall define property rights over the environment and appropriate measures of compensation. It shall take into account the diversity of situations in the various regions of the Union (ex-233 (2)). Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and with the competent international organisations (ex-233 (4)).

#### ***Article 111-4 (ex III-257 to 329)***

##### **External policies**

1. The Union's action on the international scene shall aim at peace and cooperation and be guided by the values listed in Art. 1-2. It shall contribute to the development of international law and cooperate with more encompassing international organisations such as the United Nations and the World Trade Organisation (ex-292 (1)).

2. The Union may pursue common external policies in order to

(a) safeguard its security and strengthen international security,

(b) combat crime,

(c) foster development and alleviate poverty in the developing countries,

(d) encourage the integration of all countries into the world economy,

(e) develop international measures to protect the environment,

(f) assist countries confronting natural disasters (ex-292 (2), ex-257 (3)).

3. The Union's common security and defence policy may include joint disarmament operations, humanitarian and rescue tasks, military advice, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation. All these tasks may contribute to the fight against terrorism, including support for third countries in combating terrorism in their territories (ex-309 (1)). In the area of foreign and security policy, the European Council shall act

unanimously on a recommendation from the Council and in agreement with NATO (ex-293 (1)).

4. The common commercial policy shall aim at worldwide liberalisation, particularly with regard to quantitative restrictions, tariffs and anti-dumping measures (ex-315 (1) modified).

5. The Union shall frame a common policy on asylum, immigration and external border control (ex-257 (1)).

***Article 111-5 (ex III-443 to 445)***

**Amendment**

1. The parliament or government of any Member State may submit to the Council proposals for amending provisions of this Constitutional Treaty (ex-Art. 443 (1)).

2. If, in two thirds of the parliaments of the Member States, there is a vote in favour of amending any of these provisions, an interparliamentary conference of national parliaments shall be convened to draft amendments (ECG Art. 10 (iv)). It shall have 50 members, at least one from each Member State. Otherwise, each member state shall be represented according to the size of its population.

3. The amendments shall enter into force after being ratified in each Member State (ex-443 (3)) according to their constitutional procedures.

4. In each Member State, a popular referendum is to be held. If the constitutional practice of the Member State does not provide for popular referenda, such a referendum is not binding on the parliament of the Member State. (ECG Art. 10 (iii) by analogy).

5. This Constitutional Treaty is concluded for an unlimited period (ex-446).