## Article I – The Federation and the Bill of Rights

1. The European Federal Union is, as **a secular Republic, one nation** formed by sovereign Citizens and **Member** States, participating in the Federation. **The European Federal Union shall respect the equality of Citizens and Member States before the Constitution as well as their identities, inherent in their fundamental structures, constitutional and political, inclusive of regional and local self-government.**
2. The powers not entrusted to the European Federal Union by the Constitution, nor prohibited to the States by this Constitution, are recognised powers of the Citizens and entrusted powers of the **Member** States, in order to protect the autonomous initiatives of Citizens and **Member** States, relating to activities of personal or general interest.
3. The European Federal Union sees in the natural rights of every living human being the only source from which agreed rights can be derived, such as formulated in the European Convention for the Protection of Human Rights and Fundamental Freedoms, and in the Charter of Fundamental Rights of the European Federal Union, whose rights shall have the same legal value as the Constitution.
4. Every Citizen has a right of access to documents of the Federation, States, and local Governments and the right to follow the proceedings of the courts and democratically elected bodies. Limitations to this right may be prescribed by law to protect the privacy of an individual, or else only for extraordinary reasons.
5. Subject to the provisions of Article V, Section 1, Clause 8, the European Federal Union may accede and adhere to a World Federation on the basis of an Earth Constitution.

## Explanatory Memorandum of Article I

### Explanation of Clause 1 – the formal basis

From a formal point of view, the sequence of establishing this Constitution is as follows. Citizens of European Union and of other European states - vested with the right to vote - ratify this Constitution by simple majority per state. It is up to the respective parliaments of those states to decide whether to follow the will of their Citizens. The States that follow the will of their Citizens – based on rules of their own constitution allowing the state to enter international cooperation - thus establish the European Federal Union. This Federation has two possibilities of existence. Either alongside the intergovernmental European Union, or as a Federation within that European Union. After all, federal Germany, Austria, and Belgium are already members of the EU.

**Explanation of Clause 1 – the philosophical basis**

The philosophical basis for Clause 1 is as follows. The Federation is all about the sovereignty of the Citizens, the **Member** States, and the Federation itself. Sovereignty means the right and obligation to 'reign'; not to 'govern'. This means:

- For Citizens to reign their households based on economic principles to attain prosperity through financial liberty.
- For **Member** States to reign their households based on sociologic principles to attain wellbeing through cultural equality.
- For the Federation to reign its household based on judicial principles to attain wellness through morality.

The mutual relationship between the Citizens, the **Member** States and the Federation form an idiosyncratic trias politica: independent reigning spaces under the principle of subsidiarity, precisely defined, lest deliberations will produce unintelligible cacophonic noise. If not, Citizens' and **Member** States' thoughts will be quelled by hierarchical power play. Each of the three entities of that idiosyncratic trias politica should have and mind its own business for the sake of subsidiarity. The Federation as a whole needs protection against any (group of) Citizens or Member States with egoistic financial, cultural, or political impulses breaking the complex of values of the Preamble, without which our communities remain or become 'animalistic' instead of 'humanistic'.

There are views that deny or minimise Citizens' own independent and sovereign space for thought and action. However, history has repeatedly proven that Citizens do have their own space, and that the constitution (or documents of the same value) must reflect this. Think of the English Magna Carta of 1215 in which the vassals of King John Lackland made it clear that with his signature he had to respect the inalienable rights of his people, otherwise they would depose him. The Netherlands, with the Placcard of Abandonment of 1581, declared the Spanish King no longer to be their sovereign and were prepared for an 80-year war to win this battle. The French Revolution of 1789 and the Declaration of Independence with which the thirteen British colonies declared their independence in 1776 are also examples of the inalienable right of citizens to free themselves from autocratic rule. After WWII, the Dutch, Portuguese, French, Belgian and British colonies did the same. Most of them by force.

Thus, our federal constitution guarantees the free space of Citizens in various places. First, by placing the ratification of the Federal Constitution primarily in the hands of the Citizens of Europe: the ultimate form of direct democracy. This makes it a Constitution of, by and for the Citizens. It is then up to the respective parliaments to decide whether to follow the will of the people; if so, Citizens and

**Member** States are co-owners of the Federation. Subsequently, this own space of the Citizens is laid down in Section III of the Preamble, which reads:

> III. Whereas, finally, without prejudice to our right to adjust the political composition of the federal body in elections, we have the inalienable right to depose the federation's authorities if, in our view, they violate the provisions of points I and II.

Finally, the free space of the Citizens is reflected in the Articles II, III and VII of this Constitution, articles that use different methods to ensure that Citizens are involved in the decision-making process.

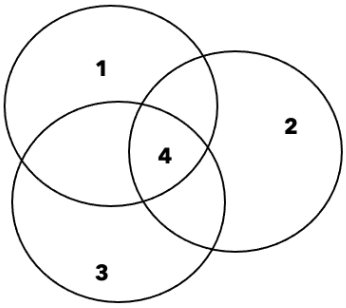
Other views grant no or little free space to the Member States of the Federation. They see the States' position as 'only' representing the people. So, limited to an administrative role. In other words, they see the space of the Citizens and of the States as coinciding, as it were, and only see a clear distinction between the space of the States and that of the Federal Authority. We do not follow this line of thinking. Although the Member States are the representation of their people, they are responsible for their own decision-making space for the democratic and functional order of the State. This is confirmed by Article VII, Section 3, Clause 2, reading:

> "The European Federal Union will not interfere with the internal organization of the **Member** States of the Federation"

**This is a reinforcement of Clause 1 of Article I, reading:**

> **"The European Federal Union shall respect the equality of Citizens and Member States before the Constitution as well as their identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government.**"

The relationship of these three independent - subsidiary - worlds of thought between the Citizens, the Member States and the Federation can perhaps be better understood by visualizing it with three intersecting circles.



Circle 1 is the world of the reign of the Citizens, Circle 2 of the Member States and Circle 3 of the Federation. In the middle - at number 4 - lies the outcome of their combined reigning, expressed in the maximum protection of the complex of values of the Preamble: the 'holy grail' so to speak, untraceable but nevertheless obliging to an eternal search by the three entities involved. A 'holy grail' once expressed by Confucius, reading:

> "When the sabers are rusted and the shovels glisten, when the steps of the temples are worn out by the feet of the faithful and grass grows in the courtyard of the courts, when the prisons are empty and the granaries are full, when the doctors walk and the bakers drive, then the empire is well governed."

**Explanation of Clause 1 – the content**

The text of the first Clause defines the specific nature of a public federation: it consists not only of States, but also and especially of their Citizens; a Federation is of the Citizens and of the Member States. They are the co-owners of the federation. For all those who fear that a Federation, as a purported superstate, would absorb the sovereignty of the participating Member States, it should now be clear that within the European Federal Union the Member States remain as they are: France remains France, Estonia remains Estonia, Spain remains Spain, et cetera. Their constitutional and institutional order remains unaffected. **So, they retain their constitutional identity (republic, monarchy), their democratic form of government (representative democracy) and their organisational identity (centralized unitary state, decentralized unitary state, federation and any entities based on nobility, such as Luxembourg).**

There is more: by explicitly naming the Citizens as co-owners of the Federation, there is a constitutional mandate to consult them on proposed changes to the territory of the Federation. A right that the European Citizens have not yet received under the Lisbon Treaty: a form of direct democracy. We address this right in Article VII of the Constitution.

The Member States are represented alongside the Citizens at the federal level of government. Their representatives have an individual mandate. They do not act in the name and on behalf of the political institutions of their State. This important principle in the functioning of the Federation is addressed in the organization of the European Congress consisting of two Houses.

**Explanation of Clause 2**

Clause 2 of Article I makes clear that the European Federal Union has a non-hierarchical vertical division of powers. This creates 'shared sovereignty' between the Member States and the Federal entity: the Member States entrust the Federation with the use of some of their powers to look after Common European Interests. These are interests that the Member States themselves cannot look after

(anymore). Entrusting the federal authority with some powers of Member States does not give it any hierarchical power, let alone enable it to intervene in the internal order of the States.[1]

Both the Federal and Member State authorities are sovereign in those matters assigned by the Constitution to both levels of government. In the sense that the Federation is assigned powers for several limited policy areas, no others. For lovers of historical best practice from the end of the 18th century, this principle of the vertical separation of powers (not to be confused with hierarchic powers) was already laid down in the first ten days of the Philadelphia Convention and further elaborated in a draft Constitution a few weeks later. It constitutionally establishes that the Federal Authority cannot exercise hierarchical power over the States.
Those familiar with the Treaty of Lisbon, and more specifically with the partial treaty under the name 'Treaty on European Union', may ask 'What's new'? After all, that Treaty on European Union stipulates in Article 4(1): 'In accordance with Article 5, powers not conferred on the Union in the Treaties shall be conferred on the Member States'. This looks like two drops of water on our Article I, Clause 2.
But appearances can be deceptive. The subsequent Article 5 of that Treaty of Lisbon states that the delimitation of the Union's competences is governed by the principle of conferral. This is what should NOT be done; the principle of conferral leaves far too many competence issues indeterminate:

- Whether the European Union has power to act is determined by the principles of subsidiarity and proportionality; that is to say, in short, the Union may act decisively in cases which the Member States themselves (or their component parts) could not (better) take care of; in other words, the principle of subsidiarity (leave to the States what the States themselves can best do) is not absolute, but relative.
- In the other part of the Lisbon Treaty - namely the 'Treaty on the Functioning of the European Union' - there are some articles that give a concrete list of the competences of the Union. But those articles are partly hierarchical in character, especially in the group of shared powers/competences - these are powers/competences allocated to both levels of government, but where the Union, when acting, obliges the Member States to conform to them. This does not exist in a Federation.
- As if all this were not enough, there are also subsidiary competences available to the European Union, granted in Article 352 of the same 'Treaty on the Functioning of the EU'. This means that the Union can act if this is necessary to achieve an objective in the Treaties and if no other provision in the Treaty provides for measures to achieve it. This is called 'the flexible legal basis'. This is a manipulative and arbitrary key that fits every lock. Apparently, the European

[1] See Chapter 5 of the 'Constitutional and Institutional Toolkit of Establishing the Federation Europe': https://www.faef.eu/wp-content/uploads/Constitutional-Toolkit.pdf .

Union cannot to this day abandon the technique of invoking the goal of 'ever-increasing integration' in order to seize power when it suits it.

Why does this not even remotely resemble federalization? Let us discuss it again. Practice has shown for years that the principle of subsidiarity leaks badly. The Protocol preventing the European Union from arbitrarily taking decisions outside the realm of its expressly granted competences, including the watchdog role of national parliaments in ensuring compliance with that Protocol, was already working very badly before the advent of the Lisbon Treaty. It has not worked at all since the entry into force of that Treaty in 2009, because from then on, the European Council took over principled decision-making. And nobody can stop that machine. Why is that? Because of the hierarchy we mentioned above: something once decided by the European Council means the obligation for the Member States to implement it uniformly in their own country: this is the source of assimilating integration. Not only is this alien to a federal system, but it is also unclear who is exclusively competent in what matters. It does say a few times that this or that authority has exclusive competence, but Articles 1 to 15 of the 'Treaty on the Functioning of the European Union' contain too many vague additions that there is no clarity.

The European Federal Union does not provide that the Federal Authority can overrule the Member States. It confers on the Federal Authority an exhaustively enumerated set of powers and that is all. There is no hierarchy towards the Member States, nor any division of powers. Just like in the Swiss and US Constitution.

This is the essence of federalism: a true federation has shared sovereignty but not shared powers: each, the Federal Authority, and the Member States, has its own powers. This is the result of the first two weeks of debates in the Philadelphia Convention that began in late May 1787. The 'Virginia Plan', which James Madison had put on the table as the federalist opening piece, contained a Clause giving the federal authority the power to overrule 'improper laws' of states. There was an objection to this, made explicit in the 'New Jersey Plan', produced immediately afterwards. The parties subsequently resolved this dispute in the 'Great Compromise' by opting for a vertical separation of powers, expressed in a series of limitable powers of the federal authority: no hierarchy. Thus, no intervention from above if a member state performs its legislative or executive functions 'improperly'.

That's how it should be: in a federal system, the Member States are and remain sovereign in their own circles. Our Constitution therefore does not mention the principle of subsidiarity at all, for the simple reason that the exhaustive

enumeration (more on this later) of federal competences establishes subsidiarity in an absolute sense. The Federal Authority has no discretionary powers - let alone arbitrary powers - to determine for itself what Member States would not be able to regulate or achieve by themselves.

**Explanation of Clause 3**

Immediately after the American Constitution came into force, the need for a Bill of Rights became apparent. This came in the form of ten amendments to the seven-article Constitution. That Bill of Rights subsequently formed an annex to the Constitution. The ten-article federal Constitution of the European Federal Union does not contain a Bill of Rights either. It refers to rights that apply by reference to other documents. It is as follows.

The third Clause of Article I sees the rights of European Citizens as deriving from natural rights. Man has no authority over these. Natural rights are fundamental, self-evident rights. And what 'goes without saying' does not need to be explained. In addition to these rights by virtue of nature, we have rights by virtue of agreements made with the consent of all participants. In our modern time these agreements are laid down in Charters because they have a transnational character.

The wording 'every living human being' means that the Constitution does not grant natural, fundamental, self-evident rights to every other living being on earth: animals, plants, the seas, and all possible other living, non-human phenomena. Agreed rights are derived from them, but such rights are currently very much under discussion and can be laid down in other documents – e.g., Climate Accords - than the federal Constitution.

So, there is a division between natural rights and cultural rights. Natural rights do not need to be formulated, because to do so would be to erroneously state that they are adaptable or negotiable. This is only possible with rights derived from natural law that are laid down by men made agreement in Charters.

Clause 3 refers to Charters for those concrete, men made, cultural rights, without considering the Charters' various intergovernmental arrangements and references to intergovernmental institutions. It is not necessary, nor advisable to incorporate concrete rights already laid down in Charters literally into the Constitution. This is also to avoid the need to develop new case law and the consequently need to amend the Constitution when jurisprudence gives cause to modify these cultural rights. In the event that the EU ceases to exist, the Federation can adopt the Charters - adapted or not - as its own human rights domain.

Post-totalitarian constitutions have always worked like this: they open themselves to international human rights treaties and thanks to these they manage to update the protection of fundamental rights without having to change the text all the time. To pretend to fix an exhaustive list of fundamental rights without referring to the human rights treaties or the Charter of fundamental rights would end up frustrating the need to guarantee a high standard of protection to the rights themselves because the text of the constitutions gets old if it is not linked to the evolution of the international community. The history of constitutional law is full of referrals like this, we need to produce a document that has the ambition to work. If we do not recognise the constitutional value of the Charter of Fundamental Rights, we will undermine the strength of fundamental rights. It will bind lawmakers, but this is what constitutions normally do and this is how the judicial review of legislation works. Courts rely on the Constitution to declare the invalidity of pieces of legislation that are seen as in conflict with fundamental rights.

There are many examples of constitutional provisions like this: Art. 10, paragraph 2, of the Spanish Constitution, Art. 16 of the Portuguese Constitution, Art. 5 of the Bulgarian Constitution, Art. 20 of the Romanian Constitution, Art. 93 of the Netherlands, and many others. If this reference is ignored, we should write a detailed list of rights and this would make the constitutional text much longer, whereas one of the objectives is to draft a short, effective, and comprehensible text. So, this explains why it is not necessary, nor advisable to incorporate concrete rights already laid down in Charters literally into the Constitution.

The Constitution - once ratified - binds everyone: individuals, governments, and private organisations of all kinds. Therefore, it is not necessary to require a signature from Citizens and organizations to confirm commitment to the Constitution. That is implicitly established. The reason to mention it explicitly here is the circumstance that there are always individuals or organisations that violate human rights. With the third Clause of Article I, it is clear that the European Federal Union is – **as one nation, composed by Citizens and Member States** - a secular republic that unconditionally opposes the violation of human rights by any person or institution.

**Explanation of Clause 4**

The freedom of information and transparency is so fundamental and vital for democracy and legitimacy/public trust in authorities, that it deserves to be included directly right there in Article I.

**Explanation of Clause 5**

Clause 5 establishes constitutionally that the European Federal Union sees itself as one of the building blocks of a World Federation. Only if the Earth is governed by

a World Federation, supported by a number of (continental) federal states such as the European Federal Union, can geopolitically tensions, armed conflicts, and greed - causes of unprecedented human suffering, destruction of the earth, refugees, torture, migration flows, poverty, disease, illiteracy and more) - be overcome.

**That is the 'holy grail' at the centre of the three circles shown earlier, a treasure that we have expressed with the famous saying of Confucius. That this may rightly be called a holy grail is supported by Appendix I A. It is a short memorandum in memory of Desmond Tutu, who died in December 2021. He is commemorated by Dr. Roger Kotila, director of the Democratic World Federalists, guardian of the Earth Constitution, a document that Desmond Tutu, along with other important figures of this world, wholeheartedly supported. See Appendix I A at the end of this explanation on Article I.**

All Clauses of Article I have the hallmark of establishing fundamental commitments. If we ask for commitment from EU Member States to sign up as members of a federal Europe, then a World Federation may ask for commitment from a federal Europe to act as one of the building blocks of the foundation of that World Federation.

Just as our constitutional federal Europe must replace the undemocratic intergovernmental EU system, so a constitutional World Federation must replace the UN's dysfunctional system of treaties.

Clause 5 makes it clear that it is indeed the Citizens of the European Federal Union who (must) take the decision whether to accede and adhere to a World Federation on the basis of an Earth Constitution by applying Article V, Section 1, Clause 8: the President shall organise a decisive referendum among all citizens on such affiliation/adherence.