Article V – Powers and tasks of the President and the Federal Ombudsman

Section 1 – Presidential powers

1. **The President ensures that the policies of the executive branch adhere to principles of inclusiveness, deliberative decision-making, and representativeness in the sense of respecting and protecting minority positions within majority decisions, with resolute wisdom to avoid oligarchic decision-making processes.**
2. The President is commander in chief of the armed forces, security agencies and militia of the European Federal Union.
3. The President appoints Ministers, Ambassadors, other Envoys, Consuls, and all public officials of the executive branch of the European Federal Union whose appointment is not regulated otherwise in this Constitution and whose offices are based on a law. He removes from office all public officials of the European Federal Union after their conviction of treason, bribery or other high crimes and misdemeanors.
4. The President may seek the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices.
5. The President has the power to grant amnesty and grace for offenses against the European Federal Union, except in cases of impeachment.
6. The President has the power to make treaties, by and with the advice and consent of House of the States, provided two thirds of delegates of the House of the States present concur.
7. The President nominates and appoints judges of the **Supreme** Court of Justice and of Federal Courts, by and with the advice and consent of the European Congress.
8. The President is organising a decisive referendum on the accession of the European Federal Union to acceding and adhering to a World Federation on the basis of an Earth Constitution **as mentioned in Article I, Clause 7.**
9. The President organizes once per year a consultative referendum among all Citizens of the European Federal Union with the right to vote in order to obtain the opinion of the European people with respect to the execution of the federal policy domains.

Section 2 – Presidential tasks

1. The President gives the European Congress once per year information about the State of the Federation and recommends measures that he judges necessary.
2. The President may on extraordinary occasions convene both Houses of the European Congress or either of them, and in case of disagreement between

them with respect to the time of adjournment he may adjourn them to such time as he thinks proper.
3. The President receives Ambassadors and other foreign Envoys.
4. **The President shall ensure the proper functioning of the European Federal Union as a democratic federation, based on the Rule of Law. The President takes care that the laws of the Union are faithfully executed.**
5. The President commissions the tasks of all government officials of European Federal Union.

Section 3 – Independent oversight of the executive branch: the Ombudsman

1. **The European Congress establishes by law the Institute of the Federal Ombudsman, charged with monitoring the functioning of the executive branch in relation to the well-being of Citizens.**
2. **The Federal Ombudsman will be independent of any other institution.**
3. **The law defines the powers of the Federal Ombudsman, including the power to advise the President to adjust the policies of the executive branch and to make good the damage caused by the executive branch to the well-being of Citizens. A rejection of the Ombudsman's advice by the President gives the Ombudsman the power to refer the matter to Oversight Committees of both Houses of the European Congress for a decision to be taken by the Houses. A rejection of the Ombudsman's advice by a House requires a two-thirds majority. If both Houses reject the Ombudsman's advice, he is allowed require a verdict by the Supreme Court of Justice.**
4. **The Ombudsman is authorised to monitor the implementation by the executive branch of the reparation of damage caused to the well-being of Citizens and to assess its quality. If it is insufficient, the Ombudsman may bring the matter to the attention of the European Congress and/or the Court once again.**

Explanatory Memorandum of Article V: Powers and tasks of the President and the Federal Ombudsman

Explanation of Section 1

Clause 1 is the equivalent of Article III, Section 1, Clause 2: it is the President's responsibility that the policies of the executive branch adhere to principles of inclusiveness, deliberative decision-making, and representativeness in the sense of respecting and protecting minority positions within majority decisions, with resolute wisdom to avoid oligarchic decision-making processes. Citizens can challenge policies they believe do not meet these requirements up to the highest court.

Clause 2 rules that the President of the European Federation performs two functions in one person: that of Head of State and that of Head of Government. In addition, he/she is Commander-in-Chief and the Supreme Diplomat.

Section 1 places the supreme command of all armed forces, security services and possible militias in the hands of the President, while the right to declare war on another country is a power of Congress. How does this work in America? Since the Korean War in the early 1950s, it has been accepted that the American President has a great deal of freedom in making decisions to send military personnel to war zones. That is, without first seeking explicit permission from Congress.

Furthermore, since the advent of the United Nations, the specific exercise of that duty has evolved in the sense that the United States only participates in wars (called police actions) under UN mandate. Except in the case of the second Iraq war. It is assumed that operating under that UN mandate implies tacit approval by Congress.

We understand this broad view in the US of presidential decision-making power in the military field because critical situations often require rapid decision-making. It will be no different for the Federation of Europe.

A few military details aside, let us look at the state of affairs in 2012. The Americans spent more than twice as much on defence as the Europeans. Moreover, they had roughly a much better balance between investments (25%), personnel (50%) and operations (25%). In Europe, countries like Belgium, Italy and Greece spent more than 70% of their defence budget on personnel. That meant little investment. Furthermore, the Member States suffered from fragmentation. For example, there were more than 20 different combat vehicles in Europe and defence decisions were mainly taken nationally, without looking at the surpluses and deficits in NATO and the EU. The EU was only able to deploy 70,000 soldiers out of almost two million European soldiers. We do not have data to assess whether this situation in 2022 is still the same as in 2012.

Clause 3 gives the President the right to appoint the offices in the Executive. He appoints the Ministers in his Government. As well as the diplomatic staff, government officials and other officials whose appointment is not regulated in any other way. In America, the appointment of these persons - so also that of the Ministers - is made through approval by the Senate. The House of Representatives has no authority in this regard. By allowing the American Senate to have a say in

the appointment of Ministers, the legislature becomes co-responsible for the functioning of the executive. We find this strange in the presidential regime of the US. It seems to us a universal rule that the person who has to do a difficult job must be able to decide for himself with which team he/she will take on the challenge.

We therefore believe that it is for the President of the European Federation alone to choose and appoint the members of his Cabinet, the other officials of the Executive Departments and the federal diplomats: under his leadership, they are responsible for the administration of the Federation, including the implementation of federal legislation made by Congress. If members of the Presidential Cabinet are not functioning properly according to the House of Representatives or the House of the States, those Houses can use their Implied Powers of Congressional Oversight to take such a Minister to task. This is better than letting the House of the States decide whether someone nominated by the President as Minister gets the approval of that House. In a conflict situation between the President and the House of the States, the House could abuse its power to obstruct the President. Something that happens regularly in the US two-party system. So, we leave it to the President to appoint his own team.

We do, however, allow the European Congress, in Clause 6, to play a role in appointing members of the third power of the trias politica, the judiciary.

Clause 4 is in the American Constitution together with the previous Clause 1. We think it is better to separate it from his commandership, because the power to seek advice from his Ministers does not apply to military matters, but to everything related to their work. What is important in this respect is that the European Constitution assumes in so many words that the President has Ministers at his disposal, the Presidential Cabinet. More on this later.

Clause 5, the Presidential power to grant amnesty and pardon, a normal part of any Constitution, has also been separated from Clause 1.

Clause 6 gives the President the right to make Treaties. But it links this to the duty to seek advice and approval from the House of the States by a two-thirds majority. This means that, as in the US, that House can give its opinion on the conclusion of Treaties by the Federation whenever this House wishes, before and after the treaty negotiations. This provision does not prevent the Member States of the Federation from continuing to conclude Treaties, provided that they do so within their own policy areas. This is due to the vertical division of powers, explained in Article III. This implies that both levels of government can have their own diplomatic and consular corps. For treaties and diplomats, this is already the case in the European Union. The division of tasks between the consuls of each administrative level can

be regulated. For example, by declaring federal consuls exclusively competent to assist (commercial) legal persons. In our view, each State of the Federal European Union remains competent for nationality legislation and thus helps abroad to physical persons with the nationality of that State. The nationality of a Member State is combined with the Citizenship of the Federal European Union.

Perhaps this is the right place to comment on the concept of 'proportionality'. This is an important issue within the current intergovernmental system of the EU. Put simply, it is a question of the extent to which the EU authority - or the authority of a national EU state - may exercise the same power. This concept is directly related to the fact that the EU treaties provide for so-called 'shared powers'. This means that one and the same power may be exercised both by the EU authority and by a State. This raises the question: how far may one and the other go in the exercise of this shared power? In practice, this has proved unworkable. Because the principle of proportionality in its application is measured against the principle of subsidiarity: leave to the States what the States themselves can do best. Because the hierarchical decision-making of the European Council has robbed the already severely leaking subsidiarity of its meaning, leading to insoluble problems of interpretation. A federal system does not have this problem at all. In a federation, the concept of 'shared powers' is unthinkable, because of the vertical distribution of powers, which is the essence of a federal organisation. A Federation only has 'shared sovereignty': the States are 100% (and therefore not partially) sovereign in all powers that have not been entrusted to the Federation. And the Federation, in its turn, is 100% sovereign (i.e., not partially so) in the exercise of that limited set of entrusted powers. Again: a Federation reflects absolute subsidiarity and for that reason this concept is nowhere in our draft Federal Constitution. Nor the EU-nonsense of proportionality.

Clause 7 departs from the US Constitution in that the President's right to appoint judges to the Supreme Court of Justice and to Federal Courts depends not only on the approval of the House of the States, but of the entire Congress, including the House of the Citizens. By Federal Courts we mean courts which Congress may establish by law and which, in the hierarchy of judicial power, are just below the highest court, the Supreme Court. Following the example of the Swiss Constitution for the composition of the Federal Courts we assign these important decisions to both Houses of Congress - with the difference that the European President also plays a role, namely nominating the candidate judges. Since the Supreme Court of Justice and the lower Federal Courts must enforce the uniform application of federal law throughout the Federation, we believe that their independent operation is better assured in this way, especially in relation to the States whose law may have to give way to federal law. Moreover, the Federal Courts should have the full confidence of those who made and will make the Federal regulations,

together with those who apply them, namely the President and his Government, and who can therefore judge whether the candidates for those courts are competent enough.

Clause 8 is the result of Article I, Clause 7 with regard to becoming a member of a World Federation. Clause 8 requires the President to hold a decisive referendum among the people of Europe on the question of whether the Federal European Union should join such a World Federation. Clause 8 also includes the commitment of the Federal European Union to join other federal states in exchanging the treaty-based UN for a federal world government, based on a federal constitution.

Clause 9 instructs the President to organize once a year a consultative referendum among all Citizens of the European Federal Union with the right to vote in order to obtain the opinion of the European people with respect to the execution of the federal policy domains.

Explanation of Section 2
In the US Constitution, this article is one continuous text. We find it more convenient to divide it into five Clauses.

Clause 1 deals with the annual State of the Union. Until the administration of President Woodrow Wilson (1913-1921, founder of the League of Nations), this was done in writing in the US. Since Wilson, it has been done through personal appearances in the US Congress. This is an executive task explicitly assigned to the President by the Constitution. He is supposed to bring forward everything that he considers important as Head of State, Head of Government, Commander-in-chief, Highest diplomat, et cetera. In addition, the President has the power and duty to point out to Congress the need to take measures, as he thinks they are useful and necessary. This is the so-called 'Recommendation Clause'. We want to adopt this practice in the European Constitution.

Clause 2 gives the President the right to convene both Houses in extraordinary cases. The US Constitution does not make clear what criteria are to be used to define 'extraordinary'. It has taken place twenty-seven times. The last time under Harry Truman, successor to Franklin D. Roosevelt, at the end of World War II.

Clause 3 requires all foreign ambassadors to present their credentials in a personal interview with the President.

Clause 4 is known in the US as the 'Take Care Clause' or the 'Faithful Execution Clause'. In essence, it is an order to the President to faithfully execute the laws,

even if he/she does not agree with them. This is not just about execution itself, but also about realizing the intrinsic intentions of Congress: hence the word 'faithful'. This Clause is held in high esteem in the US and is thus also the source of a strong teleological attitude among those in authority and the citizens. An attitude that manifests itself in a high degree of curiosity about "What would the founding fathers of the Constitution have meant? What goals does Congress want to achieve with that provision in that law?". Nonetheless, it is recognised that the President has broad authority to interpret the intentions of the legislature. But always with the Supreme Court as watchdog, empowered to declare presidential action contrary to the Constitution: "The Constitution is what the judges say it is."

Clause 5 gives the President the power to ensure that all officials of the Federal Government know what their job is.

Special explanation of Article V, Section 1, Clauses 2 and 3

NOTE: The following is just an example of the possible composition of the President's Cabinet. The final composition of the Ministries will depend on the outcome of the vertical separation of powers as described in Article III.

We now return to Clauses 2 and 3 of Section 1: the power of the President to appoint Ministers and to seek their advice. One sees in this the constitutional authority that the President has a Council of Ministers: 'The President's Cabinet'. The Constitution does not determine the size of that Cabinet.

The question we must now address is, "How large should the Cabinet of the President of the Federal European Union be?" To answer that question, we would have to consider the dominant executive policy areas that emerge from Article III, Section 2 (the exhaustive list of powers of the European Congress). But we are reluctant to do so. It is likely that such a consideration will only lead to endless debates, drifting away from the requirements of good governance. Especially since, to us, it is out of the question that every participating country will by definition have a representative in that government, as is currently the case in the European Commission and the European Council. Ministries of the Government of the Federation of Europe must have European legitimacy, not national (= member state) legitimacy.

In order to open the debate on this, we cut the knot in a simple manner: we follow (with two exceptions) the policy areas of the Cabinet of the American President. The reasoning behind this choice is the same as our proposal that the election of the President of the Federal European Union should always take place at around the same time as that of the American President: to create the greatest possible

homogeneity between the two federations so that they can do business with each other quickly and competently.

This concerns fifteen ministers:

1) Minister of Foreign Affairs: in charge of the foreign policy of the Federal European Union. On the understanding that the States of the Federal European Union retain their own foreign policy for their substantive domains, with their own Ministers of Foreign Affairs, as is currently the case in the EU and in the Belgian Federation.
2) Minister of Finance in charge of the financial policy of the Federal European Union. Including the federal budget and federal taxes. Including the supervision of the Fiscal Union we advocate.
3) Minister of Defense: charged with the care of the federal army in all its components: namely, land forces, air forces, naval forces, and militias.
4) Minister of Justice in charge of all judicial matters.
5) Minister of the Interior. This American Secretary of the Interior is not comparable to the Minister of the Interior as we often know it in Europe. In this case, it is about the care for the transnational spatial planning, with an emphasis on the care for the preservation of the quality of life.
6) Minister of Agriculture: responsible for agriculture, stock breeding, fisheries, and horticulture, as well as food security (production, distribution, and supply) and food safety (healthy food).
7) Minister of Commerce: responsible for the economy, trade, competition policy and intellectual property.
8) Minister of Labor: responsible for employment and working conditions.
9) Minister of Health and Human Services: responsible for health and social services, including poverty reduction.
10) Minister of Housing and Urban Development: responsible for public housing and the development of urban areas.
11) Minister of Transportation: responsible for all transportation of persons and goods for each mode of transportation between the States of the Federation, including the construction of transnational infrastructure.
12) Minister of Energy: responsible for energy supply and distribution, as well as for the promotion of clean energy and energy saving measures, and the issue of climate change.
13) Minister of Homeland Security: responsible for ensuring homeland security, combating terrorism within the Federation, and responding to disasters.

Two ministerial posts from the American Cabinet do not seem applicable to the Federal European Union, namely:

- The Minister of Education: we see the concern for education and related matters, for example vocational training, as a matter and task for the States, not for the Federal Authority.
- The Minister for Veterans Affairs: to the extent that this would be a relevant policy area in the United States of Europe, we consider it a joint task of the Ministers of Defence and of Health and Social Affairs.

Instead, we propose:

14) Minister of Science Policy and Innovation: in charge of supporting basic scientific research, ensuring innovation in areas such as electronic traffic, product innovation and the creation of new educational systems.
15) Minister of Cultural Relations and Immigration: responsible for ensuring good relations between the peoples of the member states, for the interests of regions and populations with their own language and culture, and for migration policy.

See here the possible fifteen federal ministers as members of the Cabinet of the President of the Federal European Union. And thus, no twenty-seven or more Commissioners to satisfy the national interest or honour of each Member State in the EU. Let alone a European Council.

This list also defines the limited and exhaustive list of general European interests to be promoted by the federal body.

Explanation of Section 3
This Section provides for the institution of the Federal Ombudsman.
Clause 1 takes care of regulating this by law.
Clause 2 ensures the Ombudsman's independence.
Clause 3 ensures that the power to give advice to the President cannot simply be rejected or ignored by the President: the Ombudsman is allowed to lay the matter before the European Congress. For both Houses, a two-thirds majority is required to reject the advice of the Ombudsman.
Clause 4 regulates an additional power: the Ombudsman is authorised to monitor the implementation – by the executive branch - of the reparation of damage caused to the well-being of Citizens and to assess its quality. If it is insufficient, the Ombudsman may bring the matter to the attention of the European Congress once again.

Clauses 3 and 4 give Citizens influence over the decision-making processes of the executive branch through the Ombudsman and is, in that sense, a form of direct democracy.