Nr. 22 – Klinkers & Tombeur, March 2013

In Paper no. 22 Klinkers and Tombeur deal with the Legislative Branch of the European Federation. In their opinion this should reflect both the content and the structure of Article I of the American Constitution, although adapted to their own insights. These concern primarily the election of the members of the House representing the Citizens and the appointment of the members of the other House, the Senate, representing the States. The American Article I is rather elaborate; it contains no less than ten Sections, each subdivided into several Clauses. In order to improve on that structure Klinkers and Tombeur split the American Article I into two Articles: Article II and Article III. They offer general explanations as well as explanations per Section or Clause.

Now we proceed with Article II of our version of a federal European Constitution. As much as possible we follow the structure and content of the American Constitution; we make adjustments if we find that an element could be better structured or formulated. As mentioned before the American Constitution of only seven Articles also contains 27 Amendments. Where necessary we will include them in our federal Constitution. We will also include Swiss and European elements. We do not claim that this is a perfect Constitution. We welcome any proposal to improve our work and shall – where possible – further this draft with the input of readers with more expertise than us.

Article II – Organization of the Legislative Branch

Section 1- Setting the European Congress

1. The Legislative Branch of the European Federation rests with the European Congress. It consists of two Houses: the House of the Citizens and the House of the States, under the name Senate.
2. The European Congress and its two separate Houses have their residence in Brussels.

<u>Explanation of Section 1, clauses 1 and 2</u>
We consciously chose the words 'Organization of …' in the title of Article II because Sections 1-6 of Article I of the American Constitution deal with organizational/institutional aspects. Sections 7-10 of that Article I are concerned with powers. We prefer to divide this Article into two Articles. Our Article II deals only with the organizational/institutional aspects of the Legislative Branch; a separate Article III will address its powers.

Clause 1 implies that the European Congress holds the same position as the

American Congress: the assembly of both Houses together. Only Congress possesses legislative powers. However, this principle should be regarded with some nuance. As mentioned before, the President has a type of derivative legislative power in the form of Presidential Executive Orders. However, this is legislation of a lower order than the formal legislative power of Clause 1. And these Orders must stem from Congressional legislation. Another nuance is that the American Supreme Court has decided more than once that Congress is allowed to delegate legislative powers to federal institutions.

In Clause 2 we choose Brussels as the seat of both the European Congress and both of its Houses. This implies that Strasbourg no longer plays a role as far as meetings of the European Federation are concerned. This means, of course, an extra complication within the intergovernmental system. For many years the intergovernmental European Parliament has been travelling back and forth between Brussels and Strasbourg because France once enforced this and remains unwilling to change this costly kind of commuting, despite the many protests of Parliament itself. This marks one of the serious systemic errors within the intergovernmental system: in its inevitable continuous dealing and wheeling in the game of winners and losers one national interest determines the order of the European whole. We will leave this aside for now.

A European Federation – as part of the European Union until the intergovernmental system will be abolished altogether – will possess its own constitutional, institutional and therefore organizational order (and this is exclusively within Brussels). On the other hand, however, it will be forced to cooperate with this regular moving from Brussels to Strasbourg for its work within the EU. This implies that Brussels would house a European Parliament (of the European Union's intergovernmental system) as well as the European Congress (of the European Federation); the two Parliaments side by side. This complexity will be the inevitable result of the necessity to realize a paradigm shift. Complexity remains, even if we assume that the intergovernmental system will be somewhat alleviated once nine European Member States leave the European Union in order to enter that Union again as a Federation. The complexity, however, would be minimal if all countries of the Eurozone were to decide to join the Federation together. Thus all existing institutions of the European Union would be embraced by the Federation – with some adaptations of course. In that case there would be no necessity to install a European Congress. Rather, the European Parliament, transformed into two Houses, could serve as the representative body of the Federation. The Court of Justice would perform the role of the European Supreme Court. As long as both systems exist side by side this institutional simplification will not be feasible.

Section 2 – The House of the Citizens

1. The House of the Citizens is composed of the representatives of the Citizens of the European Federation. Each member of the House has one vote. The members of this House are elected for a term of six years by the Citizens of the Federation qualified to vote, united in one constituency. The election of the members of the House of the Citizens takes place each time in the month May, and for the first time in the year 20XX. They enter office at the latest on June 1st of the election year. The members resign on the third day of the month May in the final year of their term. They can be re-elected twice in succession.
2. Eligible are those who have reached the age of thirty years and are registered as Citizen of a State of the Federation during at least seven years.
3. The members of the House of the Citizens have an individual mandate. They carry out this mandate without instructions, in the general interest of the Federation. This mandate is incompatible with any other public function.
4. The right to vote in elections for the House of the Citizens belongs to anybody who has reached the age of eighteen years and is registered as Citizen in one of the States of the Federation, regardless of the number of years of that registration.
5. The House of the Citizens choose their Chairperson, with the right to vote, and appoint their own personnel.

Explanation of Section 2

In what way do we deviate from the American Constitution? First, with our choice to have one constituency throughout the Federation; no elections for the House of the Citizens per State – as is the case in the United States and in the European Union. We reject the idea of being confined to electing candidates of national States. Our vision is that Citizens throughout the Federation should be able to vote throughout the Federation: one constituency consisting of all countries of the Eurozone. A German should have the right to vote for a Belgian, a Briton, a Spaniard and vice versa. One federal constituency makes possible the creation of effective transnational political parties. As far as we know – at this moment, March 2013 – only one transnational European political party exists: the European Federalist Party (EFP). However, the problem is that this party, forced by the present intergovernmental system, can only participate in the European elections through its national sections. Voters can only vote for national candidates of the

EFP, as well for candidates of other parties.

A direct relation between the Citizens and their Representatives can only be established through one constituency of the European Federation. With respect to the text of this Section this choice implies that we leave aside the extended description of the American election system.

The primary objection of Americans against one American constituency throughout the USA (rather than the present system of Electoral Colleges per State) stems from their fear that the population in densely populated areas and major cities may gain more influence than the inhabitants of rural areas. This would disturb the balance of power within the House of Representatives. However, the electoral system of our

choice is based on the so-called list-system: each transnational political party deposits a list of eligible candidates, the electorate votes by selecting a candidate from their preferred list. The electoral quota determines how many votes one candidate needs to acquire a seat. An example of the electoral quota: if there are ten million valid votes for one hundred seats in the House of the Citizens, then the electoral quota will be 10,000,000 : 100 = 100,000 votes. This amount of votes is required to obtain one seat; that is the electoral quota.

The political parties themselves will determine which candidate is number 1, or 48 or 250 on the list. If the American Democrats and Republicans would decide to label seats 1-100 to women, then seats 100-200 to candidates from rural areas and the remainder to citizens of New York City, the House of Representatives would primarily consist of women, people from rural areas and some from NYC. In other words: a balanced or unbalanced European House of the Citizens – for instance with respect to nationalities – is determined by the way in which political parties compose their electoral lists. The political parties can prevent tiny member States from acquiring none or only few representatives in the House of the Citizens. The trans-European political parties are responsible for including skilled candidates for the House of the Citizens, throughout the Federation, in eligible positions on the electoral list.

In addition, this list-system is by far the most appropriate to further gender equality. If all political parties compose their electoral lists by using an alternate positioning of woman-man-woman-man, etc, then the composition of the House of the Citizens will be near the ratio of 50% women and 50% men.

We do not consider interim elections for members of the House who resign earlier than required. We propose that the list-system contains also a system of deputies.

Which leads us to the question "How would a German know if he should vote for a Luxembourger or a Cypriot?" Well, this is a non-issue. He does not need to know that, because in the European Congress only European matters are at stake, not German or other national interests. He only needs to believe in the political agenda of the transnational party of his choice. And thus believe that this party has included its best candidates, a cross-section of EU-nationalities, on its electoral list.

So far our observations regarding our first deviation of the American Constitution. Second, we will not follow the two-year term of members of the American House of Representatives. We opt for six years, unabridged. For the simple reason that the European Union's democratic deficit has been highly criticized for many years; this can only be fully rectified by placing the center of political gravity with the representatives of the Citizens. The European States have – by applying their nationalistic-driven interests of intergovernmentalism – robbed the representatives of the Citizens of their powers for too long.

Moreover, we think that it is not good to send the members of the House of the Citizens on an election tour every two years. Once they know how to perform within the parliamentary system they have to try to get re-elected. Within a

European Federation they can devote the major part of their six-year term to taking care of the interests of the Citizens rather than of their personal interest in acquiring re-election. Each member of the House of the Citizens can be re-elected, in succession. However, we would like to limit re-election to two terms. Thus a maximum of eighteen years in the House of the Citizens. In this way we may prevent that a concentration of power, laziness or a too powerful influence on the part of lobbyists will deteriorate the quality of the representative office.

The following question we cannot answer at this moment: how many members should the House of the Citizens consist of? In the USA the number is fixed to 435, representing 308.745.538 inhabitants (census 2010). The 27 countries of the European Union comprise about 504.149.000 inhabitants. The 17 countries of the Eurozone count circa 332.976.000 inhabitants. Two matters have to be dealt with here: first, how many representatives will there be for the circa 500 million inhabitants of the entire European Union? Second, how large should this House of the European Congress be if the European Federation will start with only nine countries of the Eurozone? We cannot answer these questions right now. However, taking into account circa 600 million inhabitants after the inclusion of all European countries in the Federation, including several States awaiting admission such as Turkey, the House of the Citizens should consist of around 600 people.

Nor can we foresee in which year the first elections of the House of the Citizens could be organized. Its date depends on the time the European Constitution is going into force. We prefer though the month May of that year, and for any following election, because that month is mostly used for the election of the Parliament of the European Union. A temporarily living next to each other, the European Federation and the European Union, is inevitable. We can imagine that election campaigns and processing the election results in the Federation take some time. That is why we write in this draft Constitution that the members elect enter their office at the latest on June 1st of that election year.

Contrary to the American Constitution, we determine in Clause 2 of this Section the age of eligibility for the House of the Citizens at thirty years instead of twenty five. Why? In order to guarantee that the elected people possess enough knowledge, wisdom and life experience for such an important office. The emphasis should lie on generalists rather than on specialists. The trend in the Netherlands, for instance, to allow candidates of only twenty years of age to gain a seat in Parliament is wrong. The same applies to Belgium: the minimum age there is 21. We think that this is as useless as selecting a sixty year-old in the football team to play for CF Barcelona or Manchester United. We see in this trend only an advantage for dynasty formation of politically active families.

In the third Clause of this Section we determine explicitly – following both the American and Swiss Constitution – that the members of the House of the Citizens have an individual mandate, and are only to be held accountable by the European Citizens. Their mandate is also exclusive: they are not allowed to hold any other public office, on whatever level of public

administration. Thus we avoid conflicts of interests and a concentration of powers.

Besides this we should deal with another important aspect. There are, alongside the 435 members with the right to vote in the American House of Representatives, six members without the right to vote in that House. They are from the District of Columbia (= D.C. with the federal capital Washington), Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands and a 'resident commissioner' of Puerto Rico. Always looking for as much as possible congruency with the American constitutional system we have the following point of view.

Brussels is the constitutional capital of the European Federation. But it is not, as is the case with Washington in the District of Columbia, a territory with such a constitutional status that it should legitimize membership of the House of the Citizens. Therefore no seat for Brussels in the European Congress.

Another matter is what status the 24 so-called Overseas Countries and Territories should have. These are countries elsewhere in the world that are connected to the Constitution of France, the United Kingdom, the Netherlands and Denmark. Their associated membership with the European Union resembles the status of the six territories without the right to vote in the American House of Representatives. That is why we would like to advise the EU-related Overseas Countries and Territories to be granted a similar status in the European House of the Citizens: membership without the right to vote. This leaves open the following question: how many representatives should they deliver and who elects them? This should be solved in a simple way: the four concerned Member States (if participating in the European Federation) organize in their own Overseas Countries and Territories an election for one representative of the House of the Citizens, without the right to vote in that House. The principle of incompatible positions should be applied here too. One cannot be a representative in the European House of the Citizens and hold a public position in an Overseas Country or Territory.

Section 3 – The House of the States, or the Senate

1. The Senate is composed of eight representatives per State. Each Senator has one vote. The Senators are appointed for a term of six years by and from the legislature of the States, provided that after three years half the number of Senators resign. The first appointing of the full Senate takes place within the first five months of the year 20XX. The three-yearly appointments to replace half of the Senators takes place in the first five months of that year. The Senators enter their office at the latest on June 1st of the year of their appointment. They resign on the afternoon of the third day of the month May in the final year of their term. The Senators who resign are immediately re-appointable for a further term of three years. The Rules of Proceedings of the Senate regulate the way of resigning of one half of the Senate.
2. Eligible as Senator are those who have reached the age of thirty years and who have been registered for a period of at least seven years as Citizen of a State of the European Federation.

3. The Senators have an individual mandate. They carry out this mandate without instructions, in the general interest of the Federation. This mandate is incompatible with any other public function.
4. The Vice-president of the European Federation chairs the Senate. He has no right to vote unless the votes are equally divided.
5. The Senate elects a Chairperson pro tempore who in the absence of the Vice-president, or when he is acting President, leads the meetings of the Senate. The Senate appoints its own personnel.
6. The Senate holds the exclusive power to preside over impeachments. In case the President, the Vice-president or a member of Congress is impeached the Senate will be chaired by the Chief Justice of the Court of Justice. In case a member of that Court is impeached the President will chair the Senate. No one shall be convicted without a two third majority vote of the members present.
7. Conviction in cases of impeachment shall not extend further than the removal from office and disqualification from holding any office of honor, trust or salaried office within the European Federation. The convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.

Explanation of Section 3

With regard to the composition of the Senate we opt for the original version of the American Constitution of 1789. According to that text, the Senators were chosen by the legislatures of the States. Thus they were not elected by the Citizens. This changed with the ratification of Amendment XVII in 1913. Since then the composition of the Senate is the result of the voting by the Citizens in each State. We wonder if this Amendment is beneficial. The explicit goal of the House of Representatives has always been to represent the interests of the Citizens and that of the Senate to represent the interests of the States. This is an essential element of the federal system: the Federation is formed by the Citizens and the States. That is why their representation is regulated separately, from two separate sources: one from the Citizens and one from the States.

By shifting the appointment of the Senators by the States legislatures to electing them by the States-Citizens, the Senate's emphasis is also shifted towards taking care of the interests of the Citizens. This has led to a 'strengthening' of federal powers in Washington. At least in the perception of the Republicans. This has for some years been the subject of heated debate between Republicans and Democrats. It has reached a point where Citizens of some States once again call –

as was the case in 1861 – for leaving the Union. At this moment (February-March 2013) an action is taking place within the Parliament of the State of Oklahoma to adopt a bill to nullify the 'Obamacare' Act. This attempt to nullify is without any constitutional basis. A State does not possess such a power. However, this unconstitutional attempt at nullifying a federal act is significant as it adds to the tensions between the federal body and some States.

To prevent this discussion from spreading to Europe we opt for a system in which the Senators will be chosen from and by the States-legislatures. Eight Senators per State. Why not – as is the case in the USA – only two Senators per

State? And why eight? That is to guarantee that each State of the European Federation is adequately represented in the federal Senate, however small or thinly populated it may be. By granting each member State eight representatives in the Senate, each State is ensured of sufficient representation to participate effectively in the federal decision-making process. Moreover, the number eight can be a stimulus for the smallest European countries (with only a couple millions of inhabitants) to join the European Federation. According to the Treaty of Lisbon, at present they are guaranteed five to eight seats in European Parliament. By joining the European Federation they will maintain eight seats within the European Congress, even if these smallest States should fail to gain a seat in the House of the Citizens.

The previous paragraph explains why we chose for eight instead of two Senators per State. Another question is: why not twelve or fourteen or even more? The reason is that this would create the risk of specialization. It is certain that the House of the Citizens will harbor specialists. That will do. In our vision the Senate should be composed of generalists, wise persons with a broad experience in the way a State translates societal developments into wise policies.

We opt for a six-year term for the Senate as well, provided that half of them will resign after three years, while being immediately re-appointable for one second term. This three-year change is based on our wish to realize and to maintain strong support from the Parliaments of the States, since national elections in the nine States (or more) will hardly ever concur all with the elections for the European Congress. We do not consider elections for early replacement of Senators, which implies the necessity of having a system of deputies in the Rules of Proceedings of the Senate and in the respective national Rules of Proceedings.

As is the case for the House of the Citizens we cannot foresee in which year the first appointments for the European Senate might take place. The date depends on the time on which the Constitution will go into force. We can imagine though, that appointing the Senators by the Parliaments of the States presuppose that all national legislatures are in session. However, it might be possible that the planned appointment of Senators coincides with parliamentary elections in one or more States. That is why we choose for a period of five months to handle the appointment of the Senators. Thus, the States are able to appoint their Senators each three years, before a parliament will be dissolved, prematurely or not. This safeguards the continuity of the governance of the Federation. The only disadvantage seems to be that the Senators in case of premature dissolving of their national Parliament will have to wait some extra weeks before entering their office, but anyhow on June 1st of the year of their appointment.

Clause 2 of both Sections sees to it that Citizens from other parts of the world should have officially resided for at least seven years in one of the States; thus, they are sufficiently integrated to be eligible.

Clause 3 states that the Senator's mandate is individual; a Senator does not operate under instructions, not even from

the Parliament appointing the Senator. The mandate is also exclusive in the sense that it excludes any other public function.

Clause 6 refers to a Court of Justice, a Supreme Court of the European Federation. Thus next to the present Court of Justice of the EU. If all EU-countries were to join the European Federation it would be natural to regard this EU-Court of Justice as the Supreme Court of the Federation. As long as only nine Eurozone countries are to join the Federation, it will be necessary to establish a separate Court of Justice for the Federation. This is our opinion. But we would like to submit this to specialists in this field for assessment.

Following the American Constitution Clauses 6 and 7 deal with judging people who committed severe crimes while holding a public office.

The same status issue applies to the position of the 79 ACP-countries: now independent, but previously colonies of European countries. The European Union maintains special ties with these countries in Africa, the Caribbean and the Pacific, primarily aimed at the creation of trade relations that are beneficial to both parties. However, these ties are always under pressure. Whereas the EU – in the context of the World Trade Organization's policy – emphasizes the elimination of trade barriers, the ACP-countries keep focusing on a continuation of trade protection. The periodical renewal of the treaty between the EU and the ACP-countries seems unable to mitigate these tensions; on the contrary. However, we cannot afford a continuation of these tensions in the globalizing world. That is why also for this theme we propose a paradigm shift: furthering the operation of the EU-ACP treaties by granting the ACP-countries an institutional/organizational seat in European Congress – with the emphasis on 'institutional/organizational'. Granting them a constitutional seat is impossible because it concerns independent sovereign States outside of Europe. But on what grounds could we oppose to giving them six seats (without the right to vote) in the Senate – the House explicitly intended to take care of the interests of the States? Six seats implying: two per African-, Caribbean- and Pacific-group. In order to further gender equality the two members of each group should be a woman and a man.

Even though it will be without the right to vote, they should participate in debates within the Senate Committee(s) working on trade-related treaties that the President sends to the Senate for approval. This would give a positive impetus to present tensions between the EU and the ACP: these countries would no longer be negotiators at the other end of the table, but partners arguing for the same cause. It seems appropriate for the three groups of countries to take care of the election or appointment of their representatives in the Senate of the European Federation themselves. Here the principle of incompatibility of public positions should be applied as well. These representatives should not hold any other public function, wherever.

It seems unnecessary to include this item as such in the European Constitution. The specific relationship between the European Federation and the ACP-countries can be dealt with in a treaty. In case anyone claims that the Constitutional absence of this

membership of the Senate would imply that granting this membership of the Senate through a treaty would be a breach of the Constitution, the European Supreme Court can decide – based on the teleological nature of this matter – that this is in accordance with the Constitution.

Should all present Eurozone countries join the European Federation the Senate would consist of 17 x 8 = 136 people. Plus the aforementioned 3 x 2 = 6 from the ACP-countries, without the right to vote. Herewith we confirm the assumption, already created in the heads of some readers, that there is no place for Heads of States and national Leaders of Governments in the two Houses of the European Congress.

The primary argument in favor of this out-of-the-box step can be read in Paper no. 9, where Tombeur explains that Europe has to position itself rapidly within globalizing relations, in which new superpowers will determine the rules of the political and commercial game. By giving the ACP-countries an organizational seat within the European Federation, Europe would be some steps ahead of those superpowers.

Section 4 – The European Congress

1. The time, place and manner of electing the members of the House of the Citizens and of appointing the members of the Senate are determined by the European Congress.
2. The European Congress convenes at least once per year. This meeting will begin on the third day of January, unless Congress determines a different day by law.
3. The European Congress settles Rules of Proceedings for its manner of operating.

Explanation of Section 4

Contrary to the American Constitution we propose that the European Congress, thus not each House separately, regulates the organizational aspects of the Houses' composition. This is due to our decision to have one constituency for the entire European Federation with respect to the election of the House of the Citizens. Thus no election of representatives of Citizens of individual States, but of all Citizens throughout the Federation. In this way this House is the indisputable emanation of the Citizens of the Federation.

Clause 2 is part of American Amendment XX, ratified in January 1933. Clause 3 is self-evident. The Rules of Proceedings of the people's representatives are the second most important document – after the Constitution – because they regulate the procedures for democratic decision making.

Section 5 – Rules of Proceedings of both Houses

1. Each House settles Rules of Proceedings. They regulate what subjects require a quorum, how the presence of members can be enforced, what sanctions can be imposed in case of structural absence, what powers the Chairperson has to restore order and how the proceedings of meetings and votings are recorded.

2. The Rules of Proceedings regulate punishment of members of the House in the case of disorderly behavior, including the power of the House to expel the member permanently by a two third majority.
3. During meetings of the European Congress no House may adjourn for more than three days without the consent of the other House, nor may it move its seat outside of Brussels.

Explanation of Section 5

Thus there are three Rules of Proceedings: one of the European Congress (the two Houses together) and one for each House separately. The recording of the debates and votes imply open access to these documents, unless a House decides that some subjects need to be addressed behind closed doors.

Section 6 – Compensation and immunity of members of Congress

1. The members of both Houses receive a salary for their work, determined by law, to be paid monthly by the Treasury of the European Federation. Next to that they receive a compensation for travel and accommodation expenses in accordance with the real expenses made, and confined to the travels and activities justified by their work.
2. The members of both Houses are in all cases, except treason, felony and disturbance of the public order, exempted from arrest during their attendance at sessions of their respective House and in going to and returning from that House. For any speech or debate in either House they are not to be questioned in any other location.

Explanation of Section 6

Clause 1 is self-evident. Clause 2 refers to immunity in order to guarantee the free exercise of the representative's mandate; each member of Congress should be able to function without external pressure.

Article III – Powers of the Legislative Branch

Section 1 - Way of proceeding to make laws

1. The House of the Citizens has the power to initiate tax laws for the European Federation. The Senate has the power – as is the case with other law initiatives by the House of the Citizens – to propose amendments in order to adjust federal tax laws.
2. Both Houses have the power to initiate laws. Each draft law of a House will be presented to the President of the European Federation. If he/she approves the draft he/she will sign it and forward it to the other House. If the President does not approve the draft he/she will return it, with his/her objections, to the House initiating the draft. That House records the presidential objections and proceeds to reconsider the draft. If, following such reconsideration, two thirds of that House agree to pass the bill it will be sent, together with the presidential objections, to the other House. If that House approves the bill with a two third majority it becomes law. If a bill is not returned by the President within ten working days after having been presented to him/her, it will become law as if he/she had signed it, unless Congress by adjournment of its activities prevents its return within ten days. In that case it will not become a law.

3. Any order, resolution or vote, other than a draft law, requiring the consent of both Houses – except for decisions with respect to adjournment – are presented to the President and need his/her approval before they will gain legal effect. If the President disapproves, this matter will nevertheless have legal effect if two thirds of both Houses approve.

Explanation of Section 1

Here we make an adjustment to the structure of the American Constitution. The American Article I consists of ten Sections. They deal with both the organization and the powers of Congress. We prefer to split these two aspects into two Articles. That is why we call our Article II 'Organization of the Legislature', encompassing the Sections 1-6. We have included Sections 7-10 in a new Article III, 'Powers of the Legislature', its Sections numbered 1-4.

Both Houses initiate draft laws – not the President or the Ministers of the President's Cabinet. These people do not even perform in the Houses. This strict division of powers between the legislative and the executive branch will guarantee the European Congress' autonomy with respect to its core task: initiating and concluding laws.

Clause 1 of Section 1 grants the power to draft federal tax laws exclusively to the House of the Citizens. Contrary to drafting federal laws in general, the

Senate does not have this power. The Senate is, however, entitled to try to adjust federal tax laws by amendments. The reason to give this power to take the initiative exclusively to the House of the Citizens is based on the consideration that 'groping in the citizen's purse' should be subject to consideration by the people's representatives only.

As an aside we would like to address the question: "If Europe would be a Federation like the United States of America, would the banking and economic crisis have been dealt with more effectively?" The Bank of the Netherlands (DNB) answers this question affirmatively in its Annual Report 2012. In the extended paragraph 1,5 the DNB makes it clear in what respect the American federal system proved to be the basis for a quick and effective approach of these crises. We would like to refer the reader to some remarkable details in the Annual Report 2012, but not without failing to mention one aspect here. The American federal body can absorb more public and other debts than the EU. In 2012 the American budget was 24% of the GDP. Compared to this the EU is a financial midget: just over 1%. The American Federation began with the slogan: 'no taxation without representation'. In the EU it is 'representation without taxation'.

Thus, the House of the Citizens decides on what kind of federal tax will be introduced: income tax, corporate tax, road tax, property tax, value added tax, et cetera. Or maybe it leaves these kinds of taxes to the jurisdiction of the respective States, creating only one new federal revenue tax, under the condition that it lowers or abolishes State taxes simultaneously in order to prevent that federal taxation will be at the expense of the people. That is all we like to say about this subject because it is something to be decided upon by the representatives of the House of the Citizens. That is why we also do not interfere in the dispute regarding the harmonization of taxes on

a European level, for instance the corporate tax.

Remarkable in Clause 2 is the so-called Lex Silencio Positivo, a rule from Roman Law: if the President does not decide on the draft within ten days it will become law. If the President disapproves he/she has to return it, together with his/her objections, to the House initiating the bill. As mentioned before, this is the President's veto right. However, the word 'veto' is not mentioned in the Constitution as such.

It seems appropriate to deal here with one of the present-day consequences of the American choice to supplement the principle of the trias politica with an ingenious system of checks and balances. Since the end of 2012 until now (March 2013) the President and the Senate have blocked the possibility to solve the US-budget crisis. Looking at this superficially, one would be inclined to blame a constitutional systemic error: if both institutes stick obstinately to their constitutional powers they create a deadlock, and therefore the Constitution should be blamed. However, this point of view is wrong if one goes back to the one and only reason for installing these checks and balances: never again shall there be a power that is the absolute boss over all others. This compels the parties concerned to demonstrate their responsibility, given to them by the people, when a possible deadlock occurs. And this implies taking care of solving the deadlock, one way or another. The continuation of this sad situation does not stem from a constitutional systemic flaw of the American Constitution, but rather from the inability of the respective politicians to assume their responsibility in the general interest.

Section 2 – Substantive powers of the Houses of the European Congress

The European Congress has the power:

a. to impose and collect taxes, imposts and excises to pay the debts of the European Federation and to provide in the expenses needed to fulfill the guarantee as described in the Preamble, whereby all taxes, imposts and excises are uniform throughout the entire European Federation;
b. to borrow money on the credit of the European Federation;
c. to regulate commerce among the States of the European Federation and with foreign nations;
d. to regulate throughout the European Federation uniform migration and integration rules, what rules will be co-maintained by the States;
e. to regulate uniform rules on bankruptcy throughout the European Federation;
f. to coin the federal currency, regulate its value, and fix the standard of weights and measures; to provide in the punishment of counterfeiting the securities and the currency of the European Federation;
g. to regulate and enforce the rules to further and protect the climate and the quality of the water, soil and air;
h. to regulate the production and distribution of energy;
i. to make rules for the prevention, furthering and protection of public health, including professional illnesses and labor accidents;

j. to regulate any mode of traffic and transportation between the States of the Federation, including the transnational infrastructure, postal facilities, telecommunications as well as electronic traffic between public administrations and between public administrations and Citizens, including all necessary rules to fight fraud, forgery, theft, damage and destruction of postal and electronic information and their information carriers;
k. to further progress of scientific findings, economic innovations, arts and sports by safeguarding for authors, inventors and designers the exclusive rights of their creations;
l. to establish federal courts, subordinated to the Supreme Court;
m. to fight and punish piracy, crimes against international law and human rights;
n. to declare war and make rules concerning captures on land, water or air; to raise and support a European defense (army, navy, air force); to provide for a militia to execute the laws of the Federation, to suppress insurrections and to repel invaders;
o. to make all laws necessary and proper for carrying out the execution of the foregoing powers and of all other powers vested by this Constitution in the Government of the European Federation or in any Ministry or Public Officer thereof.

Explanation of Section 2

This Section 2 contains the limitatively enumerated powers of the legislature, the European Congress. It characterizes the vertical division of powers in a Federation. Only these powers – exclusively intended to take care of common interests that cannot be dealt with sufficiently by individual Citizens or States – belong to the European Congress. No other powers, no hierarchy. The essence of the vertical division of powers is that Citizens and States request a federal body to be so kind as to take good care of enumerated common interests (for which they are prepared to pay), without giving that federal body the right to assume it is the boss. All other powers remain with the Citizens and the States, untouchable by the federal body. Thus the States maintain their own Parliament, Government and Judicial branch for all matters not vested in the federal body.

This Section 2 is our version of the so-called Kompetenz Katalog, proposed by Germany during the drafting of the Treaty of Maastricht in 1992, and proposed many times thereafter, but always rejected by other EU-countries. One of the most serious flaws of the intergovernmental system.

Our list is something completely different from the limitative enumerations (plural) to be found in the Treaty concerning the workings of the European Union. Not only are they not precisely and indeed limitatively enumerated, they are also stifled by the uncontrollable principle of subsidiarity, the hierarchical execution of powers and the sharing of powers: all curses within a real Federation because they erode the participating States' sovereignty. The principle of a limitative enumeration of federal powers is one of the greatest achievements of the debates in the Convention of Philadelphia, which was realized within the first two weeks of their debate.

It seems good to quote here Frank Ankersmit, emeritus professor in the history of philosophy. In the Dutch Yearbook Parliamentary History 2012, titled 'The United States of Europe', he writes: *"It is not useful to dwell here on*

the European decision-making and therefore it is sufficient to ascertain that it contradicts everything that has been thought of in the history of political philosophy on public decision-making. This type of decision-making is completely unique in history – and that is not meant in a positive way. Considering the immense problems of European unification one can sympathize with this; but is still remains an ugly thing. Especially, this decision making is the official codification of all uncertainties about the ultimate goal of the European unification. It is as if the European administrators consciously translated this uncertainty into a structure of governance which is its organizational expression. It is as if they want to fix indissolubly Europe's inability to jump sooner or later over its own shadow in a structure of governance that makes this impossible indeed."
(underlining by K/T)

Compare this to what was stated by Klinkers in Paper no. 11: the Treaty of Lisbon is such a crippling document (legislatively, democratically, organizationally and with respect to decision-making processes) that renewal is only possible by stepping out of that box; avoiding the pitfall of trying to improve that system by changing the cursed Treaty. It is filled with systemic errors. Any new amendment will be poisoned by the same errors because they are 'genetically' branded. Strong arguments against any adjustments of the EU-Treaties and in favor of an autonomous European Constitution are also to be found in 'We the Peoples - Europa en de Amerikaanse Constitutie' by Hugo Klijn.

Those with a leading position within the intergovernmental system do not realize the destructive influence of wrong law-making on society. A fundamental knowledge of and insight into the necessity of a well-thought stately design, as the basis for a well-functioning society, is apparently absent. Even – we are sorry to say this – in sincere federal European circles. Where this knowledge and insight does nevertheless appear, it is not supported by statesmanship.

We consider this to be an undesired disregard of the principles of law making. As a playing down and brushing away of the necessity to take care – under all circumstances – that the stately basis of society has a professionally formulated codification. Even if parts of laws, especially administrative laws, have an instrumental function (law as an instrument to realize political goals) there are still doctrines of fundamental law that may not be touched by politics or policies. To deny this is denying that the rule of law prevails over tyranny. For more insights into the concept of 'disregarding the law' we refer to the book 'Rechtsrelativering' (Disregarding the Law) by Peter van Lochem.

Let us continue with the draft of the federal Constitution. Essential additions which go beyond the American Constitution are: 1st point d, migration policy as a federal matter and no longer belonging to individual European States, however their assistance is required in the execution of immigration regulations. 2nd points g–j are new elements pertaining to modern society; 3rd point n, the creation of one European defense (army, navy and air forces). A well-known dispute driven by national(istic) tendencies, but as an example of provincial folklore under a federal Constitution not worth any further

debate. Paper no. 12 already described the sad story regarding the attempts at establishing a European defense force after World War II. We leave this aside for now.

This Section 2 deals with the most important aspect of a Federation: the vertical division of powers between the Federation on the one hand and those of the Citizens and States on the other. What is vested in the European Congress is summed up there. This does not imply that this also makes clear how many Ministries the executive branch should consist of. Thus, for which policy domains should there be a Minister? We will elaborate on this question when dealing with the Articles regarding the executive branch.

As far as the limitative enumeration is concerned we have to make three nuances.

Firstly, we indicate that the European Federation has the power, naturally, to carry out its mandate not only within, but also outside of the territory of the Federation. For instance by agreements to Treaties. We connect the federal powers both to its internal and external foreign policy. The same applies to the States of the Federation. How this will work, will be dealt with in the Articles regarding the executive branch.

Secondly, we have to refer to the final power of Section 2, point o. In the text of the American Constitution: *"To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."* This is the famous 'Necessary and Proper' clause: Congress can make all laws that it deems necessary and proper. However, if these laws do not stem unmistakably from the list of limitatively enumerated powers of Article I, Section 8 (our Article III, Section 2) the President can veto them. Or the Supreme Court can rule that they are unconstitutional: the so-called Supreme Court's judicial review.

Thirdly, there is another important aspect. The American Congress has actually more powers than mentioned in its Constitution under Article I, Section 8 (our Article III, Section 2). This is the domain of the 'implied powers', which are not explicitly mentioned in the Constitution but derived from the body of powers of the American Section 8.

One of the primary implied powers concerns the 'Congressional Oversight'. This oversight – primarily organized by parliamentary committees (both standard and special committees) – deal with the complete functioning of the executive power and federal agencies. The goal is to enhance effectiveness and efficiency, in order to keep the executive branch within the confines of its direct tasks (the execution of laws), to detect waste, bureaucracy, fraud and corruption, to protect civil rights and freedoms, etc. It is an all-encompassing overview of the entire policy-implementation process. This is not a recent aspect of the American system. It is part of the original Constitution and is an indisputable element of the aforementioned system of checks and balances. The Constitution does not literally refer to this Congressional oversight but it is considered to be an unalienable lengthening of the legislative branch: if you have the power to make laws you

should also have the power to control whatever happens with respect to their execution. A self-evident matter in administrative processes.

Of course there have been attempts at claiming that these implied powers conflict with the American Constitution. However, the Supreme Court has always denounced that claim. This is in line with President Woodrow Wilson's vision (regarded by academics in the science of public administration as the first public administrationist) to consider this parliamentary oversight as important as making laws: "Quite as important as legislation is vigilant oversight of administration."

All of this, recognizing that the American Constitution, in Article I, Section 9, determines within what confines Congress may exert its limitatively enumerated powers of Section 8.

We would like to draw attention to some specific clauses of our, adapted, Section 2.

Firstly Clause 1a, the power to impose and collect taxes, etc. Taxes are needed to pay for debts and 'for the common Defense and general Welfare of the United States'. We have substituted the quoted words with: 'needed to fulfill the guarantee as described in the Preamble'. Generating its own income for the federal body, in our view, should extend beyond paying for federal debts and financing expenses in the areas of defense and general welfare. Besides explicitly referring to the necessity of being able to pay off debts, we deem it important to refer directly to the guarantee in the Preamble. Thus, imposing and collecting taxes etc., in order to be able to finance the expenses for "freedom, order, safety, happiness, justice, defense against enemies of the Federation, environmental sustainability, as well as for the acceptance and tolerance of the diversity of cultures, convictions, ways of life and languages of all who live and will live in the territory that is under the jurisdiction of the Federation".

In the American Constitution clause c is called the 'Commerce Clause'. From the point of view of Obama's offer in his latest State of the Union, to create a new trade treaty between the USA and the EU, the execution of this clause will be of great importance for recovering the financial-economic status of the EU. We agree with Koen Berden and Marcel Canoy in their article 'EU kikkert op van vrijhandel met de VS' (EU revitalizes through free trade with the USA), in the Dutch newspaper NRC Handelsblad of March 16th 2013, claiming that the elimination of trade barriers is of great importance for the EU's economic recovery. This is also important with respect to our proposal to grant six representatives from the ACP-countries holding a non-voting seat in the Senate: the economic survival of Europe largely depends on its ability to anchor institutionally, completely new insights on trade-relations in the foundation of its stately organization.

Section 3 –Guaranteed rights of individuals

1. The immigration of people, by States considered to be permissible, is not prohibited by the European Congress before the year 20XX.
2. The right of habeas corpus is not suspended unless deemed necessary for public safety in cases of revolt or an invasion.
3. The European Congress is not allowed to pass a retroactive law nor a law on civil death. Nor pass a law impairing contractual obligations or judicial verdicts of whatever court.

Explanation of Section 3

Section 3 deals with fundamental restrictions – in order to protect the individual – of the federal powers which are attributed to the European Congress in Section 2. This concise Section 3 about individual rights will do in this draft Constitution. There is no need for more. Indeed, Article I, Clause 3 of this draft endorses the Charter of Human Rights of the EU, except for the litigious principle of subsidiarity, and that the Federation accedes to the Treaty of Human Rights and Fundamental Freedoms, agreed in the context of the Council of Europe (see Paper 21).

Clause 1 of Section 3 tells us that the States can continue – for some years – their own foreign residents policy. From the year 20XX this policy will become federal. By making this policy shift the Federation introduces a policy of inviting and welcoming foreigners, under certain conditions, rather than the bureaucratic mechanisms and deterring legal structures to block them from entering the European Federation or expelling them. The European Federation may make good use of tens of millions of active, entrepreneurial 'dissenters' to pull the European economy out of its crisis and to countervail the aging of the present European population. This requires a migration policy which is organized for the advantage of Europe and that of the migrant. European policy makers may get their inspiration from the successful policies in Federations such as Australia, Canada and the USA.

Section 4 – Constraints for the European Federation and its States

1. No taxes, imposts or excises will be levied on transnational services and goods between the States of the European Federation.
2. No preference will be given through any regulation to commerce or to tax in the sea ports and air ports of the States of the European Federation; nor will vessels or aircrafts bound to, or from one State, be obliged to enter, clear or pay duties in another State.
3. No State is allowed to pass a retroactive law nor a law on civil death. Nor pass a law impairing contractual obligations or judicial verdicts of whatever court.
4. No State will emit its own currency.
5. No State will, without the consent of the European Congress, impose any tax, impost or excise on the import or export of services and goods, except for what may be necessary for executing inspections of import and export. The net yield of all taxes, imposts or excises, imposed by any State on import and export, will be for the use of the Treasury of the European Federation; all related regulations will be subject to the revision and control by the European Congress.

6. No State will, without the consent of the European Congress, have an army, navy or air force, enter into any agreement or covenant with another State of the Federation or with a foreign State, or engage in a war, unless it is actually invaded or facing an imminent threat which precludes delay.

Explanation of Section 4

According to the Clauses 1 and 2 of this Section the States, nor the Federation itself, are allowed to pass or maintain

laws which constraint or impede the economic unity of the Federation. The internal market of the Federation and the EU is free.

Again, powers that are not explicitly granted to the European Congress by Article III, Section 2 of the Constitution are powers of the Citizens and the States. This is the other side of the coin with the title 'vertical division of powers'. Nevertheless, America thought it useful and necessary to curb not only Congress in Article I, Section 9, but also to remind the States that their powers are not unlimited. To that purpose the American Article I, Section 10 (our Article III,

Section 4), makes clear what States should not do.

Clause 3 limits the legislative power of the States in the same manner as the legislative power of the Federation, as mentioned in Section 3, Clause 3, to maintain legal security, to not curbing the power of the Judicial Branch and to safeguard existing Citizen's rights. Furthermore there is an important matter, often decided upon by the Supreme Court, that no State is allowed to make laws lifting contractual bonds. Legal security for contracting or litigating parties is of a higher order than the power to declare a contract or a judicial verdict null and void.

Clause 4 clarifies that no federated State is allowed to emit its own currency (stemming from Federalist Paper no. 44 by James Madison). This is a firm warning to groups who propose to leave the Eurozone and to return to their previous national currency. Nevertheless, the States of the European Federation could emit bonds and other debt papers to finance their deficit spending. In other words, we propose to establish a financial system in the Eurozone similar to the system of the USA.

Clause 5 determines that imposing imposts on import and export is not allowed unless permitted by European Congress. Yet they may charge a sum in order to compensate their expenses with respect to the inspection of imports and exports. The net yield of allowed imposts goes to the Treasury. This aspect may receive a high ranking on the agenda of the – as proposed by us – six Senators (without the right to vote) representing the ACP-countries in the European Senate.

Clause 6 emphasizes once more that defense is a federal task. That is to say that Congress may rule that a State can host part of the federal armed forces, ready to operate in cases of emergency.

Section 5 – Constraints for the European Federation

1. No money shall be drawn from the Treasury but for the use as determined by federal law; a statement on the finances of the European Federation will be published yearly.
2. No title of nobility will be granted by the European Federation. No person who under the European Federation holds a public or a trust office accepts without the consent of the European Congress any present, emolument, office or title of any kind whatever, from any foreign King, Prince or foreign State.

Explanation of Section 5

We think that this Section speaks for itself.

This is our version of the legislative branch of the European Federation. We followed as much as possible the text of the American Constitution. Thus it is thinkable that words or sentences – vital for a federal Europe – may be lacking or are not properly clarified. Or we may deal with matters that are not necessary for a European Federation. That is why we – as is the case for the remainder of our draft Constitution – are open to additions and improvements by people who are more experienced in this area.