



# POLICY ANALYSIS

## DOES THE SERBIAN CONSTITUTION NEED TO BE AMENDED IN THE EU ACCESSION PROCESS?



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# Does the Serbian Constitution Need to be Amended in the EU Accession Process?

## Summary

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The Republic of Serbia has embarked on EU accession negotiations. Given that EU Member States have to secure the full and proper enforcement of the EU *acquis* in their territory from the moment they accede to the EU, the Constitution of the Republic of Serbia will have to be amended in order to fulfil this obligation.

Under Article 194 of the Serbian Constitution, the Constitution is the highest law of the land; ratified international treaties and generally accepted rules of international law shall be part of Serbia's legal order; and, ratified international treaties may not be in contravention of the Constitution.

The Treaty of Accession to the EU and the obligations arising from EU membership will have to be in accordance with the Serbian Constitution for the Treaty of Accession to be ratified by the Serbian parliament and enter into force. This will not be possible unless the Serbian Constitution is amended, as some of the obligations arising from the Treaty will not be in accordance with the Constitution as it stands now. The Constitution will clearly have to be amended given that these obligations are already well-known.

The following two types of amendments to the Constitution have to be made: The first type of amendments had to be made by nearly all EU Member States during or after their accession. They include the introduction of the so-called "integration clause" ensuring that the decisions of EU bodies and EU law they lay down can be directly applied in the territory of the Republic of Serbia and take precedence over

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the national legislation, as well as obligations arising from the EU's political order, notably obligations arising from the body of rights regarding so-called "European citizenship", which primarily entails the EU citizens' active and passive rights to vote in elections in Serbia, equal to those of Serbian nationals.

The second type of amendments are those that must be made because of the specific features of Serbia's constitutional order. They include amendments to ensure full judicial independence that are defined in Negotiation Chapter 23 - Judiciary and Fundamental Rights. They also include potential amendments to the Constitution aimed at strengthening the realisation of national minority rights in Serbia, as well as amendments that may be required as a consequence of the top-level dialogue between Belgrade and Priština on the normalisation of relations.

This Policy Analysis shows that the Constitution will have to be amended at least twice and that a referendum on Serbia's accession to the EU will have to be held, as the Government already stressed at the opening of the accession talks in 2014. The Analysis includes recommendations for civil society on how to involve itself in amending the Constitution, whilst highlighting that organised civil society support will be of major relevance in mobilising the public to vote at the referendum on an important and far-reaching issue, such as Serbia's accession to the EU.

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## 1. Introduction

The Republic of Serbia has embarked on negotiations on accession to the European Union (EU). In order to join the EU, Serbia has to fulfil the so-called Copenhagen criteria all Member States have to satisfy. Under the third Copenhagen criterion, the Member States must have the ability to take on the obligations of membership, i.e. their legislation has to be in conformity with the EU body of law (the EU *acquis*).

Conformity with the EU entails both alignment with the provisions of primary and secondary EU law and adherence to the principles underlying the EU and developed in the case law of the Court of Justice of the European Union (CJEU).

Over the decades, the CJEU has in its case law developed a number of principles, the most important of which, for the purpose of this Policy Analysis, is that of the supremacy of EU law over the law of the Member States. The very principle of supremacy of EU law over the law of the Member States is not very disputable from their perspective, because most countries in the world recognise the supremacy of international treaties over national law. The constitutional consequences of this principle arose when, in its judgment in the case of *Internationale Handelsgesellschaft* (in 1970)<sup>1</sup>, the CJEU confirmed that Member States may not derogate from their obligations arising from EU membership by subsequent adoption of legal norms, even those constitutional in character. The CJEU thus established that the provisions of the Member States' Constitutions must be in compliance with their obligations arising from EU membership.

This view of the CJEU, coupled with the Member States' obligation to ensure the full and proper enforcement of the EU *acquis* from the moment of accession, clearly demonstrate that a state joining the EU must make sure that the provisions of its Constitution are not in contravention of the obligations it will assume when it accedes to the EU.

The Republic of Serbia is not an isolated case. Some of the countries that joined the EU in the 2004-2013 period were also under the obligation to amend their Constitutions. An analysis of their experiences indicates that candidate countries had to make two types of amendments to their Constitutions.

The first type of amendments was almost identical in all the acceding states, as they arise from the very order of the EU as an organisation and have to be made in order to enable the state to function within the EU. They include the conferral of specific decision-making powers to the EU and the issues arising from the body of rights of so-called "European citizenship".

The second type of amendments are specific to each state and stem from the specific features of its constitutional order that are not compatible with the obligations arising from EU membership. In both cases, the candidate state needs to conform its Constitution with its membership obligations before it completes the accession talks.

According to the Serbian Constitution as it stands now, the Treaty of Accession to the EU and the obligations arising from EU membership will have to be in accordance



with the Serbian Constitution for the Treaty of Accession to be ratified and enter into force. Namely, under Article 194 of the Serbian Constitution, the Constitution is the highest law of the land; ratified international treaties and generally accepted rules of international law shall be part of Serbia's legal order; and, ratified international treaties may not be in contravention of the Constitution.

However, the Republic of Serbia will be unable to complete the accession talks and sign the Treaty of Accession unless it aligns its Constitution with its EU membership obligations or, - if such alignment is impossible before it signs the Treaty of Accession due to the character of the amendment - unless it binds itself to do so before it becomes a member. These latter amendments are made in the period between the completion of the talks or signing of the Treaty of Accession and the date of accession. This period ordinarily suffices to implement all the final activities agreed on during the negotiations, primarily for the ratification of the Treaty of Accession by Serbia and all EU Member States, and usually lasts around two years, from the day a state closes the last chapter, i.e. completes the negotiations, to the day it accedes to the EU.

Specific obligations arising from EU accession are clearly not in conformity with the Serbian Constitution. Given that the EU membership obligations are well known, the Constitution will have to undergo specific amendments at one point.

The purpose of this Policy Analysis is to identify the requisite and potential constitutional amendments to be taken in the EU accession process. It aims to serve as a basis for initiating a debate on this topic and proposes two draft amendments that may serve as a starting point in the expert debate on this topic. Such a debate needs to be launched as soon as possible, with a view to dispelling the dilemmas about whether Serbia will preserve its sovereignty once it joins the EU already in the early stages of the negotiations. Furthermore, the launch of a public debate will provide enough time to achieve consensus on these issues, as well as on the very text of the constitutional amendments, thereby avoiding the negative experiences during the adoption of the 2006 Constitution, namely lack of transparency and public debate.

The Policy Analysis focuses on the amendments to the Constitution required in the EU accession process, while the requisite constitutional amendments in general have been elaborated in prior analyses of the European Movement in Serbia.<sup>2</sup> This Policy Analysis is based on currently available information but it is possible that other issues requiring constitutional interventions will arise during the accession talks, given that the negotiations are at a relatively early stage.

The constitutional amendments required within the EU accession process can be divided into the following four groups:

- a. Regular, ordinary amendments to the Constitution required within the EU accession process:
  - Amendments arising from the need to regulate the conferral of the exercise of the part of Serbia's sovereign rights to the EU and the relationship between EU and national law (the so-called integration clause),
  - Amendments required to ensure the full enforcement of rights arising from "European citizenship" in Serbia,
- b. Amendments arising from Serbia's specificities already mentioned in accession documents:
  - Amendments required to ensure the full independence of the judiciary, which has been assessed as in need of further strengthening in the accession talks held to date,
  - Potential amendments to reinforce the realisation of national minority rights in Serbia.

Amendments to the Serbia Constitution, which may be required as a consequence of the top-level dialogue on the normalisation of relations between Belgrade and Priština, are another category of issues to be borne in mind, given that, under the EU

Negotiating Framework for Serbia, such a dialogue is to lead to the “*comprehensive normalisation of relations between Kosovo and Serbia, in the form of a legally binding agreement by the end of Serbia’s accession negotiations.*”<sup>3</sup> The necessity of these amendments to the Constitution is uncertain at the moment.

The Policy Analysis also reviews the dynamic of amending the Constitution and the issue of a referendum on Serbia’s accession to the EU.

## 2. Integration Clause

By acceding to the EU, the Republic of Serbia will accept the adoption of legally binding acts by the EU authorities that will be directly enforced in its territory. Serbia will participate in the adoption of such acts like all other EU Member States. Furthermore, under the EU legal order, the EU *acquis* has supremacy over national law.

Article 98 of the Constitution clearly lays down that the National Assembly shall be the supreme representative body and holder of constitutional and legislative power in the Republic of Serbia. Article 99(7) of the Constitution on the Assembly’s powers states that the National Assembly shall “*enact laws and other general acts within the competence of the Republic of Serbia*”. These provisions explicitly specify which authority may adopt laws in Serbia, leaving no room for any dilemmas or interpretations – only the National Assembly is entitled to enact them. Therefore, these two articles do not allow any other body to enact laws or other legal acts that will be enforced in the territory of the Republic of Serbia and binding on its citizens.

By acceding to the EU, a Member State agrees that legally binding acts (regulations), which are not adopted or ratified by its parliament or introduced in its national legal system by any other legal act, shall apply and be enforced in its territory.<sup>4</sup> This actually distinguishes the EU from other international organisations, rendering it a supranational entity. By signing and ratifying the Treaty of Accession to the EU, Serbia will agree to the adoption of legally binding acts – that will also be legally binding on Serbia – by EU authorities in accordance with the procedures laid down in the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) and within the competences conferred to the EU.<sup>5</sup> The representatives of the Republic of Serbia will, of course, take part in the work of the EU authorities enacting such regulations.

By acceding to the EU, a state accepts the principles of the supremacy of EU law over national law, since this principle was established by the CJEU. In view of the clear hierarchy of norms defined in the Constitution<sup>6</sup> and the principle of supremacy of EU law, the Constitution needs to clearly define the relationship between the two legal orders, which are to function as a single one in Serbia after it joins the EU. The definition of this relationship in the Constitution would eliminate numerous dilemmas regarding the enforcement of EU law in the Republic of Serbia, especially in the first few post-accession years, until the national system grows accustomed to the new environment.

Therefore, the integration clause governs the exercise of sovereign rights, which includes the adoption of legally binding acts that will apply in Serbia upon its accession and which will be adopted by EU institutions in the work of which Serbia, too, will participate. The common denominator for most constitutional provisions on this issue in the EU Member States is that they mention the transfer/conferral of the *exercise of part of sovereign rights*.<sup>7</sup> Therefore, not the conferral of sovereign rights as such but of the exercise of *part of the sovereign*

rights is at issue.<sup>8</sup> This ensures the state's sovereignty as it remains the holder of sovereignty, having conferred the exercise of part of it to the EU. For instance, the UK, which voted for leaving the EU at *Brexit*, will reassume all the rights it had conferred to the EU.<sup>9</sup> In addition, the integration clause needs to specify the supremacy of the EU *acquis* over the national legal order, in order to avoid different interpretations of this relationship in the future.

The integration clause needs to be inserted after Article 16 of the Constitution (International Relations), as a new Article 16a, since it will govern the issue of Serbia's accession to the EU and its sovereignty within the EU.

The integration clause should be worded as follows:

*Pursuant to the Treaty of Accession ratified by a two-thirds majority vote of all National Assembly deputies, the Republic of Serbia may confer (alternative: transfer) the exercise of part of its sovereign rights to international organisations, established by states that freely decided to exercise some of their sovereign rights in common and based on the respect for human rights and fundamental freedoms, democracy and the principle of rule of law (plus, optionally: and may join defence alliances with states founded on those values).*

*The National Assembly shall call a referendum on the Treaty of Accession prior to its ratification. The proposal shall be adopted if it wins the majority of votes of the citizens of the Republic of Serbia who voted. The result shall be binding on the National Assembly.*

*Legal acts adopted within international organisations, to which the Republic of Serbia has conferred (alternative: transferred) the exercise of part of its sovereign rights, shall apply in the Republic of Serbia in accordance with the legal orders of such organisations (alternative: shall have supremacy over national general legal acts).*

*The Government shall without delay notify the National Assembly of the draft legal acts and decisions of international organisations, to which the Republic of Serbia conferred the exercise of part of its sovereign rights, during the process of their adoption, and of its activities.*

*The relationship between the National Assembly and the Government on issues referred to in the previous paragraph shall be governed by a law adopted by a two-thirds majority vote of National Assembly deputies."*<sup>10</sup>

The integration clause can also be used to define additional issues of relevance to accession and/or future membership, such as:

- a. The majority (simple or qualified) in the National Assembly required for the ratification of the Treaty of Accession,<sup>11</sup>
- b. The holding of a referendum on EU accession,
- c. The post-accession relationship between the Government and National Assembly with respect to the administration of EU affairs, et al.

In addition to EU accession requirements, the integration clause in Article 3a of the Slovenian Constitution, for instance, also lays down the criteria for Slovenia's accession to NATO.

All these elements need to be taken into account during the formulation of this clause, which is indispensable if Serbia is to join the EU.

The content of the integration clause is relevant both in terms of regulating Serbia's relations with the EU and in terms of a debate on Serbia's preservation/loss of sovereignty upon its accession to the EU. This debate needs to be launched as soon as possible to provide the relevant experts with the opportunity to discuss the preservation/loss of sovereignty issue. On the other hand, Serbia should also initiate an expert debate on the content and scope of the integration clause as soon as possible, albeit not in (a parliamentary or presidential) election year. In view of the negative experiences with the adoption of the 2006 Constitution, this debate has to be broad and long-lasting and include the representatives of the Government, the academia and civil society, as well as Constitutional Court judges.



### 3. Constitutional Amendments Prerequisite for Ensuring the Full Enforcement of "European Citizenship" Rights

Election rights in Serbia are governed by Article 52 of the Constitution. Under this Article, all nationals of Serbia of age and possessing legal capacity are entitled to vote and be elected. The Constitution thus reserves the active and passive voting rights for Serbia's nationals, as most constitutions do. This norm is clear and unambiguous, not leaving any room for interpretations on who is entitled to vote at elections in Serbia.

The rights of Serbia's nationals will, on the one hand, expand on the country's accession to the EU, since they will be entitled to vote for their representatives in and be elected to the European Parliament. On the other hand, Serbia will assume the obligation to ensure the right the EU, as an organisation, grants its "citizens". "EU citizens" denote all nationals of all EU Member States, whether or not they live in their country of nationality. The rights emanating from "EU citizenship" are enjoyed by all nationals of EU Member States, in addition to the rights they have on the basis of their nationality. These supplementary rights are granted and guaranteed by the EU itself.<sup>12</sup>

The "EU citizenship" body of rights entails, *inter alia*, the right of "EU citizens" to vote and to stand as candidates in elections to the European Parliament and at municipal elections in the Member States they are residing in, pursuant to Article 22 of the TEU. On accession, Serbia will assume the obligation to grant "EU citizens" the same rights enjoyed by its nationals - to vote and stand as candidates in these elections. Of course, it goes without saying that all Serbian nationals lawfully residing in any EU Member State will also be granted these rights once Serbia joins the EU. The large number of Serbian nationals living in EU Member States testifies to the importance of this right for the Republic of Serbia and its nationals.

To sum up, Serbia will have to grant "EU citizens", who are not nationals of Serbia and are lawfully residing in it, the active and passive voting rights at European Parliament and municipal elections.

It needs to be stressed that the parliamentary and presidential elections will remain reserved for nationals of Serbia.

Serbia will have to align its legislation with the following two EU regulations enacted pursuant to Article 22 of the TEU during the accession negotiations:

- a. Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals (with subsequent amendments thereto),  
and
- b. Council Directive 94/80/EC of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals (with subsequent amendments thereto).

Serbia will have to adopt a law governing the active and passive rights to vote at European Parliament elections of both Serbian nationals and "EU citizens" since this is a completely new area for Serbia and the matter is not governed by Serbian law. Although Serbian nationals will not be able to take part in European Parliament elections at least not until 2024, this law will have to be adopted earlier, for the accession

negotiations to be completed. As far as municipal elections are concerned, amendments will have to be made to the Local Election Law, governing this matter in the Republic of Serbia.

The adoption of this legislation requires the amendment of Article 52 of the Constitution.

Active and passive rights of EU citizens can be introduced in the Constitution by adding the following (italicised) paragraph 2 to Article 52:

- "1. All nationals of Serbia of age and possessing legal capacity are entitled to vote and be elected.
2. *European Union citizens shall also be entitled to vote and stand as candidates in elections to the European Parliament and at municipal elections, pursuant to the law and EU acquis.*
3. Suffrage shall be universal and equal for all, elections shall be free and direct and voting shall be carried out by secret ballot and in person.
4. Suffrage shall be protected by law and in accordance with the law."

This amendment is indisputable, wherefore it is unnecessary to conduct a separate public debate on it. This issue can be addressed during the general debate on EU accession at the end of the negotiations, with a view to finding the optimal solution.

## 4. Constitutional Amendments Prerequisite for Ensuring Full Judicial Independence

In its 2007 opinion on Serbia's 2006 Constitution, the CoE Venice Commission voiced a number of criticisms about the organisation of the judicial authorities in the Republic of Serbia, primarily with regard to ensuring the judiciary's independence from the executive and legislative authorities.

Although voiced by a Council of Europe commission, these assessments were included in the European Commission's Screening Report on Chapter 23 – Judiciary and Fundamental Rights. The EC said that Serbia should make a thorough analysis of the existing solutions/possible amendments to the Constitution bearing in mind the Venice Commission recommendations and European standards, ensuring independence and accountability of the judiciary. Changes should include, *inter alia*, the following points: The system for the recruitment, selection, appointment, transfer and dismissal of judges, presidents of Courts, and prosecutors should be independent of political influence; the roles and compositions of the High Judicial Council and the State Prosecutorial Council, without involvement of the National Assembly (unless solely declaratory), etc.

In short, these changes aim at eliminating the influence of the executive and legislative authorities on the judiciary and ensuring its full independence. The following provisions of the Constitution met with the greatest criticism: Article 147, under which first-time judges shall be elected by the National Assembly; Article 153, under which the National Assembly shall elect also the members of the High Judicial Council charged with nominating the judges to be elected by the National Assembly; and Article 164, under which the National Assembly shall elect also the members of the State Prosecutorial Council.

The EU conditioned the opening of talks on Chapter 23 by Serbia's adoption of an Action Plan setting out the activities aimed at eliminating the deficiencies identified during the screening process.

On 23 October 2015, the Serbian Government adopted the Chapter 23 Action Plan, in which it addressed the criticisms in the Screening Report, and forwarded it to the EU.<sup>13</sup>

A number of measures aimed at rectifying the identified shortcomings and requiring the amendment of the Serbian Constitution are set out in Section 1.1.1 on judicial independence of the Action Plan. They involve the drafting of the amendments, a public debate on the draft amendments and their referral to the Venice Commission for comment. All these activities are to be implemented in 2016.

Under the Action Plan, the requisite constitutional amendments are to be adopted by the end of 2017. This will be followed by aligning all the relevant judicial laws with the amended Constitution.

The Action Plan demonstrates the Government's intention to address the issue of judicial independence in accordance with the recommendations of the Venice Commission and Screening Report assessments at the start of the accession negotiations.

Since the Action Plan provides for a public debate on this subject, civil society and the academia, as well as all other stakeholders, need to take an active part in such a debate.

## 5. Potential Amendments to Strengthen the Realisation of National Minority Rights in Serbia

Although the Serbian Constitution guarantees national minority rights in accordance with all valid international and European standards and documents, and even goes beyond the protection of national minorities required by these documents in some areas, the realisation of the enshrined rights calls for specific improvements.

This is why the Serbian Government adopted the Action Plan for the Realisation of National Minority Rights in the Republic of Serbia on 3 March 2016.<sup>14</sup> This document spells out the activities envisaged in the Chapter 23 Action Plan, in the section on fundamental rights and that consideration shall be given to improving the constitutional guarantees related to the realisation of national minority rights. This Action Plan mentions the possibility of amending the Constitution twice.

Firstly, the section of this Action Plan on the realisation of national minority rights on an equal footing, the development of tolerance and prevention of discrimination (Point 2.8) envisages review of the need to amend the relevant provisions of the Constitution with a view to strengthening the enforcement of affirmative measures in order to improve the equality of persons belonging to national minorities and eliminate any ambiguities on the issue in the Constitution. In its Opinion on Serbia's Constitution, the Venice Commission also questioned the clarity and precision of these provisions (Article 76 of the Constitution). If it is concluded that the provisions in this part of the Constitution need to be amended, these amendments, under this Action Plan, will be adopted together with the other amendments planned within the judicial reform, at the end of 2017.

Secondly, the section of this Action Plan on the development of efficient mechanisms for the democratic participation of national minorities in political processes (Point 7.1) envisages a legal analysis of the practices of the EU Member States in the region with a view to identifying best practices and an adequate model of minority

participation in the election process and the adequate representation of national minorities in representative bodies at the national, provincial and local levels. Point 7.2. sets out that the potential models of democratic participation of national minorities, including smaller ones, in election processes guaranteeing the adequate representation of national minorities in representative bodies at the national, provincial and local levels, whilst ensuring that no room is left for any abuse of the more flexible provisions on national minority parties, will be identified on the basis of the analysis and comparative law practices. This work is to be completed in 2016. If the analyses demonstrate the need to amend the Constitution to achieve the defined goal, they can serve as the basis for amending the Constitution, as they will be forwarded to the National Assembly's Action Group for the Political System.

In the event the analyses demonstrate the need to amend the Constitution in this area, the Government should organise a comprehensive public debate in which all stakeholders should take an active part.

## 6. Constitutional Amendments Arising as a Consequence of the Top-Level Belgrade-Priština Dialogue on the Normalisation of Relations

A top-level dialogue on the normalisation of relations between Belgrade and Priština opened in 2012. This dialogue, facilitated by the EU High Representative for Foreign Affairs and Security Policy, has been ongoing for four years now and resulted in the adoption of the First Agreement on Principles Governing the Normalisation of Relations in April 2013.

The dialogue continued after this Agreement was reached and its participants are discussing including new topics in the agenda. The dynamics of the dialogue, the issues that will be raised and how they will be regulated cannot be assessed, as they depend on numerous factors, impossible to predict at the moment.

The link between the dialogue with Priština and the EU accession talks was established in Chapter 35 – Other issues, within which the dialogue with Priština is monitored. This approach is a novel one in accession talks with the EU. The Republic of Serbia cannot make any alignment plans regarding Chapter 35 because this Chapter does not deal with the EU acquis. This is why talks on Chapter 35 opened on 14 December 2015, without Serbia submitting its negotiating position. It needs to be underlined that the talks within Chapter 35 represent exclusively a mechanism for monitoring and evaluating agreements reached in the dialogue on normalisation and that talks with the EU on Kosovo are not held within this Chapter.

The EU stated the following in paragraph 23 of its EU Negotiating Framework, presented at the first Intergovernmental Conference on the Accession of Serbia to the European Union on 21 January 2014:

*"23. The advancement of the negotiations will be guided by Serbia's progress in preparing for accession, within a framework of economic and social convergence. This progress will be measured in particular against the following requirements:*

...

- *Serbia's continued engagement, in line with the Stabilisation and Association process conditionality, towards a visible and sustainable improvement in relations with Kosovo\*. This process shall ensure that both can continue on their respective European paths, while avoiding that either can block the other in these efforts and should gradually lead to the comprehensive normalisation of relations between Serbia and Kosovo, in the form of a legally binding agreement by the end of Serbia's accession negotiations, with the prospect of both being able to fully exercise their rights and fulfil their responsibilities."*

It needs to be noted that it is unclear at the moment what all the parties involved in the dialogue consider under "comprehensive normalisation of relations between Serbia and Kosovo," and that this will be one of the key points in the negotiations, which cannot be elucidated at the moment. The Negotiating Framework envisages the conclusion of a "legally binding agreement" as a result of the dialogue. The question whether the Constitution will have to be amended to ensure that the results of the dialogue find their place in Serbia's constitutional order will be clearly answered only once the outcome of the dialogue, as well as the form and content of that "legally binding agreement", are known.

## 7. Dynamic of Amending the Constitution

The above text clearly indicates that the Republic of Serbia will amend its Constitution at least twice during the accession talks.

Under the Chapter 23 Action Plan, the first amendments are planned for 2017, with a view to putting in place constitutional prerequisites for ensuring judicial independence in line with the Venice Commission's recommendations and accepted European standards. Without them, further headway in talks on Chapter 23 would be brought into question, and, thus, the pace of the accession negotiations on the whole would be slowed down. As noted, consideration is also to be given to amending the Constitution under the Action Plan for the Realisation of National Minority Rights in the Republic of Serbia, and these potential amendments might be adopted at the same time as those aiming to ensure judicial independence.

The next enactment of constitutional amendments will ensue at the end of the talks, i.e. after Serbia signs the Treaty of Accession, when all the parameters according to which Serbia will be joining the EU will be known. The Constitution should then be amended by a new integration clause and provisions enabling the exercise of the rights related to "EU citizenship". These amendments are inevitable and are ordinarily adopted at the very end of the negotiating process, i.e. after the Treaty of Accession is signed and before it is ratified by the National Assembly.

Furthermore, it will be known by then what the "*comprehensive normalisation of relations between Serbia and Kosovo in the form of a legally binding agreement*" mentioned in the EU Negotiating Framework entails and which, if any, implications that agreement will have on the Constitution. The timing of the potential constitutional amendments arising as a consequence of the dialogue remains unknown, for now.

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\* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and ICJ Opinion on the Kosovo declaration of independence.

## 8. Referendum on Serbia's Accession to the EU

The analysis of the valid Constitution clearly shows that Serbian nationals will have to decide at a referendum whether or not Serbia will join the EU.

This view arises from Article 203 (6), of the Constitution, under which:

*"The National Assembly shall be obliged to call a national referendum on the act amending the Constitution when the amendment pertains to the Preamble of the Constitution, constitutional principles, human and minority rights and freedoms, **system of government**, proclamation of a state of war and emergency, derogation from human and minority rights in a state of emergency or war or the constitutional amendment procedure."*

Since the provisions providing for the enforcement of the EU *acquis* in Serbia will require amendments to those on the system of government in the Republic of Serbia, i.e. will derogate from the scope of Article 98, which confers legislative powers exclusively to the National Assembly, we are of the view that the constitutional amendment introducing the integration clause will require a referendum.

The Serbian Government stated the following in paragraph 35 of the Opening Statement of the Republic of Serbia<sup>15</sup> presented at the first Accession Conference on 21 January 2014: "[U]pon the signing of the Accession Treaty between the Republic of Serbia and the European Union, the final decision on the accession of the Republic of Serbia to the European Union will be made by the citizens of the Republic of Serbia at the referendum".

This Government view not only clearly indicates that a referendum will be held at the end of the talks, but its timeframe as well – after the Treaty of Accession is signed and before its ratification by the National Assembly.

Optimally, Serbia's nationals would vote both on the text of the constitutional amendments that have to be adopted to allow Serbia to join the EU and on the Treaty of Accession at the referendum. In that case, provided that they uphold both the constitutional amendments and the Treaty of Accession, the former would come into force first, enabling the National Assembly to ratify the Treaty of Accession in accordance with the procedure defined in the constitutional amendments. Serbia's citizens will, in any case, clearly have the opportunity to vote "for" or "against" Serbia's accession to the EU at a referendum. To ensure they are informed of the issue(s) they will be voting on at the referendum, the Government has to continue consistently communicating the issues discussed in the negotiations to the public, thus ensuring that the citizens are adequately informed of them and with a view to mustering a high turnout at the referendum and avoiding the repetition of the Croatian scenario (where most of the citizens boycotted the referendum on accession to the EU; the turnout stood at 43.51%).<sup>16</sup> Civil society organisations involved in monitoring the accession negotiations play an important role in informing the public and in public debates on Serbia's accession to the EU.

## 9. Conclusions and Recommendations

Our analysis shows that the Republic of Serbia will have to amend its Constitution at least twice during the accession process in order to join the EU. All constitutional amendments need to undergo broadest possible public debates, officially launched by the Government, to ensure the legitimacy of those amendments and the entire accession process and thus avoid the negative experiences surrounding the adoption of the 2006 Constitution. On the other hand, stakeholders need to participate intensively in the debates once the Government launches them.

An integration clause governing the following issues of relevance to Serbia's accession to the EU needs to be inserted in the Constitution: conferral of specific powers to the EU; relationship between the national and European legal systems; the kind of majority needed in the National Assembly for the ratification of the Treaty of Accession; the relationship between the Government and National Assembly once Serbia joins the EU. This clause can be introduced by the adoption of a new Article, Article 16a of the Constitution. A public debate on this topic is indispensable, in order to dispel any dilemmas about whether Serbia will preserve its sovereignty if it joins the EU and find the optimal wordings of the constitutional amendments. Furthermore, the debate would provide the experts and other stakeholders with the opportunity to discuss whether this clause can also be used to regulate the issue of Serbia's accession to defence alliances. This debate needs to be launched as soon as possible, ideally not in election year.

The Constitution needs to provide for active and passive voting rights of "EU citizens" at European Parliament and local elections in Serbia i.e. a constitutional basis for the adoption of the relevant laws. This can be achieved by adopting the proposed amendment to Article 52 of the Constitution.

The Chapter 23 Action Plan envisages amending the Constitution by end 2017, with a view to ensuring judicial independence. Civil society needs to monitor the Government's activities in this field and actively involve itself in the debate on this topic, once the Government launches it.

On the other hand, the Constitution will possibly have to be amended to strengthen the realisation of the rights of national minorities in Serbia. At present, it is impossible to provide a definitive answer to the question whether the Constitution will also have to be amended to reflect the results of the top-level dialogue on the normalisation of relations between Belgrade and Priština. As potential amendments to the Constitution are at issue, civil society needs to monitor the activities in this field and actively involve itself in a public debate in case the need for adopting such amendments is identified.

Our analysis also shows that the Constitution lays down that a referendum has to be called on constitutional amendments prerequisite for Serbia's accession to the EU. The Government has already stated its view on the need to hold a referendum in its Opening Statement at the first Intergovernmental accession conference on 21 January 2014, in which it reaffirmed that the citizens of the Republic of Serbia would have a final say on Serbia's accession to the EU at a referendum to be held after the Treaty of Accession is signed. Once the referendum on Serbia's EU membership

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is called, civil society organisations need to involve themselves actively in supporting the referendum and promoting Serbia's EU membership, to encourage as many citizens as possible to vote at the referendum (and avoid the low turnout, like in Croatia) and vote for Serbia's accession to the EU. Concerted civil society support will be of major relevance to mobilising the public to vote at the referendum on such an important and far-reaching decision, such as Serbia's accession to the EU.

## Endnotes

- 1 Case C-11/70 *Internationale Handelsgesellschaft mbH v Einfuhr-und Vorratsstelle für Getreide und Futtermittel*, (1970), ECR 1125
- 2 Available at [www.emins.org](http://www.emins.org)
- 3 EU Negotiating Framework, Paragraph 23, available at <http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=AD%201%202014%20INIT>.
- 4 In terms of Article 99(4) of the Serbian Constitution: "The National Assembly shall... 4. Ratify international treaties when the obligation to ratify them is provided for by the law".
- 5 Article 2(2) of the Treaty on the Functioning of the European Union.
- 6 Article 194 of the Serbian Constitution.
- 7 Annex I lists constitutional provisions of eight states that joined the EU in the 2004-2013 period.
- 8 Article 3a of the Slovene Constitution refers to the **transfer** while Article 143(2) of the Croatian Constitution refers to the **conferral** of the exercise of part of their sovereign rights. Article 2 of the TFEU mentions **conferral** of competences by the Treaty on European Union.
- 9 The mechanism for leaving the EU is laid down in Article 50 of the Treaty on European Union.
- 10 The draft is modelled after the integration clause in the Slovene Constitution.
- 11 Under Article 105 of the Serbian Constitution, the National Assembly shall ratify international treaties by a majority vote of all deputies.
- 12 Apart from the voting rights, the body of "EU citizenship" rights includes prohibition of discrimination on grounds of nationality in EU territory, freedom of movement and residence, right to diplomatic or consular protection of any EU Member State in a third country, right of petition to the European Parliament and right of complaint to the European Ombudsman, communication with EU institutions in one of the official EU languages, right of access to European Parliament, Commission and Council documents under specific conditions, and right to employment in EU services.
- 13 Chapter 23 Action Plan, available at the Serbian Ministry of Justice website: [www.mpravde.gov.rs](http://www.mpravde.gov.rs)
- 14 Available at the Serbian Ministry of State Administration and Local Self-Government website: [www.mduls.gov.rs](http://www.mduls.gov.rs)
- 15 Available at the Serbian European Integration Office website: [http://www.seio.gov.rs/upload/documents/pristupni\\_pregovori/the\\_opening\\_statement\\_of\\_the\\_republic\\_of\\_serbia.pdf](http://www.seio.gov.rs/upload/documents/pristupni_pregovori/the_opening_statement_of_the_republic_of_serbia.pdf).
- 16 Data available at the website of the Croatian Ministry of Foreign Affairs and European Integration: <http://www.mvep.hr>

# Annex 1. Examples of Integration Clauses of Some States that Joined the European Union in the 2004-2013 Period

## 1. SLOVENE CONSTITUTION

### Article 3a

Pursuant to a treaty ratified by the National Assembly by a two-thirds majority vote of all deputies, Slovenia may transfer the exercise of part of its sovereign rights to international organisations which are based on respect for human rights and fundamental freedoms, democracy and the principles of the rule of law and may enter into a defensive alliance with states which are based on respect for these values.

Before ratifying a treaty referred to in the preceding paragraph, the National Assembly may call a referendum. A proposal shall pass at the referendum if a majority of voters who have cast valid votes vote in favour of such. The National Assembly is bound by the result of such referendum. If such referendum has been held, a referendum regarding the law on the ratification of the treaty concerned may not be called.

Legal acts and decisions adopted within international organisations to which Slovenia has transferred the exercise of part of its sovereign rights shall be applied in Slovenia in accordance with the legal regulation of these organisations.

In procedures for the adoption of legal acts and decisions in international organisations to which Slovenia has transferred the exercise of part of its sovereign rights, the Government shall promptly inform the National Assembly of proposals for such acts and decisions as well as of its own activities.

The National Assembly may adopt positions thereon, which the Government shall take into consideration in its activities. The relationship between the National Assembly and the Government arising from this paragraph shall be regulated in detail by a law adopted by a two-thirds majority vote of deputies present.

## 2. BULGARIAN CONSTITUTION

### Art. 4

(1) The Republic of Bulgaria shall be a State governed by the rule of law. It shall be governed by the Constitution and the laws of the country.

(2) The Republic of Bulgaria shall guarantee the life, dignity and rights of the individual and shall create conditions conducive to the free development of the individual and of civil society.

(3) (new, SG 18/05) Republic of Bulgaria shall participate in the building and development of the European Union.

### Art. 42

(1) Every citizen above the age of 18, with the exception of those placed under judicial interdiction or serving a prison sentence, shall be free to elect state and local authorities and vote in referendums.

(2) The organization and procedure for the holding of elections and referendums shall be established by law.

(3) (new, SG 18/05) The elections for Members of the European Parliament and the participation of European Union citizens in the elections for local authorities shall be regulated by law.

### Art. 85

(1) The National Assembly shall ratify or denounce by law all international treaties which:

1. are of a political or military nature;
2. concern the Republic of Bulgaria's participation in international organizations;
3. envisage corrections to the borders of the Republic of Bulgaria;
4. contain obligations for the treasury;
5. envisage the State's participation in international arbitration or legal proceedings;
6. concern fundamental human rights;
7. affect the action of the law or require new legislation in order to be enforced;
8. expressly require ratification;
9. (new, SG 18/05) confer to the European Union powers ensuing from this Constitution.

(2) (new, SG 18/05) The law ratifying the international treaty referred to in para 1, item 9 shall be adopted by a majority of two-thirds of all members of the Parliament.

(3) (former para 2, SG 18/05) Treaties ratified by the National Assembly may be amended or denounced only by their built-in procedure or in accordance with the universally acknowledged norms of international law.

(4) (former para 3, SG 18/05) The conclusion of an international treaty requiring an amendment to the Constitution shall be preceded by the passage of such an amendment.

#### Art. 105

(1) The Council of Ministers shall direct and conduct State's domestic and foreign policy in accordance with the Constitution and the laws.

(2) The Council of Ministers shall ensure the public order and national security and shall exercise overall guidance over the state administration and the Armed Forces.

(3) (new, SG 18/05) The Council of Ministers shall inform the National Assembly on issues concerning the obligations of the Republic of Bulgaria resulting from its membership in the European Union.

(4) (new, SG 18/05) When participating in the drafting and adoption of European Union instruments, the Council of Ministers shall inform the National Assembly in advance, and shall give detailed account for its actions.

#### FINAL PROVISION (SG 18/05)

##### § 7.

§ 2 shall enter into force as of the date of entry into force of the Treaty concerning the Accession of the Republic of Bulgaria to the European Union and shall not apply to international treaties found.

## 3. 1949 HUNGARIAN CONSTITUTION AS AMENDED UNTIL 2007<sup>1</sup>

#### Article 2

(1) The Republic of Hungary is an independent, democratic state governed by the rule of law.

(2) In the Republic of Hungary supreme power is vested in the people, who exercise their sovereign rights directly and through elected representatives.

(3) No activity of any person may be directed at the violent acquisition or exercise of public power, nor at the exclusive possession of such power. Everyone has the right and obligation to resist such activities in such ways as permitted by law.

#### Article 2/A

(1) By virtue of treaty, the Republic of Hungary, in its capacity as a Member State of the European Union, may exercise certain constitutional powers jointly with other Member States to the extent necessary to exercise the rights and fulfill

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<sup>1</sup> The new Hungarian Constitution, adopted in 2010, was not analysed.

the obligations conferred by the founding treaties of the European Union and the European Communities (hereinafter referred to as “European Union”); these powers may also be exercised autonomously by the institutions of the European Union.

(2) The ratification and promulgation of the treaty referred to in paragraph (1) shall be subject to a two-thirds majority vote of the Parliament.

## 4. CROATIAN CONSTITUTION

### VIII. EUROPEAN UNION

#### 1. LEGAL GROUNDS FOR MEMBERSHIP AND TRANSFER OF CONSTITUTIONAL POWERS

##### Article 143

Pursuant to Article 142 of the Constitution, the Republic of Croatia shall, as a Member State of the European Union, participate in the creation of European unity in order to ensure, together with other European states, lasting peace, liberty, security and prosperity, and to attain other common objectives in keeping with the founding principles and values of the European Union.

Pursuant to Articles 140 and 141 of the Constitution, the Republic of Croatia shall confer upon the institutions of the European Union the powers necessary for the enjoyment of rights and fulfilment of obligations ensuing from membership.

#### 2. PARTICIPATION IN EUROPEAN UNION INSTITUTIONS

##### Article 144

The citizens of the Republic of Croatia shall be directly represented in the European Parliament where they shall, through their elected representatives, decide upon matters falling within their purview. The Croatian Parliament shall participate in the European legislative process as regulated in the founding treaties of the European Union.

The Government of the Republic of Croatia shall report to the Croatian Parliament on the draft regulations and decisions in the adoption of which it participates in the institutions of the European Union. In respect of such draft regulations and decisions, the Croatian Parliament may adopt conclusions which shall provide the basis on for the Government’s actions in European Union institutions. Parliamentary oversight by the Croatian Parliament of the actions of the Government of the Republic of Croatia in European Union institutions shall be regulated by law.

The Republic of Croatia shall be represented in the Council and the European Council by the Government and the President of the Republic of Croatia in accordance with their respective constitutional powers.

### 3. EUROPEAN UNION LAW

#### Article 145

The exercise of the rights ensuing from the European Union *acquis communautaire* shall be made equal to the exercise of rights under Croatian law.

All the legal acts and decisions accepted by the Republic of Croatia in European Union institutions shall be applied in the Republic of Croatia in accordance with the European Union *acquis communautaire*. Croatian courts shall protect subjective rights based on the European Union *acquis communautaire*.

Governmental agencies, bodies of local and regional self-government and legal persons vested with public authority shall apply European Union law directly.

### 4. RIGHTS OF EUROPEAN UNION CITIZENS

#### Article 146

Citizens of the Republic of Croatia shall be European Union citizens and shall enjoy the rights guaranteed by the European Union *acquis communautaire*, and in particular:

- freedom of movement and residence in the territory of all Member States,
- active and passive voting rights in European parliamentary elections and in local elections in another Member State, in accordance with that Member State's law,
- the right to the diplomatic and consular protection of any Member State which is equal to the protection provided to own citizens when present in a third country where the Republic of Croatia has no diplomatic-consular representation,
- the right to submit petitions to the European Parliament, complaints to the European Ombudsman and the right to apply to European Union institutions and advisory bodies in the Croatian language, as well as in all the other official languages of the European Union, and to receive a reply in the same language.

All rights shall be exercised in compliance with the conditions and limitations laid down in the founding treaties of the European Union and the measures undertaken pursuant to such treaties.

In the Republic of Croatia, all rights guaranteed by the European Union *acquis communautaire* shall be enjoyed by all citizens of the European Union.

## 5. POLISH CONSTITUTION

### Chapter III SOURCES OF LAW

#### Article 87

1. The sources of universally binding law of the Republic of Poland shall be: the Constitution, statutes, ratified international agreements, and regulations.
2. Enactments of local law issued by the operation of organs shall be a source of universally binding law of the Republic of Poland in the territory of the organ issuing such enactments.

#### Article 88

1. The condition precedent for the coming into force of statutes, regulations and enactments of local law shall be the promulgation thereof.
2. The principles of and procedures for promulgation of normative acts shall be specified by statute.
3. International agreements ratified with prior consent granted by statute shall be promulgated in accordance with the procedures required for statutes. The principles of promulgation of other international agreements shall be specified by statute.

#### Article 89

1. Ratification of an international agreement by the Republic of Poland, as well as renunciation thereof, shall require prior consent granted by statute - if such agreement concerns:
  - 1) peace, alliances, political or military treaties;
  - 2) freedoms, rights or obligations of citizens, as specified in the Constitution;
  - 3) the Republic of Poland's membership in an international organization;
  - 4) considerable financial responsibilities imposed on the State;
  - 5) matters regulated by statute or those in respect of which the Constitution requires the form of a statute.
2. The President of the Council of Ministers (the Prime Minister) shall inform the Sejm of any intention to submit, for ratification by the President of the Republic, any international agreements whose ratification does not require consent granted by statute.
3. The principles of and procedures for the conclusion and renunciation of international agreements shall be specified by statute.

## Article 90

1. The Republic of Poland may, by virtue of international agreements, delegate to an international organization or international institution the competence of organs of State authority in relation to certain matters.
2. A statute, granting consent for ratification of an international agreement referred to in para.1, shall be passed by the Sejm by a two-thirds majority vote in the presence of at least half of the statutory number of Deputies, and by the Senate by a two-thirds majority vote in the presence of at least half of the statutory number of Senators.
3. Granting of consent for ratification of such agreement may also be passed by a nationwide referendum in accordance with the provisions of Article 125.
4. Any resolution in respect of the choice of procedure for granting consent to ratification shall be taken by the Sejm by an absolute majority vote taken in the presence of at least half of the statutory number of Deputies.

## Article 91

1. After promulgation thereof in the Journal of Laws of the Republic of Poland (Dziennik Ustaw), a ratified international agreement shall constitute part of the domestic legal order and shall be applied directly, unless its application depends on the enactment of a statute.
2. An international agreement ratified upon prior consent granted by statute shall have precedence over statutes if such an agreement cannot be reconciled with the provisions of such statutes.
3. If an agreement, ratified by the Republic of Poland, establishing an international organization so provides, the laws established by it shall be applied directly and have precedence in the event of a conflict of laws.

## Article 92

1. Regulations shall be issued on the basis of specific authorization contained in, and for the purpose of implementation of, statutes by the organs specified in the Constitution. The authorization shall specify the organ appropriate to issue a regulation and the scope of matters to be regulated as well as guidelines concerning the provisions of such act.
2. An organ authorized to issue a regulation shall not delegate its competence, referred to in para. 1 above, to another organ.

## Article 93

1. Resolutions of the Council of Ministers and orders of the Prime Minister and ministers shall be of an internal character and shall bind only those organizational units subordinate to the organ which issues such act.
2. Orders shall only be issued on the basis of statute. They shall not serve as the basis for decisions taken in respect of citizens, legal persons and other subjects.
3. Resolutions and orders shall be subject to scrutiny regarding their compliance with universally binding law.

## Article 94

On the basis of and within limits specified by statute, organs of local government and territorial organs of government administration shall enact local legal enactments applicable to their territorially defined areas of operation. The principles of and procedures for enacting local legal enactments shall be specified by statute.

# 6. CZECH CONSTITUTION

## Article 10

Promulgated treaties, to the ratification of which Parliament has given its consent and by which the Czech Republic is bound, form part of the legal order; if treaty provides something other than that which statute provides, the treaty shall apply.

### Article 10a (rev. 2002)

1. Certain powers of Czech Republic authorities may be transferred by treaty to an international organization or institution.
2. The ratification of treaty under paragraph requires the consent of Parliament, unless constitutional act provides that such ratification requires the approval obtained in referendum.

### Article 10b (rev. 2002)

1. The government shall inform the Parliament, regularly and in advance, on issues connected to obligations resulting from the Czech Republic's membership in an international organization or institution.
2. The chambers of Parliament shall give their views on prepared decisions of such international organization or institution in the manner laid down in their standing orders.
3. A statute governing the principles of dealings and relations between both chambers, as well as externally, may entrust the exercise of the chambers' competence pursuant to paragraph to body common to both chambers.

## 7. ROMANIAN CONSTITUTION

### TITLE VI

#### Euro-Atlantic integration Integration into the European Union

#### ARTICLE 148

(1) Romania's accession to the constituent treaties of the European Union, with a view to transferring certain powers to community institutions, as well as to exercising in common with the other member states the abilities stipulated in such treaties, shall be carried out by means of a law adopted in the joint sitting of the Chamber of Deputies and the Senate, with a majority of two thirds of the number of deputies and senators.

(2) As a result of the accession, the provisions of the constituent treaties of the European Union, as well as the other mandatory community regulations shall take precedence over the opposite provisions of the national laws, in compliance with the provisions of the accession act.

(3) The provisions of paragraphs (1) and (2) shall also apply accordingly for the accession to the acts revising the constituent treaties of the European Union.

(4) The Parliament, the President of Romania, the Government, and the judicial authority shall guarantee that the obligations resulting from the accession act and the provisions of paragraph (2) are implemented.

(5) The Government shall send to the two Chambers of the Parliament the draft mandatory acts before they are submitted to the European Union institutions for approval.

#### Accession to the North-Atlantic Treaty

#### ARTICLE 149

Romania's accession to the North-Atlantic Treaty shall take place by means of a law adopted in the joint sitting of the Chamber of Deputies and the Senate, with a majority of two thirds of the number of deputies and senators.

## 8. LITHUANIAN CONSTITUTION

### THE CONSTITUTIONAL ACT OF THE REPUBLIC OF LITHUANIA ON MEMBERSHIP OF THE REPUBLIC OF LITHUANIA IN THE EUROPEAN UNION

The Seimas of the Republic of Lithuania,  
executing the will of the citizens of the Republic of Lithuania, as expressed in the referendum on membership of the Republic of Lithuania in the European Union, held on 10-11 May 2003,

expressing its conviction that the European Union respects human rights and fundamental freedoms and that Lithuanian membership in the European Union will contribute to the more efficient securing of human rights and freedoms,

noting that the European Union respects the national identity and constitutional traditions of its Member States,

seeking to ensure the fully fledged participation of the Republic of Lithuania in the European integration, as well as the security of the Republic of Lithuania and welfare of its citizens,

having ratified, on 16 September 2003, the Treaty Between the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Union) and the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, the Slovak Republic Concerning the Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, the Slovak Republic to the European Union, signed on 16 April 2003 in Athens,

adopts and proclaims this Constitutional Act:

1. The Republic of Lithuania as a Member State of the European Union shall share with or confer on the European Union the competences of its state institutions in the areas provided for in the founding Treaties of the European Union and to the extent it would, together with the other Member States of the European Union, jointly meet its membership commitments in those areas, as well as enjoy membership rights.
2. The norms of European Union law shall be a constituent part of the legal system of the Republic of Lithuania. Where it concerns the founding Treaties of the European Union, the norms of European Union law shall be applied directly, while in the event of the collision of legal norms, they shall have supremacy over the laws and other legal acts of the Republic of Lithuania.
3. The Government shall inform the Seimas about the proposals to adopt the acts of European Union law. As regards the proposals to adopt the acts of European Union law regulating the areas that, under the Constitution of the Republic of Lithuania, are related to the competences of the Seimas, the Government shall consult the Seimas. The Seimas may recommend to the Government a position of

the Republic of Lithuania in respect of these proposals. The Seimas Committee on European Affairs and the Seimas Committee on Foreign Affairs may, according to the procedure established by the Statute of the Seimas, submit to the Government the opinion of the Seimas concerning the proposals to adopt the acts of European Union law. The Government shall assess the recommendations or opinions submitted by the Seimas or its Committees and shall inform the Seimas about their execution following the procedure established by legal acts.

4. The Government shall consider the proposals to adopt the acts of European Union law following the procedure established by legal acts. As regards these proposals, the Government may adopt decisions or resolutions for the adoption of which the provisions of Article 95 of the Constitution are not applicable.

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