THE INTERNAL ENLARGEMENT OF THE EUROPEAN UNION

ANALYSIS OF THE LEGAL AND POLITICAL CONSEQUENCES FOR THE EUROPEAN UNION IN THE CASE OF A MEMBER STATE'S SECESSION OR DISSOLUTION

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2011

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Preface

Various stateless nations throughout Europe continue to demand their full emancipation and the chance to associate with other peoples of the continent, and the world on an equal footing. However, the European integration process has added a further level of difficulty in achieving a separate state within the European context. Indeed, those peoples who aspire to full realisation of their national personality within the European Union framework wish to do so without giving up the common project of European construction.

This circumstance makes us question how to make access to national independence compatible with continued European Union membership for the new state that results from the process. In this respect, the strength of commitment to the European project maintained by stateless nations throughout Europe and particularly the Catalan people makes it essential to study the compatibility between achieving a separate state and a continued bond with the European Union.

The study we present here uses as its starting point the continuity of the bond between the new state and the Union, whilst considering that democratic decision at the source of independence is the expression of the desire to form a separate state within the European Union. Thus, respecting the democratic principle governing the Union's political personality, from the Preamble to the European Union Treaty, as well as respecting rights of citizens of the new member state as citizens of the Union, the report argues that the new state's membership status is automatic. In this respect, European Union law cannot be an obstacle in hindering the legitimate democratic will of European citizens who, in a particular region of Europe, decide to found a new state for themselves through a democratic and peaceful procedure.

In short, as has occurred in federal states that the Union mirrors from the institutional point of view, separating from a member state does not mean a separation from the federation. It may even be the declaration of a firm wish to maintain the commitment with the federal agreement. Moreover, in the case of new European states outside Union boundaries, the latter has demonstrated its support for the democratically expressed wish of the people in this respect and, therefore for the recognition of the new state.

From this basis, technical problems are obviously raised regarding how the new state is to be built within the Union's institutional architecture, as well as with regards to the new member's obligations. In this respect, starting with the new state's membership status, the report proposes to make a distinction between a provisional membership phase, from notification that the new state is to succeed the predecessor state as a Union member, and a definitive phase, once the primary law provisions have been amended.

To conclude, European Union values and principles support the access to a separate state without having to renounce the European construction project. On that basis, negotiations between the parties involved must shape the new state's definitive statutes side by side with their partners in the common project, as greater liberty and democracy also means a greater Europe.

Joan Ridao
Chairman of the Fundació Josep Irla

1 INTRODUCTION

This study's main purpose is to determine the response that the European Union should have when faced with a secession or dissolution process by a member state in the case that the new state expresses its wish to succeed its predecessor's state in Union member status.

The analysis of the legal basis that is applicable to a substitution situation, in the territorial sovereignty exercise of a European Union member state, which considers the status of the predecessor state's members -if the state continues existing - and that of the new states resulting from it, requires a prior identification of the laws applicable to the specific case. From the point of view of Public International Law, this is a case of one state being substituted by another regarding a territory's international relationship responsibility. This is what is traditionally known as the state succession. However, when identifying the law applicable to this specific case, it would be appropriate to bear in mind the uniqueness of the European construction process, which takes its form chiefly through the European Union. This uniqueness means that a secession or dissolution process in a member state can be considered as a internal enlargement process of the European Union, as it would be a process that takes place within European Union borders, and therefore the finally adopted internal solution for the latter does not necessarily mean that it could be applied to relations between the new state and the other subjects of the international community.

The study that we present below is divided into two parts. The first is devoted to the response analysis that must be given by the European Union to the new state's wish to succeed in the same Union member position as that held by the predecessor state. The second part analyses the internal process that the European Union must follow when a case of internal enlargement arises.

2 THE UNIQUE NATURE OF THE EUROPEAN UNION AS A BASIS FOR ITS INTERNAL ENLARGEMENT

The first question to be resolved is the response that the European Union must give when a new state arising out of a secession or dissolution process of a European Union member state declares its wish to continue as European Union member. To deal with this question, we must identify the legislation and the practice applicable, bearing in mind the European Union's unique nature.

1. THE UNIQUE NATURE OF THE EUROPEAN UNION

All those who have studied the European Union process, which began by creating European Communities, agree on this phenomenon's unique nature, which shares elements characteristic of international organisations and federal structures as well as others that cannot be compared to anything in today's international society.

To this we must add some of the Union's characteristic and fundamental features: defence of democratic principles, both internally and internationally, and creation of a community of law, which recognises and guarantees a number of fundamental rights for people and citizenship status for its member state nationals. This uniqueness is the key to providing a response to a secession or dissolution phenomenon within the European Union.

1.1. The legal nature of the European Union

The particular characteristics of the European Union coincide with elements that make up international organisations. As **SOBRINO HEREDIA** has indicated, international organisations are defined as "voluntary associations of States set up with international agreement, assigned with permanent, separate and independent bodies, responsible for managing certain collective interests and able to express a will that is legally different from that of its members". Each and every one of these characteristics can be applied to the European Union, but it is also true that in its institutional and legal design we can find many elements that pertain to federalism, which do not exist in any other international organisation. For this reason, most of the legal doctrine considers that European Communities, and now the European Union as the successor that takes after the European Community, are international organisations *sui generis*.[1]

The international legal nature of the European Union is determined essentially in Articles 1 and 47 of the TEU. Article 1 of the TEU confirms the member states wish to create an international organisation when it states the following: "By this Treaty, the High Contracting Parties establish among themselves a European Union, hereinafter called the ' Union' on which the

[1] *PÉREZ, Las relaciones de la Unión Europea con organizaciones internacionales. Anàlisis jurídico de la practica institucional [The relationship of the European Union with International Organisations. Legal Analysis of Institutional Practice], pg. 73-133.*

Member States confer powers to achieve common objectives." This is the classic formula used in founding international organisations treaties and that is completed with the explicit recognition of its legal status in Article 47 of the TEU, that is, its capacity to have legal rights and obligations.

International law subjects in the international community relate to the European Union in the same way as to international organisations. From this point of view, in its relationship with other international subjects, it has the legal rights and obligations of international organisations, as provided for in the international legal system, and is connected to other international subjects exercising prerogatives that are particular to international organisations:

— It can enter into international agreements with third parties and international organisations.
— It maintains diplomatic relations with other international subjects, obtaining from within, representatives for states and other international organisations and appointing permanent European Union representatives for states and other international organisations.
— It takes part in international conferences that deal with matters within its jurisdiction.
— It takes part in other international organisations as a full member or with a restricted participation status.
— It can make use of dispute resolution mechanisms provided in Public International Law, and for this reason can be held internationally liable for any international law violations it may have committed, and can demand liability in the event of law infringement arising from obligations undertaken by other international subjects.

However, as occurs with all international organisations, the European Union's legal status is limited and functional. That is to say, all these prerogatives may only be exercised insofar as they are restricted to actual areas assumed by Union member states and provided they accomplish the objectives considered by the Treaty.

International European Union subjectivity does not cancel out international member state subjectivity. Member states are subject to international law and hold only a limited international capacity to act in matters that have been conferred to the European Union. This consideration implies that on specific occasions it is the European Union that has exclusive membership of a particular international organisation, takes part in a particular international conference or is party to a particular international agreement and that, on other occasions, any of these prerogatives can be exercised together with the member states, so that both the Union and the member states are parties to certain international agreements, participate in particular international conferences or are members of an international organisation.

However, internationally the European Union is sometimes able to act in a way more characteristic of states than of international organisations. An example of this can be seen in the possibility provided in Article 35 TEU to give European Union delegations the task of contributing, together with the member states diplomatic and consular missions, "to the implementation of the Union's citizen's right to protection in third country areas as referred to in Article 20(2)(c) of the Treaty on the Functioning of the European Union and of measures adopted pursuant to Article 23 of that Treaty". The European Union's participation in certain international organisations or in certain international treaties transmitted with specific formulae in between those used by international organisations and by states is also usual. This is due to the fact that the latter exercises powers conferred upon it by member states by passing laws internally and entering into internationally binding agreements, forming its own legal system that becomes automatically integrated as the law in force in the member states' domestic legal systems. Thus, although the European Union is an international organisation, it is also true that at international level its behaviour is more akin to that of states than of international organisations and on certain occasions it is treated by other international subjects in a manner more like the relationship shown towards a state than towards an international organisation.

On the other hand, from an internal point of view, the European Union is also a unique international organisation, because it shares features characteristic both of classic international cooperation organisations, and those of federal and confederal-type structures. As we will be able to see further on, many of the characteristics of European Union's organisational structure and legal system are closer to federal models than those of international organisations.

This fact makes it difficult, and sometimes impossible, to apply certain solutions inherent in international law to regulate the internal functioning of the European Union. Thus, beyond the unquestionable integration of

international agreements that serve as a basis for the European Union in its own legal system, the integration of common law and general international law principles into the Union's legal system will only happen insofar as these rules of law do not contravene the basic principles that govern its functioning.

Along the same lines, the European Union's legal system also incorporates, as general principles of Law, legal principles common to the legal systems of the member states. This possibility has been expressly recognised in the founding Treaties to integrate the protection of fundamental rights and public liberties within the European Union framework (Art. 6 TEU) and to determine compensation for damages caused within the European Union framework, of non-contractual liability (Art. 340 TFEU), which has also been repeatedly recognised in other circumstances by ECJ case law. As **LOUIS** states, "the role attributed to these principles arises from the necessarily incomplete nature of Community Law, determined by the aims and material laws of the Treaties, as well as by the Member states' community of legal traditions".[2] The same author argues that the use of general legal principles by ECJ is based on the fact that it falls on this body "to seek the best solution depending on the demands of Community law",[3] even though it is restricted by the fact that "it cannot replace the Community legislator when the latter is able to remedy the deficiency".[4]

It is therefore possible to conclude that on certain occasions some international laws cannot be applied within the European Union area because they are incompatible with its own founding principles and we can apply general principles of law originating from the legal traditions of the member states, provided that they adapt to the nature and aims of the European Union itself.

1.2. The quasi-federal nature of the European Union

From the time of its origins until the present day, the European Union's legal nature has been subjected to constant doctrinal analysis, which has showed up its unique character. Each original treaty reform has given rise to a debate regarding its legal and political classification. Besides attempts to give name to a peculiar and complex organisational and decision-making

[2-3-4] LOUIS, El ordenamiento jurídico comunitario [The Community Legal Order], pg. 128-129.

structure that is constantly evolving, what is true is that nowadays the European integration model has gone beyond the traditional parameters that have used international law to furnish explanations for the various international organisations; and this model is increasingly growing closer to the characteristic pattern of contemporary state structures.

Of course, the origin of European integration can clearly be seen in the international law area as states, through various international treaties, have created European Communities (TEC, TEAEC, TECSC). Its later evolution towards a deeper integration situates the European Union in the most complex state model area, with organisational structures that diverge from and go beyond those typical of traditional international organisations. We only have to think of how the original structures of the European Communities have gradually adapted to the challenges that have arisen in the last decade, such as the enlargement of member states to twenty-seven, the search for a greater level of citizen participation in the life of the Union or the strengthening and convergence of the member states' economies in an era of globalisation. In addition, it has already become clear after the failure of the process to approve the European Constitution and the new Treaty of Lisbon came into force, that the European integration process not is a finite, finished model but that, with the communal principles and processes defined by the common will of the states that make it up, allows the bases of its structure to remain open.

If there is a point on which all those who have conducted research into the peculiar nature of the European integration phenomenon are agreed, it is the belief that federal theories are those that best match and explain it.[5] However, using comparative federal models demonstrates, firstly, that there is not just one single federal experience but rather numerous developments of an idea that have various applications. Secondly, it is the standard model, which serves as common inspiration and alternative, in those political-legal communities such as the Union, characterised by there being a plurality of political territorial decision-making centres that require distribution formulae and balance between the different entities involved. The federal system's essence, according to **HÄBERLE**, is defined by the search for the individual states' own mechanisms and structures that establish methods to distribute vertical power in a rational way whilst avoiding an abuse of power and guaranteeing political liberty, and that allow the principles of homogeneity (unity) to be reconciled with those of optimal plurality (difference and diversity). It is a question of conjugating and preserving

the plurality of particular entities that make up the federal pact: on the one hand the common political entity that sustains the federal pact, and on the other, the different territorial and political parts that form it. The centre of gravity is therefore focused on mechanisms provided to achieve the greatest harmony between the two tendencies. In short, federalism pursues a balance between freedom and political equality, culture and economics, an optimal measure of pluralism and difference with the necessary degree of homogeneity.[6]

Along these lines, the last step taken in the process of integrating Europe by enforcing the Treaty of Lisbon consolidates a process which, according to its Preamble, seeks on the one hand "to strengthen the democratic and effective operation of the Union's institutions so that they can better carry out the missions entrusted to them within a single institutional framework" and at the same time " increase solidarity among its people regarding their history, culture and traditions".

Further on, we will not try to assimilate or compare the European Union with current federal models, but rather highlight the elements close to or common to them, in order to evaluate the possibility of using resources and mechanisms characteristic of federal models when faced with new situations, such as a possible internal enlargement, which require legal responses in keeping with the present context. We will thus analyse below the European Union's institutional structure and power-sharing mechanisms and balanced representation (a); the relationship between the Union and its member states according to the principle of sincere cooperation and mutual solidarity (b); a system of autonomously produced laws and a liaison of these relationships with the legal systems of the member states (c); a power sharing system between the different levels of political decision-making (d); and the guarantee of the homogeneity principle based on the assumption of particular fundamental values, principles and rights (e).

a. Institutional balance in the European Union

From the institutional perspective, the Union's current organic structure, with the basic institutional pentagon is formed by the European Parliament, Council of Ministers, European Council, Commission and Court of Justice.[7] This responds firstly to a distribution of powers between the Union's different institutions, which is quite different from the classic tripartite pattern (horizontal division of powers), and secondly ensures a balance between "centrifugal forces" (member states) and "centripetal forces" (the Union) typical of federalism (vertical division of powers). Furthermore, we should not forget that this institutional framework has been teleologically designed to promote the European Union's values and aims, amongst which we must include the need for decisions to be taken at a level as close as possible to the citizens, and for their interests to be defended and protected. We should therefore emphasise how the European Union's organic structure must respond to the interests of these three co-existing realities (the Union, member states and citizens) whilst instituting formulae that guarantee they are balanced both in composition and in the Union's decision-making process.

Thus, the nature and legitimacy peculiar to each institution serve as the backbone for a genuinely communitarian model: The member states interests are represented by the Council of Ministers through their ministerial representatives, and in the European Council by the heads of state or government;[8] Union interests are supported by the Commission formed by a national from each elected state, chosen because of their general ability and European commitment, from among individuals that offer complete impartiality;[9] and direct citizen representation is undertaken by the European Parliament, which is renewed every five years with democratic elections (democratic legitimacy). With regards to sharing out

[5] Recourse to the federal model is common in a great deal of doctrine which, from the standpoint of both internationalism and constitutionalism, has analysed the Union's legal nature. Thus, MANGAS, LINAN, Instituciones y derecho de la Unión Europea [Institutions and Law of the European Union]; ALDECOA, La Europa que viene: el Tratado de Lisboa [The Europe to Come: the Treaty of Lisbon], refer to inter-governmental federalism; BALAGUER, "El tratado de Lisboa en el divàn. Una reflexión sobre estatalidad, constitucionalidad y Unión Europea" [The Treaty of Lisbon Analysed. Thoughts on Statehood, Constitutionality and European Union], Revista Española de Derecho Constitucional, p. 57-92, highlights the asymmetrical construction of the European integration process, with its own federal principles in the law area and confederal principles in the political area; HABERLE, "Comparación constitucional y cultural de los modelos federales" [Constitutional and Cultural Comparison of Federal Models], European Constitutional Law Review, pg. 171-188, indicates the European Union's transformation, while attributing to it clear pre-federal elements; MARTÍN, El federalismo supranacional. ¿Un nuevo modelo para la Unión europea? [Supranational Federalism. A New Model for the European Union?], employs the concept of supranational federalism.

[6] HABERLE, op.cit., pg. 178-179.

[7] This institutional pentagon was extended to seven institutions by the Treaty of Lisbon. Article 13 TEU: "The Union's Institutions are: European Parliament, European Council, Council of Ministers, Commission, EUCJ, ECB and Court of Auditors".

duties, the European Parliament is consolidated by the Treaty of Lisbon as joint legislator and has full budgetary authority at the same level as the Council of Ministers, which is given with broad executive powers. The Commission maintains the legislative initiative monopoly, ensures Union law is applied, is responsible for managing the budget and exterior Union representation together with the Council of Ministers.

Lastly, the Court of Justice, (whose constitutional nature has already been indicated by doctrine on numerous occasions), guarantees that the law is upheld when interpreting and applying Treaties and centralises the system so that laws are complied with in the Union. In the same way as in a federal court, it also becomes an arbiter of possible conflicts that may occur from different institutions exercising their powers, either through annulment or, to a lesser extent, omission. With regards to controlling vertical power distribution, it settles disputes between the Union and member states through recourse on grounds of breach of its obligations, derived from Union's laws on behalf of the member states (top-down control) and recourse for annulment that allows the legality and constitutionality of legal acts adopted by the Union's institutions (bottom-up control) to be controlled.

We must also not forget that this organic structure represents only the highest Union levels, since the latter does not have its own administration covering all of its territory. Its action therefore depends on the administrative structure of the member states. This attitude of respect and collaboration lies within the duty that is inspired by federal principles, and to which the Union and member states faithfully cooperate with when fulfilling their missions (Art. 4.3 TEU).

[8] The Treaty of Lisbon created the figure of a stable European Council presidency, not representative of any member state, with a mandate of two and a half years; it was designed to preside over, foster and coordinate the European Council's work, and to represent the Union in matters of foreign policy and common security. An attempt is made to give certain stability to the institution and, at the same time, give visibility and improve the Union's leadership.

[9] Article 17.5 TEU: "From 1 November 2014, the Commission will be composed by a number of members corresponding to two thirds of the number of member states, which will include its President and the Union's High Representative for Foreign Affairs and Security Policy, unless the European Council should unanimously decide to change this number."

b. The relationship between the Union and member states: loyal cooperation

Another federal core element is the regulation of the relationship between the Union and member states, that is, the definition of powers and obligations that correspond to the Union's two fundamental political levels. This relationship is subject to the principle of loyal co-operation, clearly federal in nature, which requires loyal behaviour between the member states and Union to preserve the system's coherence and effective function.

The obligations that arise from this loyal behaviour are expressly set out in Article 4 of the TEU. The Union is responsible for guaranteeing equality of all of its member states, respecting national identity in their political and constitutional structures, respecting essential state functions with regards to maintaining their territorial integrity, public order and national security, and assisting the states in fulfilling the Treaties' missions. For their part, member states must reciprocally respect and assist the Union in fulfilling missions entrusted by the Treaties, as well as taking appropriate steps to ensure their compliance, whilst avoiding any action that might threaten the Union's objectives.

c. The autonomous regulatory production system and the relationship with the legal systems of the member states

One of the European Union's essential features is its capacity to create a new set of laws that have nothing to do with either Public International Law or the internal law of the member states. An autonomous regulatory production system is formed where: a) there is a model for assigning powers to common institutions via the Treaties; b) as we have already seen, the Union possesses an institutional system with the power to create laws; c) it has a centralised mechanism, the EUCJ, to control compliance, application and interpretation of its law; and d) it regulates its own procedure to review the founding Treaties with the participation of the member states and the Union's institutions-.

In the group of European sources, it is common to distinguish between primary law, basically made up from founding Treaties and their successive reforms, and then law derived from the Union's different institutions,

regardless of their form and nature.[10] This set of legislation is finally completed with general principles of law and acts resulting from the Union's conventional activity. Primary law, which has no express clause granting its superiority in the hierarchy, takes supremacy and prevails over other sources of law- both those of the Union and of member states; its superiority is secured both by the control undertaken by EUCJ and by the reform mechanism of the Treaties (Art. 48 TEU).

From a federal viewpoint, setting up a legal system calls for the provision of a series of criteria enabling the regulation of relationships arising between federal law and the law of the federated states. Firstly we must mention that European Union legal system laws are automatically incorporated into the legal systems of the member states as soon as they come into force in accordance with European Union law provisions. From then on, the relationship between the Union law and the internal law of member states is essentially regulated based on principles of direct effect and primacy of Union law.

Direct effect is applicable to types of European Union legislation that do not require a state measure to confer rights and obligations to individuals and can be invoked before the courts. According to EUCJ jurisprudence, direct effect has been extended to a considerable number of types of legislation – founding Treaties, regulations and in certain cases to some directives – since a teleological interpretation of the Treaties must be made and the current nature of the Union taken into consideration.

The principle of federal law primacy is one that is intrinsic to federal legal systems, which establishes that all valid and applicable laws issued by a federal authority (validly and effectively assumed exercise of jurisdiction) shall prevail throughout the federation's territory. Within the Union's boundaries, the principle of primacy has been reinforced in jurisprudence (the case of Costa/ENEL) and, at present is set out in the form of a Declaration annexed to the founding treaties, stating that in accordance with repeated EUCJ case law, the Treaties and the law adopted by the European Union based on them prevail over the law of member states.[11] Lastly, the principle of vigilance in federal law performance is carried out by the EUCJ through recourse for non-compliance.

[10] Art. 288 et seq. TFEU.

d. The power sharing system between the different political decision-making levels

The mechanism of exercising jurisdiction structures with different political decision-making levels, as is the case with the Union or the states that make it up, calls for a sharing out and classification of powers that correspond to each entity. The key to federal structure lies in the distribution of powers. The Treaty of Lisbon for the first time expressly regulates delimiting powers between the Union and member states (Art. 2 TFEU), basically by two competence lists and a residual clause in favour of the member states. In the end, the idea derived from the principle of competences, conferred expressly by the founding Treaties, where the only way that the Union's powers can be legitimately extended is by reforming these treaties, which we should remember needs to be ratified by all member states.[12]

The first list, specified in Article 3 TFEU, defined the Union's exclusive jurisdiction areas, where the Union holds the monopoly on legislation and adopting binding legal acts, that is to say, regulatory production. The member states may only become involved in this regulatory activity if there is delegation or by applying the Union laws.[13] The second list, to be found in Article 4 TFEU, contains legislative jurisdiction areas shared between the Union and member states.[14] In this case the states may intervene provided that the Union has not done so or if the latter has waived its right to act, in the case of derogation by the Union of a legal act in order to comply with the principles of subsidiarity and proportionality. The residual clause that favours member states, which is traditional in federal models and contained in Article 4 TEU, completes the distribution of powers, reserving that any other power that the treaties have not attributed to the Union can be held and exercised by the member states. Lastly, the founding Treaties recognise a limited power of action for the European Union in the following

[11] Declaration no. 17, annexed to the Final Act of the Intergovernmental Conference adopting the Treaty of Lisbon.
[12] For DÍEZ-PICAZO, La naturaleza de la Unión europea [The nature of the European Union], pg. 52, the need for unanimity amongst the member states is in this respect the only difference between the Union and main federalism examples.
[13] Article 4 TFEU establishes that the powers shared between the Union and member states shall apply to the following areas: internal market; social policies, in aspects set out in the Treaty; economic, social and territorial cohesion; agriculture and fisheries, with the exclusion of conserving biological marine resources; Environment; consumer protection; transport; trans-European networks; energy; areas of freedom, safety and justice; common affairs of public health safety, in aspects set out in the Treaty.
[14] Protocol no. 2 regarding subsidiarity and proportionality principles.

areas: coordination of economic and employment policies of the member states (Art. 2.3 TFEU), external and communal security (Art. 2.4 TFEU) and coordination, support and complement of member state actions in those areas stated in Article 2.5 TFEU.

Powers exercised by the Union and member states are limited to the principles of subsidiarity and proportionality (Art. 5 TEU). Subsidiarity, in areas of shared action, states that the Union has restricted exercise of its power, and is subsidiary to domestic action. Its aim is to rationalise the exercise of joint powers, prioritising decision-making at the level closest to citizens, but also the action's effectiveness, which could end in a justified Union intervention. Under the principle of proportionality, the form and content of any Union action must not exceed what is needed to achieve the Treaty's aims.[15]

e. The principle of homogeneity: a combination of values, principles and rights

We have previously noted that one of the elements sharing the same characteristics as the federal model is the search for a reasonable balance between the principle of homogeneity, which is necessary between the different parties and the preservation of an optimal amount of plurality that allows each one to express their own interests sufficiently. The principle of homogeneity is conceived as the lowest common coincidence and essential untouchable conviction for the federation to exist and survive. At present, the guarantee of homogeneity within the European Union is formed by recognising a series of rights and freedom that can be approved universally, as well as deepening European identity by distilling it into a set of essential values and fundamental principles.

The recognition process and codification of fundamental rights within the Union is similar to federal processes, both regarding the iter and in questions of its integrating character.[16] Despite having missed the opportunity of constitutionalising the Union's catalogue of fundamental rights and freedom, the Treaty of Lisbon includes them in its set of laws by referring to them in the Charter of the Fundamental Rights of the European Union (Art. 6 TEU). Similarly, there is express recognition of the Union's obligation to adhere to the European Convention for the protection of Human Rights and Fundamental Freedom, whose common and original character is explicitly recognised with respect to the constitutional traditions of the Union's member states, so that they form part of the Union's legal system as general principles. Along the lines of contemporary constitutionalism, European integration is characterised not only by there being an extensive catalogue of rights, but also, and most importantly, by the common idea that a person's fundamental rights constitute an essential element in democratic configuration and characterisation as a community in the Union's law, which consequently has to ensure that they are guaranteed and respected. In short, they become a qualifying element in the Union's political and juridical system.

With regards to values, Article 2 of the TEU establishes that the Union is based on values that respect human dignity, freedom, democracy, equality, state of law and human rights, including the rights of people belonging to minorities. In addition, all of these are common to the member states' societies characterised by pluralism, non-discrimination, tolerance, justice, solidarity and equality between men and women. These values and principles are set up as explicit limitations to the Union's and its member states' behaviour and form the European political community's substratum. Beyond their inherent value, they serve as guidelines for the Union's proper functioning - in this respect, their failure could be reported to the EUCJ – together with those of the member states. In the latter case, if a violation or a serious risk of violation by a member state, of these values was verified, Article 7 TEU has the ability to impose sanctions which, subject to the intervention of the Union's institutions, might lead to the suspension of certain rights arising from applying the treaties, such as the Council representative's voting right. However, the TEU expressly stipulates that a sanction of this type would have to take into account the consequences resulting from the rights and obligations of individuals and legal entities.

1.3. The democratic principles of the European Union

Throughout history the European continent has been a reference point

[15] Protocol no. 2 regarding the application of the principles of subsidiarity and proportionality.

[16] Originally, both the federal model of the United States of America and that of Canada included and recognised the safeguarding of fundamental rights in texts that were approved alongside the Constitution; this is case for the Bill of Rights of 1791, incorporated into the Constitution of the United States, and of the Canadian Charter of Rights and Freedoms, approved more recently, in 1982.

in the creation, development and consolidation of democratic political systems and, therefore, in the defence of democratic institutions, processes and values. For many years clandestine political parties in European countries under dictatorial and authoritarian political regimes watched with admiration as the democratic countries of the Old Continent gradually evolved. Today they all work together, acting hand in hand to extend and reaffirm democratic principles in Europe and throughout the world. The European Union is a privileged instrument for doing so.

Indeed, the European Union is an international organisation devoted to the integration of its member states and the defence of democratic principles and values. So much so that as indicated in its preamble, the Treaty on the European Union draws its inspiration from "Europe's cultural, religious and humanistic inheritance, from which the universal values of a person's inviolable and inalienable rights, freedom, democracy, equality and the state of law arise", and confirms "its adhesion to the principles of freedom, democracy and respect for human rights and fundamental freedom and the state of law" and wishes "to strengthen the democratic, effective operation of institutions". Furthermore, it should be noted that Article 2 of the TEU clearly and forcefully establishes the values on which the European Union is founded: "respect for human dignity, freedom, democracy, equality, state of law and respect for human rights, including the rights of people to belong to minorities". Article 2 of the TEU ends by declaring that "these values are common to the member states in a society characterised by pluralism, non-discrimination, tolerance, justice, solidarity and equality between men and women".

This entire ideological foundation for the European Union has meant an effort in defending democracy not only within the member states but also throughout the world. The furtherance of democracy is therefore one of the chief objectives of European Union's foreign policy. One example of this mission to diffuse and implant democratic values internationally can be seen in the cooperation policies to ensure peace and respect for democratic values in the Mediterranean countries. In this respect, the Declaration of Barcelona dated 28 November 1995 represented a significant step in the progress towards this objective, which is now known as the Euro-Mediterranean Partnership.

Another very important example is the support programmes for guaranteeing consolidation of new and emerging democracies by the Office for Promotion of Parliamentary Democracy (under the aegis of the European Parliament Directorate-General for the Union's Foreign Policy). These proactive support programmes basically assess, train, exchange experiences, design roadmaps and collaborate in a network to train the new democracies' parliaments in institutional and administrative matters.

Inside the European Union there are also many mechanisms to permanently ensure democratic system development of the member states. Starting by viewing modern democracy as a constantly evolving phenomenon, the European Union wishes to guide member states in the processes of intensifying democratic values, increasing transparency and nurturing mutual respect, identifying political responsibilities and increasing social control. However, it is a question of fostering new processes in different democratic models, as the European Union has a rich diversity of democratic forms of government, and what is more, intends to preserve this wealth. The intention is therefore to spread universal democratic values of respect, to allow people's wishes to be freely expressed together with fundamental rights protection among the member states.

One way to preserve these values is to guarantee that the European Union itself works democratically. In this regard, Title II of the TEU sets out several provisions concerning the Union's democratic principles. Firstly, it is based on representative democracy, and secondly on participative democracy. Title II of the TEU devotes four articles (Arts. 9, 10, 11 and 12 of the TEU) to define the European political model and more specifically the democratic principles that guide it. In fact, with some changes, it reproduced Title VI of Part I of the European Constitution, which referred to the "democratic life of the European Union", starting from the concept of European citizens as subjects in rights and subjects who give legitimacy to public powers.

Article 9 of the TEU starts by referring to the Union's respect for the principles of citizen equality, and should all equally benefit from the attention given by their institutions, authorities and public bodies. Citizen equality related to the functioning of the Union extends to all people who hold the nationality of a member state.

Article 10 deals with the principle of representative democracy, which is dealt with in the first section and is explained further in the next three, regarding its institutional, participative and procedural spheres. From the institutional viewpoint, it states that citizens will be directly represented through the

European Parliament and that member states will be represented at the European Council by their head of state or head of government, and at the Council by their government representatives. With regards to participation, all citizens are entitled to take part in the Union's democratic life and decisions must be taken in a way that is most transparent and closest to the citizens. Lastly, the principle of participative democracy is specified from a procedural point of view, as it is set out in the member state Constitutions, in a task assigned to European political parties when forming European political awareness and expressing the Union's citizens' will.

The principle of participative democracy is specified in Article 11 of the TEU. Firstly, it states that institutions must give citizens the ability of publicly expressing and exchanging their opinions in all the Union's areas of action. Secondly, the European institutions are required to foster open, transparent and regular dialogue with associations and civil society. Thirdly, it states that the European Commission should maintain broad consultation with the parties concerned. Finally and in fourth place, citizens are offered the chance – and certain minimum requirements are set out – to invite the European Commission to present an adequate proposal within its power framework with regard to questions that citizens believe need a legal act from the Union to implement the Treaties. In short, it is a question of establishing different ways for citizens and representative associations to take part in the TEU, and therefore to further advance the way in which the democratic institutions are expected to work, and to support the democratic objectives of participation and transparent operation specified by other regulations such as the TFEU or those arising from the application of the White Book on European Governance.

The last of the Title II articles of the TEU, in which democratic principle provisions are set out, relates the member states' parliaments to the functioning of the Union. Thus, to guarantee the Union's correct operation, six actions that affect national parliaments are listed: to be informed by the Union's institutions and to be notified of Union legislation drafts, to ensure respect for the principle of subsidiarity, to participate in assessing the application of Union policies, to participate in procedures of reviewing treaties, to be informed of all applications to join the Union, and finally to participate in inter-parliamentary cooperation between national parliaments and the European Parliament.

All of these are measures that on the one hand, intended to strengthen links between European institutions and member state parliaments, and on the other, to firmly fix these relationships whilst at the same time preserving democratic principles in the functioning of the Union.

In keeping with democracy protection and promotion beyond the Union's member states and establishing democratic functioning inside the Union, the criteria specified so that another state can join the European Union (Art. 49 of the TEU) are respect for the principles set out in Article 2 of the TEU: human dignity, liberty, democracy, equality, the State of Law, human rights, the rights of minorities, pluralism, tolerance, justice, solidarity and equality between men and women. It is therefore a condition that the new state should be a constitutional democracy, although states are free to shape the model of democracy in the way they consider most appropriate.

The requirement that they should be a democratic state to enter the European Union, that they should always defend democratic principles once a Union member and guarantee domestic democratic functioning, justify the wording of Article 7 of the TEU, which gives the European Council the ability to be able to suspend certain rights arising from applying the Treaty in states that seriously and persistently violate the values laid down in Article 2.
In short, respect for democratic values is a connecting thread found in the criteria for entry, in its internal functioning, foreign policy and the very nature of the European Union. The European Union cannot be understood without its defence of democratic principles, nor can one think of a European Union that fails to respect decisions and democratic processes of the member states.

1.4. The European Union as community of law: rights and citizenship in the Union

As the German law historian Michael **STOLLEIS** makes clear, basing himself on Walther **HALLSTEIN**'s opinion, who was the first European Commission president, Europe represents a community of law, a concept similar to that of the State of Law and used to describe the juridical culture of the whole of Europe, specifically applied to the European Union.[17] This means that Europe uses law as the necessary vehicle to express political power, which

[17] *STOLLEIS, "Europa como Comunidad de Derecho" [Europe as Community of Law], Historia constitutional, pg. 475.*

in objective terms forms a restriction on exercising this power and therefore represents an impediment to arbitrariness.

From a formal point of view, this means that European states and the Union, entrust law to be used as a peaceful solution to social conflicts. Legal security is in this context, a guarantee to predictably resolve these conflicts, which are not subject to the whims of power (the so-called 'kadi justice'). The predictable guarantee that the law, the State of Law itself in a formal sense, must be understood as something instrumental intended to guarantee the State of Law in the substantive sense, which is shaped by rights (fundamental or human rights) and that is connected to the status of citizenship.

Indeed, fundamental and human rights form the central nucleus of the *novum ius publicum commune europaeum* as manifestation of a just social order where the state's power is limited and is democratic in origin. This is the European juridical culture's core element, which is necessarily projected - and at the same time, gives a unique character when compared to conventional international organisations - on the European Union. Effectively, the jurisprudence of the national Constitutional Courts, European Court of Human Rights in Strasbourg, and EUCJ in Luxembourg, defines the common European standard on fundamental rights and consequently the essential core of the *novum ius publicum commune europaeum*, while giving rise to a material European constitution that limits the ability to exercise power and create law in Europe, which represents a defining influence in the convergence process in the different European legal systems.[18]

European citizenship within the Union is a particular manifestation of this, based on a fundamental element in the development of the *novum ius publicum commune europaeum*, that is, the idea of individual human life as supreme juridical goods, which takes its specific form using a person's dignity as a founding principle for political and social order (e.g § 1.1GG or Art. 10.EC,). Indeed, the idea of State of Law in the substantive sense, which is projected in the concept of Europe as community of law, is that political power is committed to protect each individual's personal area as they pursue their lives according to the idea of dignity.

The European Union together with the original communities, were linked to the idea of human emancipation and therefore committed to the idea of a substantive law State, which would first be projected onto the idea, strongly imbued with an economic sense, with community freedom which would develop into the idea of a Fundamental Rights of the European Union Charter.
Effectively, the individuals' unique status in the European Union, especially following the Maastricht Treaty, is defined by the concept of citizenship, understood as a legal and political bond between the Union and individuals, consisting in enjoying a series of rights and assuming certain obligations. The perspective of a direct legal relationship between the Union's community's institutions and people suggests a unique parallelism with the legal structure of the federal states, a distinctive characteristic that comes from a direct link between the federal system of laws and citizens of the federated states. We should not forget that current-day federalism is also interpreted as the community and union of citizens, and it is here that cohesion elements found within the Union, such as citizenship, demonstrate their role as a founding principle that set them beyond their strictly legal sense.

The Treaty of Lisbon has taken firm steps to advance the consolidation of this particular status, not only legally regulating all the rights and obligations which make it up but also, and most importantly, as indicated by **MANGAS**, carrying out a decisive turn where citizenship and the rights that this entails have the "purpose of serving the citizen, who becomes the very objective of European integration, an objective that is rediscovered in an increasingly closer union between the people of Europe". In this respect, the Preamble of the TEU expressly refers to the will to create a citizenship common to the nationals of the member states.

From the legal viewpoint, the inherent status in the European citizenship concept is related to a series of rights and obligations of every citizen of the

[18] *The distinction between formal constitution and material constitution employed here is based on the idea that fundamental political decisions of a particular political community do not necessarily have to be contained within the text of the written Constitution, as AUBERT, among many others, has made clear in his Traité de droit constitutionnel suisse, [Treaty on Swiss Constitutional Law] pg. 101. This understanding of the material constitution idea is different from that discussed in the work of MORTATI, La costituzione in senso materiale, [The Constitution in a Material Sense] published by Costantino Mortati (1891-1985), in which this concept was taken to be the "organisation of the stably ordered social forces in the context of a system of specific interests and purposes", thus representing an idea based on fact rather than a constitutional system of law, which is opposite to, and rightly so, that by JIMÉNEZ, "Contra la Constitución material" [Against the Material Constitution], Estudios de Derecho público. Homenaje a Juan José Ruiz-Rico, pg. 42-43. To clarify the distinction between both conceptions of material constitution, see VIGNOCCHI, GHETTI, Corso di diritto pubblico, [Course in Public Law]pg. 25-26.*

Union who holds the nationality of one of its member state as set out in an initial version, in Article 20 of the TFEU: [19]

— The right to circulate and reside freely in member state territories.
— The right to vote and stand for the European Parliament elections and in elections of the municipality where they reside under the same conditions as nationals.
— The right, to receive the protection of diplomatic and consular authorities of any member state under the same conditions as their nationals in another country's territory where they are nationals of a member state that is not represented,.
— The right to make requests to the European Parliament, to address the European Ombudsman, and to address the Union's consultative institutions and bodies in one of the Treaty's languages and to receive an answer in the same language.

Complementarily, the citizenship system also includes other areas that allow the participation of individuals in the Union, such as the right to citizens' legislative initiative, some degree of legal protection before the EUCJ or to consider a person as a direct recipient of the European Union laws.

Beyond the recognised series of positive rights for European citizens, European citizen identity is hinged on a system of constitutional and democratic values we have already referred to (Art. 2 TEU). It would be unthinkable today that Europe should accept a political and institutional system where decisions were taken away from citizens, where there were no democratic control systems for authorities and where fundamental rights were not recognised and guaranteed. So it is clear that nowadays the components of citizen identity in the Union should be aimed at achieving democracy and citizenship values, and we intend to greatly strengthen the Union in this way in the future. Democratic legitimacy and citizenship are the Union's very essence. This was already advanced by the failed European Constitution project, which declared the common will of citizens and European states to build a common future.

[19] *Also listed in Chapter V, under the heading "Citizenship", of the Fundamental Rights of the European Union Charter, Articles 39 to 46.*

2. ANALYSIS OF THE POSSIBLE MODELS TO BE FOLLOWED IN THE CASE OF THE SECESSION OR DISSOLUTION OF A EUROPEAN UNION'S MEMBER STATE

The uniqueness of the European integration process is fundamental to determine the response that the European Union must make in an internal enlargement process arising from the secession or dissolution of a Union member state. Apart from the Public International Law applicable to a supposed case of internal European Union enlargement or the possibility of applying solutions adopted within other international organisation frameworks to this case, are two questions that need to be clarified when responding to the challenge of the Union's internal enlargement.

Another possibility, bearing in mind the European Union's uniqueness as a quasi-federal entity, would be to explore solutions provided in federal models to deal with internal changes in the organisation of territory. The internal practice used in member states or other federal countries may be very useful when dealing with this question. It is therefore possible to find significant examples in practices undertaken by federal states when faced with changes in the configuration of their territories even when in some cases, their constitutions have not made provision for the procedures to be followed.

2.1 International regulations concerning succession of states in membership status of international organisations, the possible existence of associated European Union rules and the practice of international organisations

Internal enlargement of the European Union, resulting from a member state's secession or dissolution process, would be considered a case of state succession under international law. From the point of view of international agreements on the subject, the concept of state succession determined by the scope of applying these treaties emphasises two elements: firstly substitution, and secondly, responsibility for a territory's international relations. Therefore, Article 2.1 b) of the Vienna Convention of 1978, concerning state succession in treaties, and Art. 2.1 b) of the Vienna Convention of 1983, concerning state succession on property, records and

state debts, define the state succession as: " replacing one state by another in responsibility for the territory's international relations ".

The cases of succession contemplated in the two aforementioned conventions are the following:

— One part of the state's territory changes from the sovereignty of one state to that of another.
— Creation of a recently independent state as a result of decolonisation.
— The separation of one or several parts of a state's territory, regardless of whether the predecessor state remains.
— The unification of two or more states, giving rise to a new state.
— Dissolution, when the predecessor state no longer exists and two or more successor states are created.

Some of the legal problems caused by state succession cases have been the subject of an extremely slow codification process by the ILC. The ILC decided to divide the material to be coded into four major sections: succession in treaties, succession other than in treaties, succession in the membership status of international organisations, and nationality relating to the state succession.

The results of the codification work up to now have been:

— The Vienna Convention of 1978, on state succession regarding treaties, which has not yet come into force.
— The Vienna Convention of 1983, on state succession regarding property, records and debts of state, which has not yet come into force.
— The adoption in 1999 by the ILC of a draft of articles dealing with the nationality of individuals regarding state succession.

In 1987 it was decided to shelve the codification process for the rules regarding succession as an international organisation member.

The codification work set out to combine two different sensitivities. On the one hand there was traditional practice, and on the other, the pretensions of states arising after decolonisation. The results particularly reflect the second of these positions, so it could be said that the two conventions may be considered more like a development in progress than a codification of current law. Perhaps this helps us to understand the difficulties in the process of bringing them into force, which has been very slow. In fact, at present, only the Vienna Convention of 1978 has obtained the minimum number of ratifications allow it to come into force.

However, these conventions do not exhaust existing international regulations on the matter. In addition to several treaties that resolve the problems arising from a specific process of state succession, we cannot exclude that there is common law on these areas that is not expressly regulated in international convention instruments and has been applied in different processes of peaceful dispute settlements.
When state succession means that a new state appears, the problem is raised of whether the latter succeeds it as a member of the international organisations that the predecessor belonged to. The fact that the ILC has relinquished this issue leaves us only with the precept established by the Vienna Convention of 1978, on succession in respect of treaties, which refers to this question. It is dealt with in Article 4, which regulates the application scope of the Vienna Convention of 1978 and declares the following:

"The present Convention is applied to the effects caused by a State succession regarding:

a) any treaty that is the constituent instrument of an international organization, without prejudice to the rules concerning membership acquisition and without prejudice to any other relevant rules of the organization;
b) any treaty adopted within an international organization, without prejudice to any relevant rules of the organization."

We should mention beforehand that solutions presented by the Vienna Convention of 1978, regarding state succession not arising from a decolonisation process, are maintained using the continuity principle, so successor states, if they so wish can continue to be part of treaties that their predecessor were included in, with a simple succession notification made in writing.[20]

[20] *In the specific case of Soviet Union successor republics, and bearing in mind that the Treaty was not in force and doubts were raised as to whether there was actually a simple codification process of pre-existing rules on this matter, this principle was accepted by the Almaty Declaration of 21 December 1991. In relation to German unification, a treaty was signed between the FRG and the GDR which established the continuation of FRG treaties for the whole of the state and examined GDR treaties to see whether they remained in force, whether they had to be adapted or whether they would expire.*

However, it is very complicated to apply this rule compulsorily, as even though the Vienna Convention of 1978 established that it be applied to state succession cases in agreements founding international organisations, it goes on to state that the general rule is applied without prejudice to those rules applicable to membership status acquisition and any other relevant rule of the organisation. The interpretation of this precept's scope has not gone undisputed by doctrine, although we generally consider it transfers the solution of a possible succession question in an international organisation member to the rules of international organisation itself.[21] However, the comments on the Convention's draft articles adopted by the ILC in 1974 establish a precept that is also followed, when it stated:

> *"although it is true that State succession rules do not apply to an international organisation's constituent instrument, it would be false to say that they do not apply to this treaty category at all. In principle, the organisation's relevant rules are applied, but they do not completely exclude applying State succession general rules regarding treaties where the treaty is the constituent instrument of an international organisation."* [22]

It is therefore possible to say that to resolve these questions, it is necessary to turn to the international organisation's own law, but it is also true that this does not mean that the general rules concerning state succession cannot be applied to international organisations; we should study the compatibility of these regulations with the international organisation's rules, including all the organisation's own written rules and customs in this category, as does the ILC.[23]

In this same respect, as we will see further on, international practice does not seem to reinforce international legal regulations based on common law that either support or hinder applying the provisions of the Vienna

[21] *Regarding this question see the analysis of BÜHLER, State successions and membership in international organisations: legal theories versus political pragmatism, pg. 30-35.*

[22] *«S'il est vrai que bien souvent les règles de la succession d'Etats ne s'appliquent pas à l'acte constitutif d'une organisation internationale, il serait faux de dire qu'elles ne s'appliquent pas du tout à cette catégorie de traités. En principe, ce sont les règles pertinentes de l'organisation qui l'emportent, mais elles n'excluent pas complètement l'application des règles générales de la succession d'Etats en matière de traités dans les cas ou le traité est l'acte constitutif d'une organisation internationale». INTERNATIONAL LAW COMMISSION, "Report of the Commission to the General Assembly. Draft Articles on the Succession of States in respect of Treaties with comments", International law Commission Yearbook, 1974, vol. II, part I, pg. 178-279.*

[23] *Idem.*

Convention of 1978, regarding treaty succession in cases of succession in the membership of an international organisation, because the practice is extremely varied. Therefore, according to international law, the solution adopted for European Union's internal enlargement case would refer us to the organisation's own internal law; that is, to all the written rules and customs that make up the legal framework that regulates it .

Bearing in mind that here the founding Treaties do not expressly establish provisions regulating this question, it would be appropriate to analyse the organisation's own practice to see if there is a legal framework regulating the matter.

Ever since the European communities were created, the European construction process has not had to face any state succession cases as such, although there have been two modifications to the area of territorial application of the founding Treaties. This has occurred as a result of changes in territory sovereignty that was initially made up by another sovereign state, which did not form part of the European Union (GDR), which was integrated into a member state (FRG); or changes in a member state's territorial organisation (political autonomy of Greenland within Denmark). In both cases, although there were no specific rules within the Union's framework regulating such changes, the European Union showed its ability to adapt and be flexible in providing a fast and satisfactory solution to the demands that were made.

Thus, in the absence of express regulation in the founding treaties and the fact that there is no practice in the European Union itself to help in facing member state's secession or dissolution cases, we should analyse how to possibly apply international organisations' practice on state succession regarding membership. International practice on the issue demonstrates all kinds of solutions, from cases where the automatic succession of the new states arising from a state succession process is not accepted, to those cases where a simple notification to the international organisation by the new successor state is enough for its membership to be recognised.[24]

The study carried out by **BÜHLER** on international organisations' practice from 1945 to 1990 identified six response categories: membership continuity

[24] *An analysis of the different types of solutions offered by the founding treaty provisions of international organisations in cases of state succession in membership can be seen in BÜHLER, op. cit., pg. 18-30.*

status, recovery of membership status, ex novo admission as a member, succession as a member, substitution in membership and amalgamation of membership.[25] From all these international organisations practice cases, a case of secession or dissolution of a European Union member state could give rise to, a new state or states arising from the process within this organisation, a case of continued membership, a case of ex novo admission as a member, or a case of membership succession.

— Continuity has been applied in cases of separation or secession by the predecessor state, in cases of incorporation or accession by the resulting state, and in cases of other international figures continuing after a simple change in status, such as the acquisition of state sovereignty. In all of these cases, some organisations have accepted the international organisation's continued membership from the original accession date with membership that has the same rights and obligations as the original state.
— Ex novo admission as a member of the organisation has been applied in cases of separation or secession or dismembering by some international organisations and implies that the successor state must start the formal admission procedures as an international agreement member according to the respective founding instruments.
— Membership succession has been applied by some international organisations in cases of separation/secession or dismembering, and implies accepting membership succession for the new state created according to the membership status enjoyed by the predecessor. This circumstance does not occur automatically and requires a "notification of succession" and in some cases has also required certain conditions to be fulfilled and a formal decision on the organisation's behalf. In this case, the new state is considered a member from the date of succession.

This variety of practices makes it impossible to generate an international custom on the subject to be fulfilled by the European Union, but it would not prevent some of the solutions presented to be applied by analogy. However, this analogous application would depend on whether the adopted solution was in keeping with the European Union's unique nature. It is therefore necessary to analyse whether the solutions employed by other international organisations are suitable, bearing in mind the consequences the solutions would have on the European Union.

[25] *See BÜHLER, op. cit., pg. 287.*

From this viewpoint we must remember that the practice analysed corresponds to classic international cooperation organisations that are very different from the European Union, an integrated international organisation with characteristics typical of federal and confederal-types of structure, as we have tried to show in the preceding pages. This uniqueness is reinforced even more with the particular nature of the procedures contemplated in the TEU to regulate two basic questions related to the organisation member's status. Therefore, adhesion procedures for other states (Art. 49 TEU) and withdrawal from the European Union (Art. 50 TEU) cannot be compared with those used by other international organisations. In both cases, as a result of the consequences that these two situations have on the Union, member states, its citizens and legal entities operating in the territory, an international treaty has been provided to regulate the adhesion conditions and necessary adaptations (Art. 49 TEU), and the form of their withdrawal and future relations between the former member and the Union (Art. 50.2 TEU).

The ex novo admission of the new state arising from the secession or dissolution of a member state in the European Union would imply the new state's absolute break with the Union and the possibility that the European Union might not accept the new state's adhesion or delay it for an undetermined period of time. This option would mean the founding Treaties would not be applied from the time of the new state's effective independence, with all of the consequences that this would have on effectively applying the European Union's legal system, and particularly on the effectiveness of the rights and obligations recognised not only for the states, but also for citizens and legal entities, not only for the new state's nationals but the Union's citizens and legal entities in the new state's territory. Furthermore, if the European Union chose this option it would also imply a kind of sanction on the new state's citizens, who would have to exercise the democratic option of creating a new state, contrary to defending democratic principles that are promoted by the Union itself.

The automatic continuity and succession of the new state as a European Union member would not entail a break with the EU. This solution would represent real internal enlargement that would guarantee continuity by effectively applying European Union legislation in the new state's territory, with everything that this might entail. Amongst other things, it would guarantee the authority of the European Union's institutions and bodies and particularly those referring to administrative mechanisms

and judicial control in applying Union law. However, automatic continuity would not allow the European Union's membership terms to be changed for the new state, as the latter would have the same rights and obligations as the predecessor state, which would give rise to institutional problems in the European Union and might have negative consequences, both for the European Union and the new state and its nationals regarding the application of certain Union material law provisions, as for example would occur in the case of quotas allocated to member states. On the other hand, membership succession would offer a solution to the situation created by a member state's secession or dissolution and would also guarantee the continuity of the rights and obligations arising when applying European Union law. This solution would also respect the defence of the democratic principles that the Union propounds.

2.2 Internal territorial amendments in federal states: Case studies

Based on what has been said about the European Union's unique nature and the state succession that makes it up, according to both the precedents and the internal logic of the system. It is necessary to examine some important cases of how federal and democratic states have dealt with the question of secession, that is, constitution from a new state's democratic decision by looking at the decision's legitimacy, as well as the consequences for the new state regarding to how it belongs to the federal community (state) to which its territory and citizens already belonged when they were part of the predecessor. As regards to the second question, we shall focus on a precedent for secession that will end by generating a true internal enlargement (of the members) of a federal state: this is the case of the Jura in Switzerland. This concerns the issue of the decision's legitimacy to secede, and consequently to prevent sanctions or reprisals arising from such a decision, and we will focus on how the question has been dealt with in the case of the possible secession of Quebec from the rest of Canada.

a. Internal secession and continued federation membership: the Jura secession case and Article 53.2 of the Swiss Federal Constitution

The Jura lands were included into the Berne canton after the Napoleonic Wars, under the Congress of Vienna (1815), as compensation for the loss of territory suffered by Berne during that conflict. The incorporation of a mainly French-speaking and Catholic territory into a mainly Protestant and German-speaking canton (state) did not take place without some tension, but the conflict did not come to a head until 1947, with the so-called Moeckli affair

From then on, the Jura separatist movement gradually gained notoriety until the Berne authorities were obliged to seek a political solution to the problem. The important question here was that the Jura separatists had no desire to leave Switzerland but only Berne, and become an independent canton within the Confederation's structure. In this respect, the case is similar to a secession case in a European Union member state context where the new state does not want to leave the common quasi-federal structure.
The process, evidently marked by how important direct democracy is in the Swiss political system, evolved in the way we describe below. In 1959 there was a cantonal initiative promoted by the Rassemblement Jurassien asking the people of the historic Jura about their desire to form a sovereign canton within the Confederation.[26] The initiative won a majority in the three Catholic districts of the North, but lost in the three Protestant districts of the South and in the German-speaking Catholic district of Laufental.

In 1970, the Berne canton Constitution was reformed to allow the referendum initiative in cantonal territory sectors, which at that time required a referendum throughout canton for it to be approved. In 1974 a referendum was held in the Jura territory where the people were asked if "they wished to form a new canton". The result was positive. The following year, in accordance with the constitutional reform of 1970, successive referendums were held in Southern Jura and Laufental, to see if these territories wished to remain within the Berne canton or be included into new canton (in Southern Jura the option to remain with Berne won, while Laufental first decided to remain with Berne and subsequently, to be included in the

[24] Within the Swiss direct democracy system framework, the cantonal initiative consists of being able to call a referendum within a canton, in accordance with its own constitutional law rules, with a certain percentage of the electoral roll. This means that the call to referendum does not depend on the representative powers, but comes from the people themselves, which allows questions to be brought into the political debate even against the will of the parties represented in the (cantonal) parliament. With regard to the referendum and the cantonal initiative in Switzerland, see JARIA, "Las consultas populares en Suiza (Un estudio sobre la democracia directa)" [Polls in Switzerland (A Study of Direct Democracy)], Jus. Revista del Instituto de Investigaciones Jurídicas de la UJED, pg. 127-144.

Basel-Landschaft canton, given that the new border separated it from Berne however not with that canton). After these territories had expressed their wish to remain, local referendums were held in the frontier municipalities to determine whether they wished to remain with Berne or become included into the Jura (5 municipalities opted to remain with Berne and 8 to join the new canton).

In 1977, after the question of delimiting the borders, the people of the Jura approved the new constitution, whereby they formed a new state.

The following year, once the new canton had been set up, the Federal Constitution was amended to include the new canton. The Confederation President called for respect for minorities in order to defend the "yes" of the new canton in the Federal Constitution reform referendum, whereby the Jura was included in the Confederation. The referendum returned a positive result. So finally in 1979 the canton joined the Confederation when the Federal Constitution reform came into force following its approval by the people and cantons.

As we can see with Berne (a pre-existing member state), the process involved constitutional decisions that were intended to allow the will of the different communities present to be fulfilled, whilst respecting both that of the secessionist Jurassians and of those who wished to remain in the canton. The flexibility in finding a peaceful, agreed solution to the conflict has a connection with the Canadian Supreme Court doctrine, which we will examine further on. Moreover, at Confederation level, although a constitutional reform was necessary to bring in the new canton, the process was transmitted as the recognition of the will expressed in the secession process of the Jura from Berne, without questioning that the seceded Jurassians belonged to Switzerland, and who in any case had said they were in favour of remaining in the Confederation.

We might wonder what would have happened if the federal referendum had rejected the Jura inclusion. What is evident, however, is that after the new canton's Constitution, the Jurassians continued to be Swiss and the Jura continued to be part of Switzerland; a victory for "no" in the federal referendum of 1978 would have forced the secession procedure to be initiated for the Jura from Switzerland, which would not have been automatic, or else the constitutional reform would have had to be rethought as consequently would the Jura inclusion into the Confederation. In our opinion, this situation throws sufficient light on what would have happened in the event of a case of secession or dissolution inside the European Union, particularly questioning the need for an ex novo admission. In short, it seems that remaining in the Union would be an automatic consequence for the new state and that for it to leave the Union, it would effectively be necessary to start a separation process based on Article 50 TEU.

It should be noted that the situation that occurred regarding the Jura was not viewed by the Swiss as being just a one-off event, but was in fact seen as the normal solution to be applied in secession cases within the Confederation. Therefore, given the problems that have been raised due to the lack of express regulations in the Constitution to resolve the case, there was a subsequent Federal Constitution reform, in its current Article 53.2, which set out to resolve

the contradiction between statehood guarantee (including the integrity) of the cantons assumed by the Confederation and respect for the democratic will for secession on behalf of the canton population. In the final instance, the protection of canton integrity by the Confederation gives way to the democratic principle according to the provisions of the article mentioned above. Having demonstrated that ex novo admission is not the solution that best adapts to the federal system's logic when a secession occurs in one of the federation's members, we link here to the legitimacy question of the secession act to show that, in fact, ex novo admission is contradictory to the European Union's adhesion of the democratic principle. We will do this by referring to another case - that of the secession of Quebec.

b. Democracy, State of Law and secession: the Canadian Supreme Court ruling on the secession of Quebec

Following the second referendum on the sovereignty of Quebec, which was held on 30th October 1995, the Federal Government requested the Supreme Court to rule on the possible right of Quebec to unilaterally separate from Canada. The Supreme Court handed down its judgment on 20th August 1998.[27]

[27] *Secession of Quebec, [1998] 2 S.C.R. 217.*

The Court judgment constituted a judicial opinion based on the problem raised by the secession of a territory occupied by a group of the population as part of a democratic state of law. In a way, the Canadian Supreme Court's considerations are entirely coherent with the practice of the Jura secession and seem to indicate a way to resolve this kind of disputes in a democratic state of law.

The Supreme Court started with a subtle and in depth understanding of the idea of Constitution, so it refused to give a mechanical answer to the problem, which would prevent a peaceful solution from being found based on respect for minorities. Otherwise, there were no other options than de facto procedures. Indeed, the Canadian Supreme Court considered that the Constitution "embraced unwritten, as well as written rules" so that a superficial and literal reading of selected provisions from the written constitutional enactment, might be misleading concerning the founding agreement's real content, which forms the cornerstone of any specific society.[28]

For this reason, in the view of the Canadian Supreme Court, it was necessary to undertake a more in depth investigation of the "underlying principles that give life to the whole of the Constitution, including the principles of federalism, democracy, constitutionalism and the rule of law, and respect for minorities".[29] The Court's conclusion was that there was no right to secession for Quebec set out either in the Constitution or in international law. Notwithstanding, nor was there any basis for the Federal government and other provinces "to deny the right of the Quebec government to pursue secession should a clear majority of the people of Quebec choose that goal, so long as in doing so, Quebec respects the rights of others."[30] From this point, the question of the procedure had to be resolved politically.

Effectively, as the Canadian Supreme Court saw it, "[...] a system of government cannot survive by only adhering to the law. A political system must also possess legitimacy, and in our political culture that requires an interaction between the rule of law and democratic principle. The system must be capable of reflecting people's aspirations "[...].[31] Beyond applying this judgment in the Union's internal process, we must conclude that in

[28] *Remuneration of Judges of the Provincial Court of Prince Edward Island, [1997] 3 S.C.R. 3.*
[29] *Secession of Quebec, cit.*
[31-31] *Idem*

accordance with democratic ideas and minority protection, the result of a secession or dissolution process within the Union reflecting the democratic will of those involved would have to lead to a teleological interpretation of Union's the law by ruling out mechanical application of the admission procedure for the state(s) resulting from the process.

Indeed, in accordance with the precedents of Greenland and above all those of German unification, the Union should be capable of responding to democratic aspirations of part of its citizens by constituting a new state, which would rule out ex novo admission. Therefore, going back to the Canadian Supreme Court jurisprudence, which is based on the same foundations as the *novum ius publicum commune europaeum*, the central core of the Union's law, formed by fundamental rights and democratic principle, we should point out that Treaties cannot be used to frustrate the will of a legitimate majority, in this case that of the European citizens who are nationals of a certain state and inhabitants of a certain territory, who democratically decide to form a new state different to the one they had previously belonged to, without needing to give up their status as European citizens, as it would be the same as sanctioning someone for exercising a legitimate right.

c. The legitimacy of the democratic decision to form a new state as a basis for internal enlargement

We can see in the cases analysed that we are examining the secession of a political community not subject to colonial dominion or an oppressive power. It is therefore not a question of turning to the doctrine effects of the right to self-determination under international law to justify the formation of a new state. Instead a basis must be sought in the internal founding principles of the Community's legal and political systems to justify that a (democratic) act of internal secession does not affect the new state's Union membership when it is formed.

To begin with, we should accept the democratic right of the people concerned to express their opinion on the possible secession. In this way, there are two different cases from the democracy idea point of view, one where direct democracy takes priority (Switzerland) and the other of representative democracy (Canada). We must accept the possibility that the declaration of a democratic opinion linked to the constitution

of a new political entity breaks the status quo, renouncing constitutional rules to be mechanically applied to thwart democratic aspirations by part of the population, from the idea of a constitution that is strongly linked to fundamental values and rights. Consequently, there is "no basis" (in the words of the Canadian judgment) for denying secession based on a mechanically applying constitutional rules, which from the Union's point of view, means that the Treaties must be interpreted in such a way as to allow for the integration of a declaration of will supported by Union's fundamental legal and political principles, as a democratic community of law.

3. THE LEGAL AND POLITICAL FOUNDATIONS FOR THE EUROPEAN UNION'S RESPONSE TO AN INTERNAL ENLARGEMENT PROCESS

The European Union, in accordance with it nature as a unique international organisation that is quasi-federal in structure, adopts a non-intervention stance in state internal affairs (Art. 4.2 TEU), which, although is not an active commitment to member state integrity protection as expressed in Article 53.1 of the Swiss Federal Constitution, does imply a duty of non-intervention. However, the Union's commitment to democratic values means that this respect for statehood cannot but be modified, something which seems to derive from Article 4.2 TEU, in that, according to the solutions we have compared in juridicial-political traditions similar to those of the Union, the democratic principle means there is a possibility of expressing collective will in sub-state spheres, as well as the obligation to take into account this legitimately expressed will, both at an internal (state) level as well as federal, as has been clearly seen in the Jura case.

Indeed, as stated before, the European Union is based on respect for democratic values and principles, and adopts a democratic internal functioning that is intended to disseminate and promote democracy throughout the world. It is clear that this ideological basis for the nature of the European Union includes respect for all democratic processes developed inside the member states, even though these processes are not specifically regulated in the TEU or generally in Union law.

A European Union founded on such bases cannot show political, institutional and legal contempt for scrupulously democratic processes for the dissolution of a member state or the secession of territories that form part of the member states. Therefore even though the European Union's legal body does not – explicitly – provide for the European Union's internal enlargement, that is, the possibility that some the member state territories might become new independent European Union member states. If this were to come about, legal and institutional solutions would have to be found aimed at respecting and giving the necessary purpose to preserve the democratic rights of European citizens who have decided to create a new state. Certainly it would not be understood that a European Union based on states which, in many cases, had originated through processes hardly or not at all democratic (it must be remembered that the national state's origin and its frontiers could not be called exactly democratic), should fail to respond satisfactorily to new states appearing within the Union. If democracy requires an agreement on territorial legitimacy of political power, the possibility of an internal Union enlargement made through transparent, open and participative means has to be well accepted both by the (other) Union member states, guided by democratic principles, and by the Union itself.

Although it is true that the right to self-determination as recognised in international law has been considered not relevant in interstate political communities cases not subject to colonial rule or an oppressive power, as shown by the Canadian Supreme Court's sentencing regarding the case of Quebec, this does not imply that the expression of will for secession is not legitimate in the case of a group of citizens in a certain territory inside a state, even though they are not subjected to colonial rule or a situation of oppression, together with the need to respect this democratic will.

Democracy and its principles should be able to redefine social relationship and political structures in a peaceful and consensual way. Self-determination requires firstly that citizens be free and have power to take decisions and, secondly, that people should also be free. If citizens are free and can democratically decide to initiate an independence process, all those supranational institutions that foster democratic values should look favourably on these processes.

Therefore, a European Union that proclaims it people's and citizen's freedom to the four winds cannot repeal their right to self-determination, or deny their legitimate expression of will, even if, in a particular territory, a majority of them decide to constitute a new state. In short, even if here the right to self-determination cannot be applied as a unilateral secession in accordance

with international law, we must emphasise that the aforementioned right to self-determination is an expression of democratic principle and a people's fundamental right, which form part of the Union's legal and political basis. Therefore, other manifestations of this ideological core of the Union, similar or possibly subsumed in people's right to self-determination, such as the constitution of a new state within the Union based on a democratically expressed will of the European citizens living in a certain territory, cannot be waived because they are based on the same principles and values.

In fact, in recent years the European Union has witnessed how certain peoples of Europe have started democratic processes of independence and how, later, the new states have formed part of the Union. As has been said before, the European Union, through the Office of Promotion of Parliamentary Democracy, has started programmes to consolidate new, emerging democracies arising as a result of democratic processes. If this respect, recognition and European Union support for independence processes has been a goal of its foreign and enlargement policy, there is all the more reason to support the free self-determination of territories and peoples of the member states.

In this sense, the European idea of "unity in diversity", which formed the motto of the European Union (the Treaty establishing a Constitution for Europe; it does not appear in the Treaty of Lisbon), implies the possibility of political communities at intra-state level that might be important in Europe (Committee of the Regions) and that could be used in areas for expression of democratic will even if this means changing the internal limits of the Union's member states, and particularly internal enlargement, that is, a new member state appearing as a result of the democratic will of the citizens living in the Union's territory which, until that time, had belonged to another state. We must also take into account the rights of people belonging to minorities (Art. 2 TEU) together with cultural diversity (Art. 3 TEU and Art. 22 TFEU).

Having established the legitimacy and relevance of the democratic will of the Union's intra-state communities, European citizenship must be considered a substantive manifestation of the idea of Europe as a community of law. The idea of Europe as a community of law in the substantive sense is effectively the argument that connects to the declaration of will within the democratic principle. This is like the law we have compared in states similar to those of Union members (Switzerland, Canada) that recognises, in both expression and its effects, that it is impossible to deprive citizens as a sanction for being in a territory where the majority have legitimately reached a democratic decision to form an independent state within the Union, which means the tacit assumption of the obligations, which mean they belong to the Union. Indeed, the idea of citizenship does not remove negative consequences for those affected by the decision to form a new state, even though the political negotiation problem remains about what should occur in a manifestation of will in relation to secession.

In short, when faced with the democratic expression of the will of a group of European citizens who are nationals of a pre-existing state and resident in a certain territory to form a new state within the European Union framework:

1. European Union law should not be a hindrance, but rather a basis for the legitimacy of the act to express this will.
2. European Union law cannot be interpreted so as to frustrate attaining legitimately expressed will in the sense of constituting a new state within the Union.
3. European Union law requires that the new state resulting from the democratic will of a group of European citizens should be considered a member from the time of its constitution.

In short, in view of the arguments above, the European Union is obliged to give a positive reply to a request for internal enlargement by a state appearing through a process of secession or dissolution of the European Union's member state, and should always guarantee the continuity of effective application to the Union's legal system in the new state and particularly the effectiveness of the rights and obligations given to its citizens. From here we should consider the technical details of how the new state must fit into the Union, starting with its membership status.

3 THE LEGAL SYSTEM FOR THE INTERNAL ENLARGEMENT PROCESS

A state's succession process that results from the member state's secession or the dissolution regarding the European Union membership status must:

- **Guarantee respect for the European Union's principles, values and the aims.**
- **Accept the will of succession to be a European Union member expressed by the new state, which results from a member state's secession or dissolution process.**
- **Guarantee the normal functioning of the European Union, taking into account the consequences that this solution might have for the European Union itself, the member states and individuals and legal people with rights and obligations derived from the Union's legal system.**

On the basis of these premises, it is necessary to define the procedure that best guarantees this succession process for European Union membership status .

1. THE PREREQUISITES THAT MUST BE GUARANTEED BY THE NEW STATES IN ORDER TO BRING ABOUT THE INTERNAL ENLARGEMENT

To form part of the European Union means fulfilling and guaranteeing a series of conditions necessary to ensure the new state's feasibility of integration and participation, while ensuring that the functioning of the integration process is not jeopardised.

In the 1990s, just as the Union was to be expanded with the inclusion of Eastern European countries, the European Council defined a series of political, economic and legal criteria known as the "Copenhagen criteria", according to which, "adhesion required the candidate country to achieve institutional stability to guarantee democracy, state of law, human rights and respect for and protection of minorities, an operating market economy and the ability to face the competitive pressure and market forces inside the Union. Adhesion presupposes the candidate's ability to assume adhesion obligations, including observing Political, Economic and Monetary Union aims".[32]

Although an internal enlargement presents its own peculiarities that distance it from the scenario we have just described, we understand these criteria are also obviously binding on the states that result from a secession or dissolution process of a European Union member state.

1. The political criteria are clearly defined by Article 49 TEU in as much as it establishes an entry condition to the Union values considered in the article according to TEU and the commitment to their promotion must be respected. All new states must therefore be stable democracies, respecting the values of human dignity, freedom, equality, state of law and respect for human rights, including the rights of people belonging to

[27] The "Copenhagen criteria" for the adhesion of new states were laid down by the European Council in Copenhagen at the meeting of 21-22 June 1993, intensified at the European Council of Madrid, of 15-16 December 1995 and confirmed on 12-13 of 2002 by the same institution in Copenhagen.

minorities. Along the same lines, it is necessary to ensure respect for the principles of pluralism, non-discrimination, tolerance, justice, solidarity and equality between men and women.

On an internal level, fulfilling this series of demands is based on democratic principle and must be seen with the new state's founding text being approved by a representative assembly and supported by the people, in other words, a Constitution. The state's new fundamental regulation shall expressly include the commitment to respect all of these values and principles of modern societies and democratic and social states of law. It must build a democratic institutional system that guarantees political plurality and separation, independence and democratic control of the different bodies intended to develop the state's main functions (legislative, executive and judicial). In the fundamental rights and freedom area, there should be a system set up to protect and guarantee them, which should also expressly include the European Union's Charter of Fundamental Rights and the Convention for the Protection of Human Rights and Fundamental Freedom, and which is subject to existing jurisdictions concerning the protection of rights.

In consonance with this, the desire declared by the new state to continue as a member state of the European Union and the European Atomic Energy Community must be the result of a democratic process, either due to being the result of a decision by bodies representing the new state formed in accordance with democratic rules, or being the result of the direct will of the citizens declared by means of a plebiscite.

2. With regards to economic conditions, the state is required to have an effective, viable market economy, capable of withstanding competitive pressure and the market forces inside the Union. Obviously, the Union's nature is to a large extent defined by its economic and monetary integration and at present, economic and financial stability and progress in this area is one of its goals. In consequence, it appears that the new state's economic solvency must be compared through the evolution of certain variables, such as GDP growth, the state's macroeconomic stability, privatisation and public sector weight, unemployment, foreign investment and trade with the Union. To deal with this there must be the appropriate infrastructure and trained human resources to be competitive and generate sufficient resources to be able to assume the Union's obligations. In this respect, the Union's practice up until now shows, as **GOSALBO** says, "that economic demands are related to each state's economic dynamics and their ability to take part in the internal market, that is, there being an economy that works and understands freedom of trade and prices, regulation on the subject of economic rights and contracts, macroeconomic stability and free competition."[33]

3. From a legal perspective, the new states will have to be capable of assuming the obligations inherent to a Union member state's status. Firstly, they will have to have a legal system that guarantees European Union law in its territory with the same effectiveness as before the secession or dissolution of the preceding European Union member state. Concerning regulations, an additional effort would therefore be required to adapt the Union's rules, and particularly primary law and secondary law regulations, within the new State's territorial and political framework. Secondly, the correct application of Union law to its territory will also have to be guaranteed with an effective administration able to administer Union legislation in practice.

Lastly, the new state that results from the secession or dissolution process must expressly state its unequivocal will to continue as a European Union and European Atomic Energy Community member. In this respect, its participation in the European Union process means it must be a member of both organisations; it cannot just take part in one of them.

Each and every one of these conditions must be fulfilled by the states resulting from a secession or dissolution process of a European Union member state if they aspire to continue as Union members. Only if the new state fails to meet any of these requirements will the European Union be obliged not to recognise its succession as a member.

2. FORMALISING SUCCESSION IN THE POSITION OF EUROPEAN UNION MEMBER

As there are no specific regulations in the founding treaties for internal enlargement cases, the European Union is obliged to establish a process that will swiftly bring the situation arising from the changes in the Union's internal borders to normality. The solution adopted must respect the will

[33] *GOSALBO, "La ampliación: el estado de la cuestión" [Enlargement: the state of the question", Revista Valenciana de Economia y Hacienda, pg. 12.*

expressed by the new state to continue as Union member, as well as the European Union's fundamental principles and European Union's legal system.

As we have seen previously, the practice followed regarding succession in membership of other organisations in cases of member state's succession or dissolution considers three possible paths to choose: application for ex novo adhesion, membership continuity and succession in the member's position. The solution adopted by some international organisations is to force the new state to apply for ex novo adhesion to the international organisation - regardless of whether it came from a state that had previously been part of the international organisation - would not be applicable in the European Union's internal enlargement case as it would clash with the basic principles and essence of the European Union itself in the sense that uniform application of the European Union law would be fractured in the new state's territory. This might be interpreted as a kind of sanction on the new state's citizens, who had democratically decided to form it. Automatic membership continuity of the international organisation would also be impossible to apply in the European Union because of the institutional difficulties it would entail for the Union itself and problems it would raise regarding the application of certain material regulations of the European Union both for the new state and for the predecessor state, which would cause the scaling down of certain individual and differentiated rights and obligations arising from the Union's secondary law according to the situation before the secession. By contrast, succession in membership position in the case of internal enlargement of the European Union represents the solution most suited to the unique nature of the European Union and its policies, and would be in keeping with the general rules set out for the succession of states regarding multilateral treaties for recently independent states,[34] provided that the new state has expressed the will to succeed its predecessor as a European Union member, that the new state meets the requirements imposed on all European Union members, and the European Union formally recognises this succession in membership.

The new state's declaration of the will to succeed its predecessor as a European Union member would have to take a specific form, as it does in other international organisations, by a "notification of succession" from the new state, where it would give notice of the new situation and its wish to succeed its predecessor as a European Union member, as a new state that respects the principles and conditions required for being a Union member, that is, the values mentioned in Article 2 TEU and the market economy model and necessary administrative ability to guarantee the correct application of European Union law in its territory. The "notification of succession" must also contain the commitment on the new state's behalf to accept the European Union in its entirety, including all agreements adopted by its members in the Council of Ministers, declarations, resolutions and other positions adopted by the European Council and Council of Ministers, and those relating to the European Union adopted by the member states. Finally, the notification should contain the will of the new state to immediately start the adaptation process to allow it to bring European Union law in line with the new situation and to adopt all acts allowing it to comply with all of the international obligations assumed by the states as European Union members.

This notification would only serve for the new state to start on the path to continued European Union membership, but it would not be enough to complete the process arising from the European Union'. Therefore, this "notification of succession" would have to be complemented by the European Union recognising the new situation and adopting the relevant amendments to all the European Union's legal system's regulations (primary law and secondary law) and succession with respect to the international agreements derived from the predecessor's membership, to adapt to the new situation caused by internal enlargement.

Thus, the European Union will have to recognise this situation and take the necessary decisions to make it effective. First of all, the European Union will have to adopt an "Act Recognising the succession in Union membership of a new state arising from secession or dissolution of another European Union member state ". This act would mean recognising the predecessor state, assuming that it continues to exist, and that of the successor state(s) as European Union members and would have to contain the initial provisions necessary to guarantee the functioning of the Union.

The entire process that would have to be followed to normalise the situation caused by state succession in European Union membership must be governed by the continuity principle. On this basis, the process would be completed in two phases: firstly, by establishing a transitory arrangement, to be followed by a definitive system.

[34] Article 17 of the Vienna Convention, on the succession of states regarding treaties

A transitory arrangement would have to be set up immediately and would have the aim of guaranteeing:

— Continuity of applying uniform material provisions of the European Union's legal system throughout the Union's territory.
— Compliance with the institutional provisions making the number of components of an institution, organisation and/or agency dependent on the number of member states,
— Effectiveness of decision-making procedures in the Union's different institutions and organisations, and
— The participation of government representatives of all member states in the European Union's inter-governmental institutions and organisations.

All matters that do not require a formal amendment of founding Treaties may be resolved during the transitional period. From this point of view, all matters that mean applying the founding Treaties provisions and other acts derived from their application or the amendment and formal adaptations of the secondary law acts and agreements entered into by the European Union, as well as the succession within all international agreement framework concluded by the member states in the European construction process would be included.
The definitive system would be established by means of a Treaty amending the European Union that would include all of the adjustments that have to be made to the primary law regulation to adjust provisions to reality as a result of a member state's secession or dissolution.

The founding Treaties have not established the procedure to be followed to amend the primary law regulations in the case of internal enlargement of the European Union. In our opinion, the procedure to be followed would be that of Article 48 TEU for ordinary revision, and would rule out the procedure provided for the new member state adhesion in Article 49 TEU and that provided in Article 218 TFEU to enter into international agreements between the European Union and other states and/or international organisations and which also applies by virtue of the provisions of Article 50 TEU for negotiating a member state's withdrawal from the European Union.

3. The transitory arrangement

The change in the European Union regarding the number of states arising from a member state's secession or dissolution would generally mean taking proper measures to guarantee the continuity of the material legal system applicable to the whole of the European Union, adaptations to the rules of material law that do not necessarily mean amending the founding treaties and adapting the composition of European Union institutions and organisations. This is firstly to fulfil what is set out in the founding Treaties and, secondly, to guarantee the participation of all member state government representatives and citizens in the Union's organic structure. Implementing this adaptation would have to be made in compliance with the procedures provided for amending acts adopted in application of Treaties.

3.1. Institutional adaptations

The composition of European Union institutions and organisations is regulated by the institutional provisions of the founding Treaties and their respective internal regulations. During the transitory period, the composition of the European Union institutions and organisations has to be modified in line with these regulations and, if necessary, the appropriate adaptations must be made to the provisions governing them in order to allow the new states representatives and their citizens to participate under equal conditions.

The adaptation of the composition of European Union institutions

— **The European Council:**
Article 15.2 TEU establishes that this is an institution made up by heads of state or government of the Union's member states. As the TEU does not individually designate its members and there is a Union agreement recognising the new state as a Union member, this state may take part in European Council meetings without any institutional provision of the founding Treaties having to be modified.

— **The European Union Council of Ministers:**
Article 16 TEU established that it is an institution made up by member state representatives with ministerial rank. As the TEU does not individually appoint its members and there is an agreement whereby the

Union recognises the new state as a Union member, its representatives may participate without changing any institutional provision of the constitution's Treaties. However, if the succession occurs before 31 March 2017, it will be necessary to assign the number of votes corresponding to the new state's government representative in the case of votes for adoption of agreements by qualified majority. In such a case, it will be necessary to modify Protocol number 36 on transitory provisions. The iusinternationalist doctrine considers the protocols annexed to the Treaties as forming part of the treaty itself, and for this reason any amendment to them would in principle have to be made following the procedures for treaty review contemplated in Article 48 TEU. However, European Union practice demonstrates that on certain occasions this position has not been followed. The procedure contemplated under Public International Law regarding the conclusion of treaties was not followed during the TEU ratification processes and in the Treaty of Lisbon, since the inclusion of new declarations and protocols annexed to the Treaties was permitted, as was the amendment to some of those previously agreed after the treaty had been signed and when various ratifications had already been made.[35] Notwithstanding, as proposed by the Spanish government, the European Council has initiated a process to reform the treaties, including a new protocol amending transitory provisions with the composition of European Parliament of Protocol number 36 annexed to the founding Treaties, using as legal basis Article 48 TEU.[36] Therefore, European Union practice, in accordance with the decisions adopted by the European Council on whether declarations and protocols annexed to the treaties might be amended without following the procedure of Article 48 TEU, is clearly inconsistent and is governed by obvious political pragmatism. Following this line of pragmatism and flexibility, the member states could conclude a simplified international agreement in the form of an atypical decision adopted by the European Council to review voting provisions by qualified majority in the Council of Ministers, as regulated in Protocol number 36 on transitory provisions, in order to respond to the new situation created as a result of the European Union's internal enlargement.

— **The European Parliament:**

Article 14.2 TEU establishes that this is an institution made up by Union citizen representatives. Given that the citizens of the new member state took part in the European Parliament elections and the elected members do not act under any kind of state or political party mandate, no modifications would be necessary until the definitive system is in place, which will establish how many representatives will be chosen in the next European Parliament elections. This option would mean that the parliamentary representatives elected in the different European member states would represent the new state's citizens. However, during the transitory period it would not be possible to establish the definitive system by following the procedure contemplated in Article 14 TEU by virtue of which "The European Council unanimously adopt, the European Parliament initiative and with its consent, a decision establishing the composition of the European Parliament, respecting the principles referred to in the first subparagraph". These principles are the following: "They shall not exceed seven hundred and fifty in number, plus the President. Citizen representation shall be decreasingly proportional, with a minimum threshold of six members per Member State. No Member State shall be allocated more than ninety-six seats." This would mean a reduction in the number of parliamentary representatives assigned to certain states, so as to be able to assign a number of parliamentary representatives to the new state, which would immediately have to call European Parliament elections. This possibility could be compromised if the unchanged text of the draft protocol were adopted. It is presented by the Spanish government to initiate a process to reform the founding treaties to allow this limit to be exceeded and new parliamentary representatives to be assigned to represent the citizens of the member states jeopardised by the enforcement of the Treaty of Lisbon following European Parliament elections in 2009. The legal basis that serves as the foundation for this transitory provision reform process relating to the composition of the European Parliament is that of Article 48 TEU and entails the adoption of a new protocol amending Protocol number 36 annexed to the founding treaties. The new protocol's text proposed by the Spanish Government increases the number of parliamentary representatives to 754 members and allocates additional deputies

[35] *On the practice of the European Union during the ratification period of the Treaty of Lisbon, see GUTIÉRREZ, CERVELL, La adaptación del Tratado de Lisboa (2007) del sistema institucional decisorio, su acción exterior y personalidad jurídica [The adaptation of the Treaty of Lisbon (2007) of the institutional decision-making system, its external action and legal status], pg. 109-116.*

[36] *Letter from the Ambassador, Carlos Bastarreche Sagües, Permanent Representative of Spain, to Pierre de Boissieu, Secretary-General of the Council, in regard to a proposed amendment of the treaties in relation to the composition of the European Parliament, in Transmission note of the Secretary-General of the Council to the Council/COREPER, doc. no. 17196/09, POLGEN 232, Brussels, 4 December 2009; and European Council, Conclusions, doc. no. EUCO 6/09, Brussels, 11 December 2009, point 5.*

for various states. This situation, exhausts the number of possible parliamentary representatives and using this legal basis to regulate it, means it is manifestly contrary to the regulation contemplated in the TEU, because instead of respecting the limit provided for in Article 14 TEU and using this precept to modify the composition of the European Parliament during the 2009-2014 legislature, a formula has been sought that will not harm the states that would see their number of seats reduced. This once again demonstrates the political pragmatism that prevails within the European Union. In the event that this option were to be adopted inside the European Union, the possibility of bringing the composition of the European Parliament to normal levels during the transitory period would obviously become difficult.

— **The European Commission:**
Article 17.4 TEU establishes that it is an institution made up by a national from each member state (until 31 October 2014) chosen because of their general competence and European commitment from totally impartial people. The composition and appointment of its members is carried out in accordance with the procedure regulated in the founding treaties, with the participation of the elected Commission's President, the European Parliament, the European Council and Council of Ministers. Article 17.5 TEU establishes that after 1 November 2014, the number of Commission members will be reduced to two-thirds of the member states, and will be selected from nationals of the member states fully respecting a strictly equal rotation system among the member states provided in Article 244 TFEU. At the time when a new state is recognised as a Union member, the specific procedure for appointing the new member of the Commission will be initiated.

— **The European Union Court of Justice:**
This is an institution that includes the Court of Justice, the General Court and specialised Courts made up by judges and general attorneys elected by common agreement by the member state governments. As regards the number of judges, Article 19.2 TEU sets out that the Court of Justice will comprise of one judge per member state and the General Court at least one judge per member state. This would mean that an extra judge would need to be appointed for the Court of Justice in accordance with the procedure provided for in Article 19.2 TEU and 253 TFEU, where an agreement between the member state governments is required. This change in the composition of the Court of Justice would require the later amendment of Article 9 of Protocol number 3 on the Statute of the EUCJ which regulates its partial renewal. With regards to the composition of the General Court, the increase in the number of member states would not automatically require an amendment, since Article 48 of the Statute of the EUCJ establishes that it should be made up by 27 judges without any other kind of reference to the number of member states. In relation to the European Union's Court of Public Function, Article 2 of Annex 1 of the EUCJ Statute establishes that it will be formed by seven judges and that the Council may decide to increase the number of its members by applying to the Court of Justice. Thus, an increase in Union member states would not necessarily mean an increase in the number of judges in the Court of Public Function. In relation to the general attorneys attached to the Court of Justice, Article 252 TFEU establishes that there will be a total of eight general attorneys, so no adaptation would necessarily have to be made as a result of an increase in Union membership.

— **The Central European Bank:**
Article 283 TFEU establishes that the Governing Council of the ECB is formed by the Executive Council of the ECB and the governors of the member state's national central banks that have the euro as their official currency. The same precept indicates that the Executive Council is made up of a President, a Vice-President and four other members, appointed by the European Council from among its nationals. They would all have to be people of renowned prestige and professional experience in this area. Thus, internal enlargement of the European Union would only mean that its national central bank Governor would enter the Governing Council of the ECB if the new state had the euro as its official currency.

— **The Court of Accounts:**
Article 285 TFEU establishes that it is an institution made up from one national from each of the member states. In accordance with the appointment procedure set out in Article 286.2 TFEU, the new member states must propose a candidate who meets the requirements set out, who would be appointed by the Council subject to consultation with the European Parliament. Thus, the pertinent agreements would have to be reached on adapting its composition to what is established in the Treaty.

Adaptation of European Union bodies

— **Regions Committee and the Economic and Social Committee:**
Each of these two European Union's consultative bodies is made up by representatives of various ranks appointed by the Council of Ministers as proposed by each of the member states (Art. 302.1 TFEU and Art. 305 TFEU), and undertake their duties with complete autonomy (Art. 300.4 TFEU). The Regions Committee is made up by representatives of regional and local entities (Art. 300.3 TFEU) and the Economic and Social Committee by representatives of organisations of businesspeople, workers and other sectors representing civil society (Art. 300.2 TFEU). The number of members on each of these bodies must not exceed 350, and their final composition, including the distribution of the number of members proposed by each member state, must be established by the unanimous decision of the Union Council of Ministers (Arts. 301 and 305 TFEU). In the event of an internal enlargement of the European Union these decisions would have to be taken and the new members would have to be appointed by the Council of Ministers.

— **The European Investment Bank:**
This body of the European Union has its own legal status and all of the Union states have to be members (art. 308 TFEU). For a new state to participate in the European Investment Bank, it would be necessary to modify this body's Statutes in Protocol number 5 annexed to the founding Treaties, following the special legislative procedure provided for in Article 308 TFEU.

— **The Economic and Financial Committee:**
Article 134 TFEU establishes that member states, Commission and ECB will each appoint a maximum of two members to the Economic and Financial Committee, although this provision will be developed in a regulation adopted by the Council of Ministers. Thus, in compliance with the TFEU provisions, we must review the regulations adopted by the Council in order to guarantee this body's presence in the new state.

— **The Council's auxiliary bodies (Committee of Permanent Representatives, Political and Security Committee, Workgroups):**
This is a series of Council inter-governmental auxiliary bodies that are regulated by different provisions of the constitution's Treaties and by the internal Regulations of the European Union Council.
However, as the Treaties do not regulate their composition, suitable reforms will have to be made to the Council's internal regulation and to other regulations which might govern its existence and operation to guarantee representative presence in the new member state's government.

— **Other European Union bodies, organisations and agencies:**
We must analyse each of the internal regulations and legal acts that regulate their composition to progressively bring in any amendments resulting from an increase in the number of member states.

3.2. Adaptations of material law

During this period we should analyse all the applicable regulations in the new member state's territory to guarantee their application, and particularly regulations containing individualised rights and differentiated obligations for member states. This will enable individual and differentiated obligations and rights that correspond to the new member state in accordance with these regulations to be identified and possibly fixed and any that might correspond to the predecessor, if this should still exist.

Under the succession principle, the following would have to be immediately guaranteed:

— Continuity in applying regulations that constitute the whole Schengen pact, if the predecessor state was party to it.
— Continuity in applying undertakings derived from Common Foreign and Security Policy, to the same extent as for the predecessor state.
— Continuity in participating in the Economic and Monetary Union, should the predecessor state have been party to it.
— The successor state will be bound by agreements with third parties or international organisations that have been concluded or provisionally enforced by the European Union, to the same extent as the predecessor state.
— Continuity in uniformly applying all European Union material law applicable throughout the European Union territory.

All secondary law rules must be analysed to determine the adaptations that must be made, with a view to identifying and fixing the individual and

differentiated rights and obligations of the new state arising from European Union's secondary law. The task of identifying the rules that must be adapted have to a large extent been facilitated by the work carried out in the course of recent processes of European Union enlargement. This adaptation process would not necessarily imply that specific transitory periods would have to be established for the new state, such as those that were negotiated in the enlargement processes. Should the new state encounter difficulties in complying with obligations derived from European Union law, it could plead for those exceptions and safeguard clauses that might be applicable in its case.

Whilst the negotiation period within the European Union is still under way, and during the gradual adaptation of material law rules containing rights and obligations for member states, by virtue of the sincere cooperation principles mentioned in Article 4.3 TUE,[37] the successor state and the predecessor state, if this continues to exist, or the new successor states that result from a member state's dissolution will be jointly and severally liable for the obligations that had been assumed by the predecessor state, and will be obliged to adopt all measures to guarantee European Union law to be applied, and particularly that relating to the rights and obligations of physical people and legal entities.

With regards to international agreements entered into by the predecessor state with third parties and/or international organisations as a European Union member we must guarantee:

— Succession under Public International Law provisions in the position of the predecessor state in agreements entered into or signed jointly by the European Union and the predecessor member state.
— Succession under Public International Law provisions in the position of the predecessor state in internal agreements concluded between the member states, in the same way as the predecessor state was party to them, for the application of agreements entered into between the European Union and third parties and/or international organisations.

[37] Art. 4 TEU: "[...] 3. Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks that come from the Treaties. The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the Union's institutions. The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise attaining the Union's objectives."

However if these internal agreements include a distribution of obligations and rights among the member states, a review will be necessary prior to the succession to determine the obligations and rights that correspond to the successor state on the basis of a new distribution among the member states.

To guarantee this process, all international agreements signed between the member states within European Union process framework must be identified, together with the mixed international agreements signed by the European Union and the member states, on the one side, with other states and/or international organisations to start the succession process in respect of treaties in order to begin the procedures that will involve the succession in treaties, as is provided in regulations in this matter. In this regard, the Vienna Convention on state succession in respect of treaties, as a general rule for recently independent states, sets out the freedom that the latter will be able to not remain bound by the treaties to which the predecessor state was party,[38] so that all that will be needed is the treaty's depositary to be given written notification of succession in order for their status as party to multilateral treaties be placed on record.[39]

4. The definitive system

The European Union process shows evidence of flexibility and pragmatism demonstrated at times by the European Union itself in the processes of reforming the founding Treaties to bring about a rapid enforcement of the agreed amendments, whilst respecting the fact that an amendment to a primary law regulation can only be made through another primary law regulation.

Using as a starting point the fact that the founding treaties do not expressly regulate the procedure to be followed in cases of internal enlargement of the European Union, it is necessary to determine the procedure that must be followed for the conclusion of the international Treaty establishing the definitive system arising from Union enlargement.

According to the provisions of the founding treaties, four different possibilities can be identified:

[38] Art. 16 of the Vienna Convention on State Succession in respect of Treaties.
[39] Art. 17 of the Vienna Convention on State Succession in respect of Treaties

— The procedure considered in Article 48 TEU for the amendment of the founding treaties.
— The procedure considered in Article 49 TEU for concluding agreements on the adhesion of other states to the European Union.
— The procedure considered in Article 50 TEU for the withdrawal of a European Union member state.
— The procedure considered in Article 218 TFEU for the conclusion of international agreements by the European Union.

The choice of the legal basis applicable in the case of an internal enlargement is conditioned by the purpose of the treaty to be concluded. In our opinion, this agreement's main purpose is the amendment of the founding Treaties provisions to bring them into line with the new situation arising from state succession in cases of member state secession or dissolution.

From this point of view, the procedure considered in Article 50 TEU is obviously not applicable, since the situation considered is exactly the opposite to that considered in this precept.

The application of the general procedure provided for in Article 218 TFEU also seems unsuitable, for this precept has been used in cases of express remission of treaties or when international agreements have been concluded with other states and/or international organisations or no other procedure has been provided for.

Article 49 TEU regulates the entry of a new state in the European Union. The procedure includes, firstly verifying that the requirements considered in the TEU and the criteria of eligibility agreed by the European Council are fulfilled; and secondly, establishing the admission conditions and adaptations to the Union's legal system arising from them. This procedure fails to meet the needs posed by an internal enlargement of the European Union. For example, in adhesion processes considered in Article 49 TEU, the Union's territory and the citizens are increased, which does not happen in internal enlargement processes.

Therefore, Article 48 TEU is the most suitable legal base for regulating the procedure that has to be followed in amending the founding Treaties. This process is only intended to amend the founding Treaties to adapt to the changes to the European Union's internal borders resulting from a member state's secession or dissolution.

The amendments to the founding Treaties provisions are necessary to formalise the increase in the number of member states are as follows:

— Establishment of the contracting parties to the founding Treaties (TEU, TFEU and TEAEC).
— The inclusion, should this prove necessary, of new declarations annexed to the Treaties adopted by the new state or by the other member states in regard to the new situation created by the internal enlargement of the European Union.
— The adaptation, if necessary, of protocols annexed to the Treaties that regulate aspects related to the composition of European Union institutions and bodies.

Finally, one of the questions raised is that of determining the time when the amendment process for the founding Treaties should start. Bearing in mind the long period of time required to formalise and bring the amending treaty into force, the procedure contemplated in Article 48 TEU would have to be initiated at the same time as the necessary institutional adaptations to guarantee the participation of the new member state's representatives in inter-governmental institutions and bodies and to correct the composition of the remaining institutions that have to take part in negotiating the new treaty.

Appendix

ROADMAP FOR SUCCESSION IN EUROPEAN UNION MEMBERSHIP IN THE CASE OF MEMBER STATE'S SECESSION OR DISSOLUTION

Declaration of independence from a state arising from a member state's secession or dissolution following a democratic process.

Notification of succession, from a European Union member state by the state emerging from a member state's secession or dissolution. This act would notify of the new situation as well as the new state's wish to succeed the predecessor state as a European Union member as a new state complying with the principles and conditions required for being a Union member with a model of market economy and required administrative capacity. The new state would commit the in accepting the entire flow of the European Union, and would want to immediately initiate the process of adaptation intended to ensure that European Union law is brought into line with the new situation, together with the commitment to adopt all acts that allow it to fulfil all the international obligations assumed by states as European Union members.

Act adopted by the European Union to recognise a new state's succession arising from the secession or dissolution of another European Union member state as a Union member. This would mean the recognition of the predecessor state, if it should continue to exist and of the successor state(s) as members of the European Union and would have to contain the initial provision needed to guarantee the operation of the Union.

Establishment of the transitory arrangement:

— Application of the principle of continuity in acts not requiring changes or amendment to the acts of secondary law to enable:
— The continuity of uniform application of the material provisions of the European Union's legal system throughout the new state's territory.
— The adaptation of European Union institutions and bodies in order to guarantee, firstly, the participation of the new state's representatives in inter-governmental institutions and bodies and, secondly, fulfilment of the institutional provisions that make up the number of components of an institution, body and/or agency dependent on the number of member states, together with the correct operating procedure for taking decisions in the Union's different institutions and bodies. These institutional adaptations must be carried out by applying the provisions contained in the treaties and in the regulations of secondary law, and should it prove necessary through the amendment of secondary law regulations.
— The succession in international agreements entered into jointly by the European Union and the predecessor state.
— The succession in agreements concluded among the member states arising from their status as Union members.
— The adaptation of material law made by the European Union, entailing the identification of different rights and obligations among the member states through the procedures provided for in the treaties.

Establishment of the definitive system:

— Modification of the regulations of primary law (founding Treaties and annexes, if necessary) through the procedure provided for in Article 48 TEU.

Index of acronyms

ECB	European Central Bank
CS	Constitution of Spain
ILC	International Law Commission
GG	Grundgesetz (Founding Law for the Federal Republic of Germany)
GDR	German Democratic Republic
FRG	Federal Republic of Germany
TEC	Founding Treaty of the European Communities
TECSC	Founding Treaty of the European Community of Steel and Coal
TEAEC	Founding Treaty of the European Atomic Energy Community
TFEU	Treaty of Functioning of the European Union
EUCJ	European Union Court of Justice
TEU	Treaty of the European Union

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Centre Maurits Coppieters

This new publication presents the Centre Maurits Coppieters (CMC). Our organisation was founded in September 2007. Under a pilot programme of the European Commission we were recognised as a European political foundation affiliated to the European Free Alliance (EFA), a European political party recognised by the European Parliament. More information www.e-f-a.org

In 2004 European political parties were recognised by the European Parliament. In 2008 with the emerging European political foundations a new step in the building of a European public sphere with European political infrastructure is emerging.

In a nutshell, our aims are: observing, analysing data and contributing to the debate on European public policy issues with a special focus on the role of democratic-nationalist and regionalist movements and the process of European integration. We will serve as a framework for national or regional think tanks, political foundations and academics to work together at European level.

The first General assemblies of the CMC (Antwerp, 6th of June 2008 and Brussels, European Parliament, 16th of October 2008) established the way of working and prepared the activities that will be developed in the year 2009-2010.

The start of our political foundation was assisted by the ADVN, Archives, Documentation and Research, as part of the NISE (Nationalist Intermediary Structures in Europe)-project. More information on www.advn.be and www.nise.eu

Günther Dauwen
Secretary of CMC
www.cmc-foundation.eu

GOALS OF THE EUROPEAN POLITICAL FOUNDATION CENTRE MAURITS COPPIETERS (CMC)

According to its general regulations, the Centre Maurits Coppieters asbl-vzw persues the following objectives and references:

- ☐ Observing, analysing and contributing to the debate on European public policy issues with a special focus on the role of nationalist and regionalist movements and the process of European integration;
- ☐ Serving as framework for national or regional think tanks, political foundations and academics to work together at European level;
- ☐ Gather and manage information for scientific purposes on all nationalist and regionalist movements, organisations, structures, … in all its appearances situated in a European context;
- ☐ Making available information to the public on the implementation of the principle of subsidiarity in a context of a Europe of the Regions;
- ☐ Promoting scientific research on the functioning and the history of all national and regional movements in the EU and making the results public to as many people as possible;
- ☐ Developing actions to open information sources and historical information sources in a structured and controlled way with the aim to build a common data network on issues of Nationalism and Regionalism in Europe;
- ☐ Maintaining contacts with all organisations who are active in national movements and with the Institutions of the EU;

The Centre Maurits Coppieters asbl-vzw takes all the necessary actions to promote and achieve the higher stated goals always observing the principles on which the European Union is founded, namely the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law.

The geographical scope of the Centre Maurits Coppieters asbl-vzw is the EU (27 members states) and the candidate member and states in the process of becoming once a candidate member of the EU. The contacts and functioning of the organisation is now based in 3 Member states of the EU, but they are active in 7 regions, stateless nations or constitutional regions. The CMC wishes to enlarge the number of partners in Member states and the number of partners of regions involved in this project.

MAURITS COPPIETERS (SINT-NIKLAAS, 1920 – DEINZE, 2005)

The Fleming Maurits Coppieters studied history and later became a Doctor of Laws and obtained a master's degree in East European studies. During the Second World War, he refused to work for the German occupier. After many years as a teacher, he worked as a lawyer for a while. He was one of the people who re-established the Vlaamse Volksbeweging (Flemish People's Movement), of which he was the President from 1957-1963.

Coppieters' political career began when he became a member of the Flemish-nationalist party Volksunie (VU) which was formed in 1954. With the exception of two years, Coppieters was a town councillor between 1964 and 1983. He was also elected as a member of the Belgian Chamber (1965-1971) and Senate (1971-1979). At the same time, Coppieters became President of the newly formed "Cultuurraad voor de Nederlandstalige Cultuurgemeenschap" (Cultural Council for the Dutch-speaking Community, from which later the Flemish Parliament emanated), when the VU formed part of the government. In 1979, Coppieters was moreover elected during the first direct elections for the European Parliament.

As a regionalist, he became a member of the Group for Technical Coordination and Defence of Independent Groupings and Members in the European Parliament (TCDI). Among other things, he made a name for himself when he championed the cause of the Corsicans. In the meantime, Coppieters also played a pioneering role in the formation of the European Free Alliance, of which he became the Honorary President and in whose expansion he continued to play a role, even after he said farewell to active politics in 1981. In 1996, Coppieters joined forces with the president of the Flemish Parliament, Norbert De Batselier, to promote "Het Sienjaal", a project with a view to achieve political revival beyond the party boundaries. Coppieters died on November 11, 2005.

Among other things, Coppieters was the author of: 'Het jaar van de Klaproos'; 'Ik was een Europees Parlementslid'; 'De Schone en het Beest'. He is Honorary member of the EFA.

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Colophon
CMC publications, 3

Editorial
CMC asbl, Centre Maurits Coppieters, Woeringenstraat 19, 1000 Brussel

Publication date
2011

Publication series and number
CMC publications number 3

Co-ordination and editorial board
Iria Epalza and Günther Dauwen

Layout
Wils&Peeters - Lier

Printing
New Goff

With special thanks to:
Simon Toubeau