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

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Foreword

Different stateless nations in Europe continue to call for their full emancipation and the possibility of relating on an equal basis with the remaining peoples of the continent and the world. However, the process of European integration has added extra complexity to achieving one's own state in the European context. The peoples who aspire to the full realisation of their national personality within the framework of the European Union want to do so without abandoning the common project of European construction.

This circumstance obliges us to consider how to make access to national independence compatible with the new state arising from the process continuing to belong to the European Union. In this sense, the firmness of the commitment to the European project maintained by the stateless peoples of Europe, and particularly the Catalan people, makes it inevitable to study the compatibility between achieving one's own state and maintaining the bond with the Union.

The study we present here starts from the permanence of the bond between the new state and the Union, considering that the democratic decision that must be at the origin of independence is expression of the will to constitute a state within the European Union. Therefore, in accordance with respect for democratic principle, which reports the political personality of the Union from the Preamble of the Treaty of the European Union, and respect for the citizens of the new member state as citizens of the Union, the report defends the automatic nature of the membership condition of the new state. In this sense, the Union law can not be an obstacle that hinders the legitimate democratic will of the European citizens who, in a certain territory of Europe, decide to form a new state through a peaceful, democratic process.

In short, as has happened in the case of federal states that the Union mirrors from the institutional viewpoint, separating from a member state does not mean separating from the federation, but might rather be a manifestation of a firm will to maintain the commitment with the federal pact. What's

more, in the case of new European states outside the area of the Union, the Union has shown its support for the democratically expressed will of the people in this sense, and therefore the recognition of the new state.

From here, technical problems are obviously posed of expressing the new state with the institutional architecture of the Union and in relation to the very obligations of the new member. In this sense, starting with the membership status of the new state, the report suggests distinguishing between a phase of provisional belonging from the time that it is notified that the new state succeeds the predecessor as a member of the Union, and a definitive phase, once the regulations of original law have been modified. In conclusion, the values and principles of the European Union cover access to a new state without waiving the European construction project. From here, the negotiation between the agents present must draw out the definitive status of the new state alongside its partners in the common project, for more freedom and more democracy is also more Europe.

Joan Ridao, president of the Fundació Josep Irla

Presentation

The main objective of this work is to determine the reply that the European Union should give to a process of secession or dissolution of a member state, if the new state should show its wish to succeed its predecessor as a member state of the Union.

The analysis of the legal system applicable to a situation of substitution in the exercise of territorial sovereignty of a member state of the European Union in relation to the consideration as a member of the predecessor, if this should still exist, and of the new resulting states, requires the legal regulations applicable to the specific case to be previously identified. From the perspective of Public International Law, we are faced by a case of substitution of one member state for another in the responsibility for the international relations of a territory. This is what is traditionally known as the succession of states. However, when identifying the applicable regulations in this specific case, it is important to remember the singularity of the European construction process materialised mainly through the European Union, a singularity that means that a process of secession or dissolution in one member state may be considered a process of internal enlargement of the European Union, for it would be a process occurring within the borders of the European Union. Therefore, the solution finally adopted internally in the specific case does not necessarily mean that it can be applied in the relations between the new state and the rest of the subjects of international society.

The work presented in the following is expressed in two parts. The first is dedicated to analysing the reply that the European Union should give to the wish of the new state to succeed in the position as a member of the Union held by its predecessor. The second part analyses the internal process that the European Union would have to follow in the possible event of internal enlargement.

1. THE SINGULARITY OF THE NATURE OF THE EUROPEAN UNION AS THE FOUNDATION OF ITS INTERNAL ENLARGEMENT

The first question that has to be resolved is the reply that the European Union has to give when a new state arising from a process of secession or dissolution of a member state of the European Union declares its wish to continue as a member of the European Union. To deal with this question, it is necessary to identify the legal regulations and the practice that might be applicable, bearing in mind the singular nature of the European Union.

1.1 THE SINGULAR NATURE OF THE EUROPEAN UNION

All students of the European Union process that started with the creation of the European Communities agree on the singular nature of this phenomenon, which shares the typical elements of international organisations and federal structures and others with no paragon in contemporary international society. To all of this, we must also add certain fundamental, characteristic traits of the Union: the defence of democratic principles internally and internationally and the creation of a community of law that recognises and guarantees a series of fundamental rights for people and the status of citizenship for the nationals of the member states. This singularity is key for giving a reply to a phenomenon of secession or dissolution within the heart of the European Union.

The legal nature of the European Union

The characteristics of the European Union coincide with the elements of international organisations. As SOBRINO HEREDIA points out, international organisations are defined as «voluntary associations of states established by international agreement, provided with their own, independent, permanent bodies entrusted with managing collective interests and capable of expressing a will that is juridically different from that of its members». [1] Each and every one of these characteristics are given in the European Union, but it is also true that in its institutional and legal design, we find many elements that are typical of federalism and which are not given in any other international organisation. For this reason a large part of doctrine considers that the European Communities, and now the European Union as the successor of the European Community, are «sui generis»[2] international organisations.

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[1] *«unas asociaciones voluntarias de Estados establecidas por acuerdo internacional, dotadas de órganos permanentes, propios e independientes, encargados de gestionar unos intereses colectivos y capaces de expresar una voluntad jurídicamente diferente distinta de la de sus miembros». Sobrino, «Las Organizaciones internacionales:. Generalidades» in Díez de Velasco, Las Organizaciones internacionales, p. 43.*

[2] *Pérez, Las relaciones de la Unión Europea con organizaciones internacionales. Análisis jurídico de la práctica institucional, p. 73-133.*

The international juridical nature of the European Union is fundamentally determined by articles 1 and 47 of the TEU. Article 1 of the TEU confirms the will of the member states to create an international organisation, when it establishes the following: «By this Treaty, the high contracting parties establish among themselves a European Union, hereinafter called the «Union», on which the Member States confer competences to attain objectives they have in common». This is the classical formula used in treaties constituting international organisations and which is completed by the explicit recognition of its legal nature in article 47 of the TEU, that is, its capacity to hold juridical rights and obligations.

The subjects of international law of international society are related with the European Union as they are with international organisations. From this perspective, in its relationship with the rest of international subjects, the European Union holds the juridical rights and obligations of international organisations contained in international juridical ordinance, and relates with the remaining international subjects while exercising the typical prerogatives of international organisations:

— It holds international agreements with other states and international organisations.
— It has diplomatic relations with other international subjects, allowing states and other international organisations to be represented within it and appointing permanent representatives of the European Union before states and other international organisations.
— It takes part in international conferences dealing with subjects of its competence.
— It takes part in other international organisations as a member in full right or with another status of restricted participation.
— It can use the mechanisms provided in public international law to resolve controversies. Similarly, it is internationally liable for any infringements of international regulations that it might have committed and it may demand responsibility in the case of infringement of rights derived from obligations assumed by other international subjects.

However, as happens in all international organisations, the juridical nature of the European Union is limited and functional. In other words, all of these prerogatives can only be exercised of they are circumscribed to the

material areas attributed by the member states of the Union and provided they serve to achieve the goals provided in the Treaties of constitution.

The international subjectiveness of the European Union does not annul the international subjectiveness of the member states. The member states are subjects of international law and are only internationally limited in their capacity to act in subjects which have been attributed to the European Union. This means that at certain times it is the European Union which is exclusively the member of a certain international organisation, takes part in a certain international conference or is part of a certain international agreement; at other times a parallel exercise is caused in these prerogatives with the member states, so that both the Union and the member states are part of a certain international agreement, take part in a certain international conference or are members of an international organisation.

However, the European Union can at certain times act internationally in a manner more similar to that of the states than to the international organisations. An example of this can be found in the possibility provided in article 35 TEU of attributing European Union delegations with the function of contributing, along with the diplomatic and consular missions of the member states, «to the implementation of the right of citizens of the Union to protection in the territory of third countries as referred to in Article 20(2)(c) of the Treaty on the Functioning of the European Union and of the measures adopted pursuant to Article 23 of that Treaty».

Furthermore, the European Union often participates in certain international organisations, or in certain international treaties it operates with specific formulae halfway between those used by international organisations and the states, due to the fact that it exercises competencies attributed by the member states with internal regulatory capacity and to be internationally bound, setting up its own legal ordinance which is automatically integrated as a current right in the internal ordinances of the member states.

Therefore, although the European Union is an international organisation, it is true that internationally it behaves more similarly to states than to international organisations and sometimes it is treated by the rest of the international subjects in a way more similar to the way in which a state would be treated than an international organisation.

What's more, internally the European Union is also a singular international organisation because it shares typical traits both of the classical international cooperation organisations and federal and confederate type structures. As will be seen later on, many of the characteristics of the organisational structure and the legal ordinance of the European Union are closer to federal models than to those of international organisations.

This hinders, and in some cases prevents, the application of certain solutions of international law in regulating the internal operation of the European Union. Therefore, beyond the unquestionable integration of the international agreement of which the European Union is part and its own legal ordinance, the integration of accepted regulations and the general principles of International Law in the legal ordinance of the Union will only occur in so far as these regulations do not contravene the basic principles governing its operation.

In the same line, as general principles of Law the legal ordinance of the European Union also includes legal principles common to the ordinances of the member states. This has been expressly recognised in the Treaties of constitution in order to include the protection of fundamental rights and public freedoms in the framework of the European Union (art. 6 TEU) and to determine reparations for damage caused within the framework of the extra contractual responsibility of the European Union (art. 340 TFEU), and it has also been repeatedly recognised in other cases by the jurisprudence of the EUCJ. As LOUIS says, «the role attributed to these principles comes from the necessarily incomplete nature of community legal ordinance, determined by the objectives and material regulations of the Treaties and by the community of legal traditions of the member states».[3] The same author sustains that the use of the general principles of law by the EUCJ is based on the fact that this «has to seek the best solution depending on the imperatives of community legal ordinance»,[4] although it is limited by the

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[3] *«el papel atribuido a estos principios procede del carácter necesariamente incompleto del ordenamiento jurídico comunitario, determinado por los objetivos y las normas materiales de los Tratados, así como por la comunidad de tradiciones jurídicas de los Estados miembros». Louis, El ordenamiento jurídico comunitario, p. 128-129.*

[4] *«le corresponde buscar la mejor solución en función de los imperativos del ordenamiento jurídico comunitario». Idem.*

fact that this «cannot replace the community legislator when they are able to correct the shortfall».[5]

It may therefore be concluded that at certain times, certain international laws cannot be applied in the European Union as they are incompatible with its foundations, and it is possible to apply the general principles of law of the legal traditions of the member states, providing they adapt to the nature and goals of the European Union itself.

The parafederal nature of the European Union

Since its origins, the legal nature of the European Union has been the object of constant doctrinal analysis that has revealed its singular nature. Every reform of the original treaties has caused discussion around its legal and political classification. Beyond the attempts to give a name to a peculiar, constantly evolving complex organisational and decisional structure, it is true that today the model of European integration escapes the traditional parameters which, from *iusinternationalism*, have allowed the different international organisations to be explained and more and more intensively approach the typical pattern of the contemporary state structures.

The origin of European integration obviously lies within the area of international law in so far as it is the states, with international treaties, which create the European Communities (TEC, ECAE, ECSC). However, its evolution towards a more intensive integration leads the European Union in the area of the more complex state models, with organisational structures that move away from and exceed those of classical international organisations. We only have to think of how the original structures of the European Communities have adapted to the challenges of the last decade, such as the enlargement of the number of member states to 27, the search for greater citizens' participation in the life of the Union or the strengthening and convergence of the economies of the member states in a context of globalisation. Furthermore, following the failure of the process of approving the European Constitution and the enforcement of the new Treaty of Lisbon,

[5] *«no puede sustituir al legislador comunitario cuando éste puede subsanar la carencia». Idem.*

it has become obvious that the European integration process is not a finite, closed model but that, with the common principles and processes defined by the common will of the states making it up, it does allow the bases of its structure to remain open.

If there is a meeting point amongst all of those that have dealt with the particular nature of the phenomenon of European integration, it is that of considering that the federal theories are those which best fit and explain it.[6] However, comparative federal models demonstrate, on the one hand, that there is no single federal experience but rather many developments of an idea which finds different applications and, furthermore, that this is the typical model which serves as a inspiration and a common alternative in political and legal communities such as the Union, characterised by the existence of many territorial political decision-taking centres that require formulae of distribution and balance between the different entities involved. The essence of the federal system according to HÄBERLE, is defined by the search for its own structures and mechanisms which establish the way to rationally distribute the vertical power while avoiding abuse of power and guaranteeing political freedom and the conciliation of the principles of homogeneity (unity) and optimal plurality (difference and diversity). It is a question of conjugating and preserving the plurality of particular entities that form 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 making it up. The centre of gravity therefore

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[6] *The federal model is common in a large part of the doctrine which, both from* iusinternationalism *and from constitutionalism, has analysed the legal nature of the Union. Therefore, Mangas, Liñán, Instituciones y derecho de la Unión Europea, talk of a model of international federalism; Aldecoa, La Europa que viene. El Tratado de Lisboa, evoke intergovernmental federalism; Balaguer, «El tratado de Lisboa en el diván. Una reflexión sobre estatalidad, constitucionalidad y Unión Europea», Revista española de derecho constitucional, p. 57-92, highlights the asymmetric construction of the process of European integration with federal principles in the legal area and confederate principles in the political; Häberle, «Comparación constitucional y cultural de los modelos federales», Revista de derecho constitucional europeo, p. 171-188, points to the transformation of the European Union and attribute obvious prefederal elements; MARTÍN, El federalismo supranacional. ¿Un nuevo modelo para la Unión europea?, uses the concept of supranational federalism.*

lies in the mechanisms provided for achieving the best harmony between the two tendencies. Federalism pursues a balance between freedom and political, cultural and economic equality, the optimal measure of pluralism and difference and the necessary degree of homogeneity.[7]

In this line, the last step taken in the process of integrating Europe through the enforcement of 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 institutions of the Union so that they might better carry out the missions entrusted to them within a single institutional framework» and at the same time «to increase solidarity among its peoples in respect for their history, their culture and their traditions».

In the lines that follow, we will not try to assimilate or compare the European Union with current federal models, but rather to highlight the elements close to or common with them in order to assess the possibility of using the resources and mechanisms of federal models in new situations, such as a possible internal enlargement, which require juridical replies in line with the present context. In this way, we will analyse the institutional structure of the European Union and the mechanisms for sharing power and ensuring balanced representation (a); the relations between the Union and the member states in the light of the principle of sincere co-operation and mutual solidarity (b); the system of autonomous production of legal regulations and the connection of the relations to the ordinances of the members (c); the system for sharing competencies between the different levels of political decision-taking (d); and the guarantee of the principle of homogeneity through the assumption of fundamental values, principles and rights (e).

A) INSTITUTIONAL BALANCE IN THE EUROPEAN UNION

From the institutional perspective, the present organic structure of the Union, with the basic institutional pentagon formed by the European Parliament, the Council of Ministers, the European Council, the Commission

[7] *Häberle, op.cit., p. 178-179.*

and the Court of Justice,[8] reply on the one hand to a share-out of powers between the different institutions of the Union far from the classical three-way model (horizontal division of powers), and on the other hand assures a balance between «centrifugal forces» (member states) and «centripetal forces» (Union) typical of federalism (vertical division of powers). We also must not forget that this institutional framework has been teleologically called to promote the values and purposes of the European Union, among which the need appears for decisions to be taken as close as possible to the citizens, and their interests to be defended and protected. It must therefore be stressed how the organic structure of the European Union must reply to the interests of the three coexisting realities (Union, member states and citizens) by installing formulae that guarantee their balanced presence in its composition and in the decision-taking process of the Union.

Therefore, the nature and legitimacy of each institution set up a general community model. The interests of the member states are represented in the Council of Ministers through their ministerial representatives, and in the European Council through the heads of state or government;[9] the interests of the Union are supported by the Commission formed by an elected national from each state by reason of their general competence and European commitment from among the figures offering full guarantees of independence;[10] and the direct representation of the citizens is assumed by the European Parliament renewed every five years by democratic election (democratic legitimacy). On the level of the share-out of functions, the European Parliament is consolidated by the Treaty of Lisbon as a

[8] This pentagon of institutions has been expanded by the Treaty of Lisbon to seven. Art. 13 TEU: «The institutions of the Union are: the European Parliament, the European Council, the Council of Ministers, the Commission, the EUCJ, the ECB and the Court of Accounts».

[9] The Treaty of Lisbon creates the figure of a stable Presidency of the European Council, not representative of any member state. This figure, with a mandate of two and a half years, is called to preside, encourage and coordinate the work of the European Council, and to represent the Union in the matters of foreign policy and common security. It is attempted to give a certain stability to the institution and, at the same time, to give visibility and improve the leadership of the Union.

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

joint legislator and with full budgetary authority on the same level as the Council of Ministers, which is invested with broad executive powers, and the Commission maintains the monopoly of legislative initiative, ensures the application of the law of the Union, deals with carrying out the budget and, in conjunction with the Council of Ministers, the exterior representation of the Union.

Finally, the Court of Justice, the constitutional character of which has already been indicated by doctrine on several occasions, guarantees respect for law in interpreting and applying the Treaties, and centralises the system controlling compliance with the law in the Union. As if it were a federal tribunal, it also becomes an arbiter of possible conflicts which might derive from the exercise of the attributions of the different institutions, either through annulment or, to a lesser extent, omission. As for the control of the vertical distribution of powers, this resolves the controversies between the Union and the member states through appeal for non-fulfilment of the obligations derived from the legal ordinance of the Union by the member states (up-down control) and appeal for annulment which allows control of the legality-constitutionality of the legal acts adopted by the institutions of the Union (down-up control).

We must not forget either that this organic structure only represents the top of the Union, as it has no administration of its own to supply the whole 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 of federal inspiration according to which the Union and the member states co-operate sincerely in fulfilling their missions (art. 4.3 TEU).

B) THE RELATIONS BETWEEN THE UNION AND THE MEMBER STATES: SINCERE CO-OPERATION

Another element of federal essence is the regulation of the relations between the Union and the member states, that is, the definition of the faculties and obligations that correspond to the two fundamental political levels of Union. These relations are subject to the principle of sincere co-operation, clearly federal in nature, according to which there is a demand for sincere behaviour between the member states and the Union in order to preserve the system's coherence and effective operation.

The duties derived from this sincere behaviour are expressly gathered in article 4 of the TEU. The Union is responsible for guaranteeing the equality of all of its member states, for respecting national identity relative to their political and constitutional structures, for respecting the essential functions of the states with regard to maintaining their territorial integrity, public order and national security, and for assisting the states in fulfilling the missions of the Treaties. For their part, the member states must reciprocally respect and assist the Union in fulfilling the missions entrusted by the Treaties, and in taking suitable measures to assure compliance while avoiding actions which might jeopardise the objectives of the Union.

C) THE SYSTEM OF AUTONOMOUS REGULATORY PRODUCTION AND THE RELATIONS WITH THE ORDINANCES OF THE MEMBER STATES

An essential feature of the European Union is its capacity to create a new legal ordinance not identified either with public international law or the internal law of the member states. A system of autonomous regulatory production is established, for: a) there is a model for attributing competencies to common institutions through the Treaties; b) as we have seen, the Union has an institutional system with the capacity to create legal regulations; c) it has a centralised mechanism, the EUCJ, which controls the fulfilment, application and interpretation of its law; and d) it regulates its own procedure for revising the Treaties of constitution with the participation of the member states and the institutions of the Union.

In all European sources, it is common to distinguish between original law basically made up of the Treaties of constitution and their successive reforms, on the one hand, and the law derived from the different institutions of the Union, regardless of their form and nature, on the other.[11] This regulatory setup is finally closed with the general principles of law and the act resulting from the conventional activity of the Union. With respect to original law, despite the absence of an express clause of hierarchical superiority, its supreme, prevalent character is preached over the rest of the regulations both of the Union and the member states, and its superiority is guaranteed both through the control of the EUCJ and the reformation of the treaties (art. 48 TEU).

[11] *Art. 288 and following. EUCJ.*

From federal logic, the configuration of legal ordinance also calls for the provision of a series of criteria enabling the relations caused between federal law and the law of the federated states to be disciplined. First of all, the regulations of legal ordinance of the European Union are automatically included in the ordinances of the member states from the time they are enforced, as provided by European Union law. From this time, the relations between the Union Law and the internal law of the member states are regulated above all from the principles of the direct effect and primacy of law of the Union.

The direct effect is attributed to the types of regulations of the Union that do not require a state measure for generating rights and obligations, and can be invoked before the courts. According to the jurisprudence of the EUCJ, the direct effect extends to a large number of regulations (treaties of constitution, regulations and sometimes certain directives) as a teleological interpretation has to be made of the Treaties and the present nature of the Union has to be considered.

The principle of primacy of federal law is a common, intrinsic principle of the federal ordinances that determines the prevalence of all valid, current regulation issued (validly and in exercise of an effectively assumed competence) from a federal body throughout the territory of the federation. In the area of the Union, the principle of primacy has been consolidated in jurisprudence (Costa/ENEL) and is presently set out in the form of a Declaration attached to the treaties of constitution, according to which, in accordance with repeated jurisprudence of the EUCJ, the Treaties and the law adopted by the Union on their basis prevail over the law of the member states.[12] Finally, the principle of vigilance in the performance of federal law is carried out by the EUCJ through appeal for non-fulfilment.

D) THE SYSTEM FOR SHARING COMPETENCIES AMONG THE DIFFERENT LEVELS OF POLITICAL DECISION-TAKING

The gears of exercising competencies in structures with different levels of political decision-taking, as is the case of the Union and its member states,

[12] *Declaration no. 17, annexed to the Final Act of the intergovernmental Conference that adopted the Treaty of Lisbon.*

requires a share-out and classification of the competencies corresponding to each body. The distribution of the competencies is the key to the federal structure. For the first time, the Treaty of Lisbon expressly regulates the definition of competencies between the Union and the member states (art. 2 Treaty on the functioning of the European Union) basically by two lists of competencies and a residual clause in favour of the member states. From this principle of competencies expressly attributed by the Treaties of constitution, the idea is drawn in the final instance that the only way to legitimately extend the competencies of the Union is by reforming them, which, we should remember, requires the ratification of all of the member states.[13]

The first list, in article 3 Treaty on the functioning of the European Union, lists the areas of exclusive competence of the Union with respect to which the Union holds the monopoly of legislation and for adopting binding juridical acts, that is, which produce regulations. The member states are only able to regulatorily intervene if there is delegation or by applying the regulations of the Union.[14] The second list, in article 4 Treaty on the functioning of the European Union, deals with the areas of legislative competence shared between the Union and the member states.[15] In this case, the states can intervene provided the Union has not done so or when it has waived its

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[13] Díez-Picazo, La naturaleza de la Unión europea, p. 52, the need for the unanimity of the member states in this area is the only difference between the Union and the main federal experiences.

[14] Exclusive competencies of the Union (art. 3 EUCJ): customs union; the establishment of rules on competition that are necessary for the operation of the internal market; the monetary policy of the member states using the euro; the maintenance of the marine biological resources within the common fishing policy; the common commercial policy and the holding of an international agreement when this might be provided in a legislative act of the Union, when it is necessary to allow it to exercise its internal competence or insofar as it can affect common regulations or alter their scope.

[15] Art. 4 EUCJ determines that the competencies shared between the Union and the member states will apply in the following areas: domestic market; social policy, in the aspects defined in the Treaty; economic, social and territorial cohesion; agriculture and fishing, excluding the preservation of the marine biological resources; the environment; consumer protection; transports; transeuropean networks; energy; the area of freedom, security and justice; the common matters of safety in public health, in the aspects defined in the Treaty.

exercise, in the event of derogation of a juridical act of the Union to satisfy the principles of subsidiarity and proportionality. The residual clause in favour of the member states, which is classical in federal models and contained in article 4 TEU, closes the share-out of competencies and reserves the holding and exercise of any other competence that the treaties have not attributed to the Union for member states. Finally, the treaties of constitution recognise a limited capacity of action to the European Union in the following areas: coordination of the economic and employment policies of the member states (art. 2.3 Treaty on the functioning of the European Union), foreign policy and common security (art. 2.4 Treaty on the functioning of the European Union) and coordination, support and complement of the actions of the member states in the areas provided in article 2.5 Treaty on the functioning of the European Union.

The exercise of the competencies by the Union and the member states finds its limits in the principles of subsidiarity and proportionality (art. 5 TEU). The subsidiarity in the shared areas of action requires the Union to exercise limited competence subsidiary to internal action. It is sought to rationalise the exercise of joint competencies by bringing to the forefront the proximity of the decision-taking to citizens, but also the exercise of the efficacy of the action that could justify an intervention from the Union. By virtue of the principle of proportionality, the content and form of action of the Union may not exceed what is necessary for achieving the objectives of the Treaties.[16]

E) THE PRINCIPLE OF HOMOGENEITY: A UNION OF VALUES, PRINCIPLES AND RIGHTS

We have already said that one of the elements consubstantial to the federal model is the search for a reasonable balance between the principle of homogeneity needed between the different parties and the preservation of an optimal degree of plurality that allows everyone to suitably express their own interests. With regard to the principle of homogeneity, this is conceived as the common minimum of untouchable coincidence and convictions essential for the existence and survival of the federation. At

[16] *Protocol no. 2 on the application of the principles of subsidiarity and proportionality.*

the present time, the guarantee of homogeneity in the European Union is crystallised in a series of rights and freedoms that can be approved everywhere and the deepening of the European identity condensed in a series of unavoidable fundamental values and principles.

The process of recognising and coding the fundamental rights within the Union is assimilable to the federal processes, both regarding the *iter* and in relation to what refers to its integrating character.[17] Despite not taking the opportunity to constitutionalise the catalogue of fundamental rights and freedoms of the Union, the Treaty of Lisbon includes them in its ordinance by remission to the Charter of Fundamental Rights of the European Union (art. 6 TEU). Similarly, the obligation is recognised of the Union to adhere to the European Convention for the protection of Human Rights and Fundamental Freedoms, whose common and original character is explicitly recognised with respect to the constitutional traditions of the member states of the Union in such a way that they come into the juridical ordinance of the Union as general principles. In the line of contemporary constitutionalism, European integration is characterised not only by the presence of a large catalogue of rights, but also, and above all, by the common idea that the fundamental rights of the person are an essential element in the democratic configuration and characterisation as a community in law of the Union, which consequently has to ensure their guarantee and respect. In short, they become an element qualifying the political and juridical system of the Union.

As for the values, article 2 of the TEU establishes that the Union is based on the values of respect for human dignity, freedom, democracy, equality, state of right and respect for human rights, including the rights of people belonging to minorities. Furthermore, they are all common in the societies of member states characterised by pluralism, non-discrimination, tolerance, justice, solidarity and equality between men and women. These values and principles are constituted as limits explicit to the behaviour of the Union and its member states and form the substrate of the European

[17] Originally, both the North American and the Canadian federal models include and recognise the guard of the fundamental rights in texts approved outside the Constitution. This is the case of the Bill of Rights 1791, incorporated in the Constitution of the United States, and the Canadian Charter of rights and freedoms approved more recently, in 1982.

political community. Beyond their principle value, they are guidelines for the correct operation of the Union (and their infringement can be reported to the EUCJ) and of the member states. In this last case, if the existence of a violation or a serious risk of violation by a member state of these values is seen, article 7 TEU contemplates the possibility of establishing sanctions which, with the intervention of the institutions of the Union, might even suspend certain rights derived from the application of the treaties, such as the voting right of the representative on the Council. However, a sanction of this type must consider the consequences derived for the rights and obligations of physical people and legal entities, by express mandate of the TEU.

The democratic principles of the European Union

The European continent has historically been a benchmark in the creation, development and consolidation of democratic political systems, and therefore in the defence of institutions, of processes and democratic values. For many years the clandestine political forces of European countries with dictatorial and authoritarian political regimes admired the evolution of the democratic countries of the old continent. Today they all work together hand in hand to disseminate and reaffirm the democratic principles in Europe and around the world. The European Union is a privileged instrument for doing this.

The European Union is effectively an international institution at the service of the integration of its member states and the defence of democratic principles and values. In its preamble, the Treaty on the European Union is inspired in «the cultural, religious and humanistic inheritance of Europe, from which the universal values of the inviolable and inalienable rights of the person, and 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 the fundamental freedoms and the state of law» and wishes «to strengthen the democratic, effective operation of the institutions». Furthermore, article 2 of the TEU clearly and solidly fixes 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 up affirming 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».

The whole of the ideological base of the European Union has involved an activity in defence of democracy, not only within the member states, but also around the world. The promotion of democracy is therefore a key goal of European Union foreign policy. An example of this dissemination vocation and the international implementation of democratic values are the policies of cooperation to guarantee peace and respect for democratic values in Mediterranean countries. In this sense, the Barcelona Declaration of 28 November 1995 was a firm step on the path of the so-called the Euro-mediterranean Partnership towards this objective. Another very important example is the support programs for guaranteeing the consolidation of the new and emerging democracies of the Office of Promotion of Parliamentary Democracy (dependent on the European Parliament Directorate General for Foreign Policy of the Union). These proactive support programs basically assess, train, exchange experiences, design route sheets and work in a network to institutionally and administratively train the parliaments of the new democracies.

Inside the European Union there are also many mechanisms for constantly guaranteeing the development of the democratic systems of the member states. Starting by considering modern democracy as a constantly evolving phenomenon, the European Union wishes to accompany the member states in the processes of intensifying the democratic values and, by increasing transparency and nurturing mutual respect, identifying political responsibilities and increasing social control. However, it is a question of fostering new processes in distinct democratic models, for the European Union has a rich diversity of democratic regimes and also intends to preserve this wealth. It is therefore a question of spreading the universal democratic values of respect for the will of the people freely expressed and in defence of fundamental rights among the member states.

One way to preserve these values is to guarantee that the European Union itself works democratically. Here, Title II of the TEU establishes several provisions concerning the democratic principles of the Union. Firstly, it is based on representative democracy, and secondly on participative democracy. Title II of the TEU uses 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. With some changes, it reproduces 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 a subject in law and a subject legitimising public powers.

Article 9 of the TEU starts by referring to the respect of the Union for the principle of equality among its citizens, who must equally benefit from the attention of its institutions, bodies and organisations. The quality of the citizens in relation to the working of the Union includes all people who hold the nationality of a member state. Article 10 deals with the principle of representative democracy, which is assumed in the first section and specified in the three segments in the institutional, participative and procedural area. From the institutional viewpoint, it is said that citizens will be directly represented through the European Parliament and that the member states will be represented in the European Council by their head of state or head of government, and in the Council by their government representatives. With respect to participation, all citizens are entitled to take part in the democratic life of the Union and the decisions will have to be taken more openly and closer to the citizens. Finally, the principle of participative democracy is specified from a procedural viewpoint, as it is in the Constitutions of the member states, in the function assigned to the European political parties of forming European political awareness and expressing the will of the citizens of the Union.

The principle of participative democracy is dealt with in article 11 of the TEU. Firstly, it is said that the institutions will give citizens the possibility of publicly expressing and exchanging their opinions in all areas of action of the Union. Secondly, the European institutions are required to foster open, transparent and regular dialogue with the associations and civil society. Thirdly, it is established that the European Commission should maintain broad consultation with the parties concerned. Fourthly and finally, citizens are offered the possibility, and minimum requirements are established, of inviting the European Commission to present an adequate proposal within the framework of its attributions concerning questions that the citizens believe are worthy of a juridical act of the Union for the application of the Treaties. It is a question of establishing different routes for citizens and representative associations to take part in the TEU, and therefore to go further in 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 derived from the application of the White Book on European Governance.

The last of the articles of Title II of the TEU, where the provisions are established on democratic principles, relates the parliaments of the member states with the operation of the Union. Therefore, to guarantee the correct operation of the Union, six actions are listed which affect the national parliaments: to be informed by the institutions of the Union and to receive notification of the projects of legislative acts of the Union, to ensure respect for the principle of subsidiarity, to participate in assessing the application of the policies of the Union, to participate in the procedures of revising the treaties, to be informed of all applications to join the Union, and finally to participate in the interparlamentary cooperation between the national parliaments and the European Parliament. These are all measures which are intended, on the one hand, to strengthen the links between the European institutions and the parliaments of the member states, and, on the other, to define these relations within the objective of preserving the democratic principles in the operation of the Union.

In coherence with the defence and promotion of democracy beyond the member states of the Union and with the establishment of a democratic operation within the Union, the criteria established for another state to join the European Union (art. 49 of the TEU) must be respectful of the principles of article 2 of the TEU: human dignity, freedom, democracy, equality, state of law, human rights, the rights of minorities, pluralism, tolerance, justice, solidarity and equality between men and women. Therefore one condition is that the new state must be a constitutional democracy, although the states are given the freedom to set up the democratic model most pertinent for them.

The requirement of being a democratic state to enter the European Union, the defence of democratic principles once the country is a member of the Union, and the guarantee of internal democratic operation justify the text of article 7 of the TEU, which establishes the possibility of the European Council suspending certain rights derived from the application of the treaty in states which seriously and persistently infringe the values contemplated in article 2.

In short, respect for democratic values is one guideline present in the criteria for entry, the internal operation, the foreign policy and the nature

of the European Union. The European Union cannot be understood without the defence of democratic principles, nor one that fails to respect the decisions and democratic processes of the member states.

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

As declared by the German law historian Michael STOLLEIS, based on the opinion of Walther HALLSTEIN, who was the first president of the European Commission, Europe is a community of law, a similar concept of the state of law used to characterise the juridical culture of the whole of Europe, which is particularly applied to the European Union.[18] This means that Europe makes law the necessary vehicle for expressing the political power, which objectively constitutes a limit on its exercise and therefore an impediment on arbitrarity.

From a formal viewpoint, this means that the European states and the Union trust law as a peaceful solution to social conflicts. In this context, juridical security is a guarantee of the foresight of solutions to these conflicts, which are not subject to the whims of power. The guarantee of the foresight of law typical of the state of law in a formal sense, must be understood as an instrument intended to guarantee the state of law in a substantial sense, which is configured by the laws (fundamental, human) and relates to the status of citizenship.

The fundamental/human laws are effectively the central core of the *novum ius publicum commune europaeum* as a manifestation of a just social order where the power of the state is limited and of democratic origin. This is the core element of the European juridical culture necessarily projected (and at the same time giving a singular nature in relation to the conventional international organisations) on the European Union. Effectively, the jurisprudence of the state Constitutional Courts, the European Court of Human Rights in Strasbourg, and the EUCJ, in Luxembourg defines the common European standard in fundamental rights, and therefore the essential core of the *novum ius publicum commune europaeum*, while giving way to a material European constitution which defines the

[18] *Stolleis, «Europa como Comunidad de Derecho», Historia constitucional, p. 475-485*

possibilities of exercising power and creating law in Europe, which has a determining influence in the process of convergence of the different European juridical systems.[19]

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 an individual human life as a supreme juridical good, which is specified in the dignity of the person and the foundation of political and social order (§ 1.1GG or art. 10.1CE, for example). Effectively the idea of the state of law in a substantial sense, which is projected on the conception of Europe as a community of law, is that the political power is committed to the protection of the sphere of each of the individuals who develop their lives in accordance with the idea of dignity.

The European Union appears with the original community, bound to the idea of the emancipation of human beings and therefore committed to the idea of state of substantial law, which will first be projected on the strongly economicist idea of community freedoms and which will develop into the idea of a Charter of Fundamental Rights of the European Union. Effectively, the singular status of the individual 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 the physical people, consisting of the enjoyment of a series of rights and of the assumption of certain obligations. The perspective of a direct legal relationship between the community institutions and the people of the Union suggests a singular parallelism with the juridical structure of the

[19] The distinction between formal and material constitution used here starts with the idea that fundamental political decisions of a certain political community do not necessarily have to be contained in the text of the written Constitution, as is said, amongst many others, by Aubert, Traité de droit constitutionnel suisse, p. 101. This idea of material constitution is different from that defended in the work La costituzione in senso materiale, published by Costantino Mortati (1891-1985), where the concept was understood as «organisation of the stably organised social forces around a system of fixed interests and purposes», thus representing a more real idea than constitution regulations, which is rightly opposed by JIMÉNEZ «Contra la Constitución material» in Estudios de Derecho público. Homenaje a Juan José Ruiz-Rico, p. 42-43. To clarify the distinction between the two concepts of constitution in a material sense, vg. Vignocchi, Ghettii, Corso di diritto pubblico, p. 25-26.

federal states, the distinctive characteristic of which is the existence of a direct link between the federal ordinance and the citizens of the federated states. But we must not forget that modern federalism is also read as a community and union of citizens and it is in this dimension where the elements of cohesion in the Union, such as citizenship, reveal a vocation of fundamentality that place them beyond their strictly juridical nature.

The Treaty of Lisbon advances determinedly towards the consolation of this particular status, not only by legally regulating the series of rights and obligations forming part, but also, as is said by MANGAS, consummating a decisive turn in which the citizenship and the laws which it involves «are intended to serve the citizens, who become the target of European integration, a target recovered by a tighter and tighter union between the peoples of Europe». In this sense, the preamble of the TEU expressly evokes the wish to create a citizenship common to the nationals of the member states.

From the juridical perspective, the status adhered to the concept of European citizenship refers to a series of rights and obligations of all citizens of the Union with the nationality of a member state, presented in a first version in article 20 of the Treaty on the Functioning of the European Union:[20]

— The right to circulate and reside freely in the territory of the member states.
— The right to active and passive suffrage in the elections to the European Parliament and in the municipal elections where they reside under the same conditions as nationals.
— The right, in the territory of another country in which a member state of which they are nationals is not represented, to receive the protection of the diplomatic and consular authorities of any member state under the same conditions as nationals thereof.
— The right to make requests of the European Parliament, to address the European Ombudsman, and to address the consultative institutions and bodies of the Union in one of the languages of the Treaties and to receive an answer in the same language.

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[20] Also presented in Chapter V, «Citizenship», of the Charter of Fundamental Rights of the European Union, arts. 39 to 46.

Complementarily, the system of citizenship also includes other areas that allow individuals to take part in the area of the Union, such as the right to citizens' legislative initiative, certain legal protection before the EUCJ or the consideration of the person as a direct receiver of the rules of legal ordinance of the European Union.

Beyond the series of positive rights recognised to European citizens, the identity of European citizens is expressed around a system of constitutional and democratic values to which we have already referred (art. 2 TEU). It would be unthinkable today that Europe should accept a political and institutional system in which the decisions were taken with their backs to the citizens, in which there were no systems of democratic control from the authorities and in which the fundamental rights were not recognised and guaranteed. It is therefore obvious that the components of identity of the citizens of the Union should be aimed at achieving the values of democracy and citizenship, and that it is in this sense that the Union is intended to be strengthened very intensively in the future. Democratic legitimacy and citizenship are the very essence of the Union. This was already advanced by the failed European Constitution project, when the citizens and the states of Europe declared their common will to build a common future.

1.2 ANALYSIS OF THE POSSIBLE MODELS TO BE FOLLOWED IN THE EVENT OF SECESSION OR DISSOLUTION OF A MEMBER STATE OF THE EUROPEAN UNION

The singularity of the European integration process is fundamental for determining the reply that the European Union must give in a process of internal enlargement derived from the secession or dissolution of a member state of the Union. The possible existence of rules of public international law applied to a case of internal enlargement of the European Union or the possibility of applying the solutions adopted within the framework of other international organisations to the case that concerns us are two of the questions to be clarified when replying to the challenge of the internal enlargement of the Union.

Another possibility, considering the singularity of the European Union as a parafederal entity, would be to explore the solutions given in the

federal model to deal with internal changes in the territorial organisation. The internal practice in the member states or other federal states may be of great use in replying to the question that concerns us. Therefore, it is possible to find significant examples in the practice of federal states that have had to face changes in the configuration of their territories and even, in some cases, without their constitutions establishing the procedures to be followed.

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

The internal enlargement of the European Union resulting from a process of secession or dissolution of a member state would be considered in the light of international law as state succession. From the point of view of international conventions on the subject, the concept of state succession determined by the area of application of the treaties places the stress on two elements: on the one hand the substitution, and on the other the responsibility of a territory's international relations. In this sense, article 2.1, b) of the Vienna Convention of 1978, concerning the succession of states with regard to treaties, and art. 2.1, b) of the Vienna Convention of 1983, concerning the succession of states with regard to goods, archives and state debts, define the succession of states as «the replacement of one state by another in the responsibility of a territory's international relations.»

The cases of succession provided in the two conventionss above are the following:

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

Part of the legal problems caused by the cases of succession of states have been the object of a very slow coding process by the ILC. The ILC decided to divide the material to be coded into four large sections: succession in treaties, succession other than in treaties, succession in the membership status of international organisations, nationality in relation to the succession of states.

The results of the coding work have been:

— Vienna Convention 1978, on the succession of states in treaties, which has yet to be enforced.
— Vienna Convention of 1983, on the succession of states in goods, archives and debts of the state, which has yet to be enforced.
— The adoption in 1999 by the ILC of a project of articles dealing with the nationality of physical people in relation to the succession of states.

In 1987, it was decided to park the process of coding the rules on succession as members of international organisations.

The coding work was intended to combine two different areas. On the one hand, traditional practice and on the other, the pretensions of the states resulting from decolonisation. The results show the second of the positions above all, so it may be said that the two conventions may be considered more a progressive development than a coding of current law. Maybe this helps to understand the difficulties in the enforcement process, which has been very slow. In fact today, only the Vienna Convention of 1978 has achieved the minimum number of ratifications to be enforced.

However, these conventions do not exhaust existing international regulations on the matter. In addition to several treaties which resolve the problems derived from a specific process of state succession, it is not possible to exclude the existence of agreed regulations on the question in areas not expressly regulated in the conventional international instruments and which have been applied in different processes of peaceful resolution of controversies.

When the succession of states supposes the appearance of a new state, the problem is posed of whether this succeeds it as a member of the international organisations to which the predecessor belonged. The fact that the ILC has given up the question leaves us with the single precept

of the Vienna Convention of 1978, concerning succession in treaties not referring to the question. This is article 4, which deals with the area of application of the Vienna Convention of 1978 and states the following:

> «The present Convention applies to the effects of a succession of States in respect of:
>
> a) any treaty which is the constituent instrument of an international organization without prejudice to the rules concerning acquisition of membership 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. All treaties adopted in an international organisation, under reserve of any pertinent rule of the organisation».

It is best to previously mention that the solutions given by the Vienna Convention of 1978, in the case of succession of states not arising from a process of decolonisation, are maintained on the principle of continuity, so the successor states, if they so wish, continue to be part of the treaties which included their predecessor with a simple notification of succession in writing.[21]

However, the compulsory application of these rules is very complicated for although it is generally established that the Vienna Convention of 1978 applies to cases of state succession in agreements constituting international organisations, it then states that the general rule is applied without prejudice to those applicable to the acquisition of membership quality and any other pertinent rule of the organisation. The interpretation of the scope of this precept is not at all peaceful by doctrine, although it is mainly considered that the transfer is the solution of the question

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[21] *In the specific case of the successor republics of the Soviet Union and bearing in mind that the Treaty was not in force and doubts were cast on whether there was actually a process of simple coding of pre-existing rules in this area, 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 the treaties of the FRG for the whole of the state and the examination of the treaties of the GDR to see whether they remained in force, whether they had to be adapted or whether they were to expire.*

of a possible succession in a member of an international organisation[22] to the rules of international organisation itself. Here too we follow what is established by the ILC when discussing the project of articles of the Convention that this body adopted 1974, when it said «although it is true that the rules of the succession of states do not apply in the constitution of an international organisation, it would be false to say that they do not apply to this category of treaties at all. In principle, it is the pertinent rules of the organisation which are applied but they do not completely exclude the application of the general rules of state succession in treaties in cases in which the treaty constitutes an international organisation».[23]

It is therefore possible to say that to solve these questions, it is necessary to turn to the law of the international organisation, but it is also true that this does not mean that the general rules concerning the state succession cannot be applied to international organisations; it will be necessary to study the compatibility of these regulations with the rules of the international organisation, including all written rules and the customs of the organisation itself in this category, as the ILC does.[24]

In the same sense, as we will see later, international practice does not seem to reinforce the existence of agreed international legal regulations that backs or prevents the application of the provisions of the Vienna Convention of 1978, concerning succession in treaties in cases of succession in the membership of an international organisation, because the practice is highly varied. Therefore, in the light of international law, the solution adopted for a case of internal enlargement of the European Union would refer us to the

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[22] On this question, it is possible to see the analysis by Bühler, State succession and membership in international organizations. Legal theories versus political pragmatism, p. 30-35.

[23] «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 où le traité est l'acte constitutif d'une organisation internationale». «Rapport de la Commission à l'Assemblée générale. Projet d'articles sur la succession d'Etats en matière de traites» in Annuaire de la Commission du droit international, 1974, vol. II, 1re. Partie., p. 178-279.

[24] Idem.

internal law of the organisation itself, that is, to all of the written regulations and customs making up the legal framework regulating its existence. Bearing in mind that in the case that concerns us the constituting treaties do not expressly establish provisions regulating this question, it would be best to analyse the practice of the organisation itself on the question to determine the existence of a legal framework regulating the question.

Since the creation of the European communities, the process of European construction has not had to face any case of state succession in itself, although there have been two modifications to the area of territorial application of the Treaties of constitution. This happened as a result of changes in sovereignty of territories that initially made up another sovereign state that did not form part of the European Union (GDR), which came into a member state (FRG); or changes to the territorial organisation of a member state (political autonomy of Greenland inside Denmark). In both cases, although there were no specific rules within the framework of the Union regulating such changes, the European Union showed its capacity to adapt and be flexible to give a fast and satisfactory solution to the demands.

Therefore, in the absence of express regulation in the constituting treaties and the non-existence of a practice in the European Union itself to help us to face cases of secession or dissolution of a member state, it is better to analyse the possible application of the practice of international organisations on state succession in relation to membership. International practice on the matter shows us solutions of all kinds, from majority cases in which the automatic succession of the new states arising from a state succession process is accepted, to cases in which a simple notification to the international organisation by the new successor state is sufficient for its membership to be recognised.[25]

The study made by BÜHLER of the practice of international organisations from 1945 to 1990 identified six categories of replies: the continuity of membership, the recovery of membership, *ex novo* admission as a member, succession as a member, substitution in membership and amalgam

[25] *An analysis of the different types of solutions given by the provisions of treaties constituting international organisations in cases of state succession in membership can be seen in Bühler, op. cit., p. 18-30.*

in membership.[26] Of all of these examples arising from the practice of international organisations, the case of secession or dissolution of the member state of the European Union could give rise, for the new state or states arising from the process within this organisation, to a case of continued membership, a case of *ex novo* admission as a member or a case of succession in membership.

— Continuity has been applied in cases of separation or secession for the predecessor state, in cases of incorporation or accession for 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 continued membership of the international organisation from the original date of acquisition of membership with 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/secession or dismembering by some international organisations and implies that the successor state must start the formal procedures of admission as a member of an international agreement in accordance with the respective instruments of constitution.

— Succession in membership has been applied by some international organisations in cases of separation/secession or dismembering, and supposes accepting succession in membership for the new state created in the membership condition held by the predecessor. This circumstance does not occur automatically and requires a «notification of succession» and in some cases has also required the fulfilment of certain conditions and a formal decision of the organisation. In this case, the new state is considered a member from the date of succession.

This variety of practices makes it impossible to produce an international custom on the subject which has to be fulfilled for the European Union, but it would not impede the application by analogy of some of the solutions given. However, this analogue application would be conditioned by the suitability of the adopted solution for the singular nature of the European Union. It is therefore necessary to analyse whether the solutions used

[26] *Bühler, op cit., p. 287.*

by other international organisations are suitable, bearing in mind the consequences that the solutions would have on the European Union.

From this perspective, it must be remembered that the analysed practice corresponds to classical international cooperation organisations very different from the European Union, an integrated international organisation with federal and confederate types of structure characteristics, as we have tried to show on preceding pages. This singularity is reinforced still more with the particular procedures provided in the TEU to regulate two basic questions related to the condition of organisation membership. Therefore, the procedures of adhesion for other states (art. 49 TEU) and withdrawal from the European Union (art. 50 TEU) have no comparison with those used by other international organisations. In both cases, as a result of the consequences that these two facts have on the Union, the member states, the citizens of and legal entities operating in the territory, an international treaty has been provided to regulate the conditions of adhesion and the 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 an absolute break of the new state with the Union and the possibility that the European Union might not accept the adhesion of the new state or delay it for an undetermined period of time. This option would suppose the non-application of the Constituting Treaties from the time of the effective independence of the new state, with all of the consequences that this would have on the effective application of the legal ordinance of the European Union, and particularly the effectiveness of the rights and obligations recognised not only to the states, but also to the national citizens and legal entities of the new state and the citizens and legal entities of the Union in the territory of the new state. Furthermore, the choice of the option by the European Union would also imply a kind of sanction on the citizens of the new state, who would have to exercise the democratic option of creating a new state, contrary to the defence of democratic principles postulated by the Union itself.

The automatic continuity and the succession of the new state as a member of the European Union would not suppose a break with it. This solution would suppose a true internal enlargement which would guarantee

continuity in the effective application of the ordinance of the European Union in the territory of the new state, with everything that this might mean: amongst other things, it would guarantee the authority of the institutions and bodies of the European Union and particularly those referring to mechanisms of administrative and judicial control of the application of Union law. However, automatic continuity would not allow the conditions of permanence of the new state in the European Union to be modulated, for the state would have the same rights and obligations as its predecessor, which would cause institutional problems in the European Union and might have negative consequences both for the European Union and for the new state and its nationals with regard to the application of certain provisions of material law of the Union, as would happen, for example, in the case of quotas assigned to the member states. On the other hand, succession in membership would allow a reply to be given to the situation created by the secession or dissolution of a member state and would also guarantee the continuity of the rights and duties derived from the application of European Union law. This situation will also be respectful of the defence of the democratic principles postulated by the Union.

Internal territorial modifications in federal states: case studies

From what has been said about the singular nature of the European Union and the succession of states inside it, in accordance with both the precedents and the internal logic of the system, it is necessary to see some significant cases of how federal and democratic states have dealt with the question of secession, that is, constitution from a democratic decision of a new state from the viewpoint of the legitimacy of the decision, as well as the consequences derived for the new state in relation to belonging to the federal community (state) to which its territory and citizens already belonged in the predecessor. As for the second question, we will see a precedent of secession which ended up generating true internal enlargement (of the members) of a federal state, which is the case of the Jura in Switzerland. With respect to the question of the legitimacy of the secession decision and therefore of the impossibility of deriving sanctions or reprisals, we will see how the question was posed for the possible secession of Quebec from the rest of Canada.

A) INTERNAL SECESSION AND PERMANENCE IN THE FEDERATION: THE CASE OF THE SECESSION OF THE JURA AND ARTICLE 53.2 OF THE SWISS FEDERAL CONSTITUTION

The Jura territories were brought into the canton of Berne following the Napoleonic Wars in the Vienna Congress (1815), in compensation for the territory lost by Berne in the conflict. The inclusion of a mainly French-speaking, catholic territory in a canton (state) which is really German-speaking and Protestant was not free of tension, but the conflict did not become significant until 1947, with the so-called Moeckli affair.

From this moment, the Jura separatist movement became more and more notorious until it forced the authorities of Berne to find a political solution to the problem. The important question here is that the Jura separatists did not intend to leave Switzerland, but only Berne and become an independent canton within the framework of the Confederation. In this sense, the case is similar to an episode of secession within the framework of a member state of the European Union in which the new state does not intend to leave the common parafederal framework.

The process, obviously marked by the importance of the direct democracy on the Swiss political system, was carried out as follows. In 1959, there was an initiative driven by the Rassemblement Jurassien asking the population of the historical Jura on their wish to form a sovereign canton within the framework of the Confederation.[27] The initiative won 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.

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[27] In the Swiss system of direct democracy, cantonal initiative consists of the possibility of calling a referendum in a canton in accordance with its own rules of constitutional law by a certain percentage of the electoral register. However, the call to referendum does not depend on the representative powers, but comes from the people itself, which allows questions to be brought into the political discussion even against the will of the parties represented in the parliament (cantonal). In relation to the referendum and cantonal initiative in Switzerland, vg. Jaria,«Las consultas populares en Suiza (Un estudio sobre la democracia directa)», Jus. Revista del Instituto de Investigaciones Jurídicas de la UJED, p. 127-144.

In 1970 the Constitution of the Berne canton was reformed to allow referendums in sectors of the territory, which was approved by referendum throughout the canton. In 1974 and referendum was carried out in Jura asking the people whether «they wished to form part of a new canton». The result was positive. In the following year, in accordance with the constitutional reform of 1970, referendums were carried out in southern Jura and Laufental, to see whether these territories which to remain in the Berne canton or come into the new one (the option of remaining with Berne won in southern Jura, whereas Laufental first decided to remain with Berne and later to come into Basel-Landschaft, for the new border separated it from Berne and not from this canton). After these territories had shown their will to remain, local referendums were carried out in the border towns to see whether they wished to remain in Berne or come into the Jura (5 municipalities chose to remain in Berne and 8 to come into the new canton).

In 1977, after the question of the borders, the people of the Jura approved the new constitution which made them a new state. In the following year, once the new canton had been constituted, the Federal Constitution was modified to admit it. The president of the Confederation called for respect for the minorities defending the new canton in the referendum called for reforming the Federal Constitution by which Jura was admitted to the Confederation. The referendum had a positive result and finally, in 1979, the canton was brought into the Confederation with the reform of the Federal Constitution previously approved by the people and the cantons.

As can be seen, with regard to Berne (a pre-existing member state), the process involved constitutional decisions which were intended to allow the performance of the will of the different communities in presence, while respecting both that of the secessionist Jurassians and that of those who wished to remain in the canton. The flexibility in finding a peaceful, agreed solution to the conflict links with the doctrine of the Canadian Supreme Court of Canada, which we will see in the following. Furthermore, on the level of the Confederation, although a constitutional reform was necessary to bring in the new canton, the process was vehicled as the recognition of the will expressed in the process of secession of the Jura from Berne, without questioning the belonging of the secessioned Jurassians to

Switzerland, who in any case had come down in favour of remaining in the Confederation.

It is possible to wonder what would have happened if the Federal referendum had rejected the incorporation of the Jura. What is clear however, is that after the constitution of the new canton, the Jurassians continued to be Swiss and the Jura remained in Switzerland, a victory for the no in the federal referendum of 1978 would have forced the procedure of secession of the Jura from Switzerland to begin, which would not have been automatic, or the constitutional reform to be reformulated and therefore the way it in which the Jura fitted into the Confederation. We believe that this situation offers sufficient light in relation to 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 permanence in the Union would be the automatic consequence of 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 must be noted that the situation that occurred in relation to the Jura was not considered something sporadic in the Swiss case, but was rather interpreted as what would have to be the normal solution of a case of secession inside the Confederation. Therefore, given the problems that have been considered due to a lack of express regulations in the Constitution to resolve the case, there was later a reform of the Federal Constitution, in its present article 53.2, which is intended to resolve the contradiction between the guarantee of statality (including integrity) of the cantons assumed by the Confederation and respect for the democratic will of secession by part of the population of a canton. In the final instance, the protection of the integrity of the cantons by the Confederation gives way to democratic principle in accordance with the mentioned article. Having shown that the *ex novo* admission is not the solution which best adapts to the logic of a federal system when a secession occurs in one of the members of the federation, here we link to the question of legitimacy of the act of secession to show that, in fact, *ex novo* admission is contradictory to the European Union's adhesion to 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 SENTENCE OF THE CANADIAN SUPREME COURT ON THE SECESSION OF QUEBEC

Following the second referendum on the sovereignty of Quebec, held on 30 October 1995, the Federal Government asked the Supreme Court to determine Quebec's possible right to unilaterally break away from Canada. The Supreme Court gave its decision on 20 August 1998.[28]

The decision of the Court is an opinion juridically based on the problem posed by the secession of a territory occupied by a group of population within the framework of a democratic state of law. In a certain way, the considerations of the Canadian Supreme Court are entirely coherent with the practice of the secession of the Jura and seem to indicate a way to resolve these kinds of contentious issues in a democratic state of law.

The Supreme Court starts with a subtle, penetrating understanding of the idea of Constitution, so it refuses to give a mechanical reply to the problem, which would prevent a peaceful solution from being found based on respect for minorities. Otherwise, there are no other options than the routes of fact. The Canadian Supreme Court considers that the Constitution «embraces unwritten, as well as written rules», so a superficial, literal reading of selected provisions of the written Constitution might be deceitful in relation to the real contents of the constituting pact that sustains a certain society.[29]

Therefore, according to the Canadian Supreme Court, an investigation must be made of the «underlying principles animating the whole of the Constitution, including the principles of federalism, democracy, constitutionalism and the rule of law, and respect for minorities».[30] The Court's conclusion is that there is no right to the secession of Quebec either in the Constitution or in international law. Likewise, there would be no base from the federal government and the other provinces «to deny the right of the government of Quebec to pursue secession should a clear majority

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

[29] *Remuneration of Judges of the Provincial Court of Prince Edward Island, [1997] 3 S.C.R. 3.*

[30] *Secession of Quebec, cit.*

of the people of Quebec choose that goal, so long as in doing so, Quebec respects the rights of others».[31] From here, the question of the procedure would have to be resolved politically.

Effectively, as it is understood by the Canadian Supreme Court, «[...] a system of government cannot survive through adherent to the law alone. A political system must also possess legitimacy, and in our political culture, that requires an interaction between the rule of law and the democratic principle. The system must be capable of reflecting the aspirations of the people».[32] Beyond this, from the application of this in the internal process of the Union, it must be concluded that in accordance with the ideas of democracy and protection of minorities, the result of a process of secession or dissolution within it as the fruit of the democratic will of those involved would have to lead to a teleological interpretation of the law of the Union in the sense of discarding the mechanical application of the admission procedure for the state/s resulting from the process.

Effectively in accordance with the precedents of Greenland and above all of German unification, the Union should be capable of replying to the democratic aspirations of a part of its citizens in the sense of constituting a new state, which would discard *ex novo* admission. Therefore, going back to the jurisprudence of the Canadian Supreme Court, which starts from the same foundations as the *novum ius publicum commune europaeum*, the central core of the law of the Union, configured by fundamental rights and democratic principle, it should be said that the Treaties cannot be used in the sense of frustrating 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 constitute a new state different from that to which they had previously belonged, without giving up their status as European citizens, for the opposite would be the same as sanctioning someone for exercising a legitimate right.

[31] *Idem.*

[32] *Idem.*

C) THE LEGITIMACY OF THE DEMOCRATIC DECISION TO CONSTITUTE A NEW STATE AS A FOUNDATION OF INTERNAL ENLARGEMENT

It can be seen in the analysed cases that the secession of a political community not subject to colonial domination or oppressive power is what is being considered. It is therefore not a question of turning to the effects of the doctrine of right to self-determination within the framework of international law to justify the constitution of a new state. It is rather necessary to consider the internal foundations of the legal ordinance and the community political system to justify that a (democratic) act of internal secession does not prevent a new state from belonging to the Union from its constitution.

To start with, we accept the democratic right of the population concerned to pronounce on the possible secession. In this sense, two different cases from the viewpoint of the idea of democracy, one leaning towards direct democracy (Switzerland) and the other representative democracy (Canada), accept the possibility of the declaration of a democratic opinion linked to the constitution of a new political entity that breaks the *status quo*, waiving a mechanical application of the constitutional rules to frustrate the democratic aspirations of part of the population from the idea of a constitution strongly linked to fundamental values and rights. In this way, there is not one «law» («no basis», says the Canadian sentence) to deny secession on the basis of a mechanical application of the constitutional rules, which, from the viewpoint of the Union, means that the treaties have to be interpreted in order to fit in a will that is covered by the legal and political foundations of the Union as a democratic community in law.

The legal and political foundations of the European Union's reply to a process of internal enlargement

In accordance with its nature as a singular international organisation with a parafederal structure, the European Union adopts a position of not interfering with the internal affairs of the states (art. 4.2 TEU), which, though not an active commitment to protect the integrity of the member states of the kind contained in article 53.1 of the Swiss Federal Constitution, does involve a duty of non-involvement. However, the Union's commitment to

democratic values must modulate it with respect to statality, which seems to derive from article 4.2 TEU, in so far as, in accordance with the solutions in similar legal and political traditions compared with those of the Union, the democratic principle implies the possibility of expressing the collective will in sub state areas and the obligation to consider this legitimately expressed will both internally (state) and federally, as is particularly shown in the case of the Jura.

As has been analysed before, the European Union is effectively based on respect for democratic values and principles, adopts a democratic internal operation and is intended to disseminate and promote democracy around the world. It is obvious that this ideological base of 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 the law of the Union.

A European Union based on such pillars cannot show political, institutional and legal contempt for scrupulously democratic processes of dissolving a member state or of secession of territories that form part of the member states. Therefore even though the legal body of the European Union does not explicitly provide for the internal enlargement of the European Union, that is, the possibility that some territories of the member states might become a new independent member state of the European Union, if the case did occur, legal and institutional solutions would have to be found aimed at respecting and giving the necessary effects to preserve the democratic rights of the European citizens who have decided to create a new state. Certainly it would not be understood that the European Union based on states which, in many cases, appeared through little or undemocratic processes (it must be remembered that the origin of the national state and its borders is not precisely democratic), should fail to give a satisfactory reply to new states appearing within the Union. If democracy requires an agreement on the space of territorial legitimacy of the political power, the possibility of an internal enlargement of the Union made through transparent, open and participative means has to be well accepted both by the (other) member states of the Union, guided by democratic principles, and by the Union itself.

Although it is true that the right to self-determination as it is recognised in international law has been considered not pertinent in the case of interstate

political communities not subject to colonial rule or an oppressive power, as shown by the sentence of the Canadian Supreme Court in relation to the case of Quebec, this does not imply that the expression of the will for secession is not legitimate in the case of a series of citizens in a certain territory inside a state, even though they are not subject to colonial rule or a situation of oppression, and the need to respect this democratic will.

Democracy and the principles that accompany it have enabled the capacity to be able to reconsider the social relations and political structures peacefully and in agreement. Self-determination requires free citizens, on the one hand, capable of taking decisions and, on the other, that the peoples should also be free. If the citizens are free and can decide democratically to start the process of independence, all supra-state institutions fostering democratic values must see these processes with good eyes.

Therefore, a European Union that proclaims the freedom of its peoples and its citizens to the four winds cannot repeal people's right to self-determination, or deny the legitimate expression of will of its citizens, even if, in a certain territory, a majority of them should decide to constitute a new state. In short, even if in this case the right to self-determination should not be applied in the sense of justifying a unilateral secession in accordance with international law, it must be stressed that the mentioned right to self-determination is an expression of democratic principle and the fundamental rights of people which form the legal and political basis of the Union. Therefore, other manifestations of this ideological core of the Union, similar or possibly subsumable 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 in so far as they are based on the same principles and values.

In fact, in recent years the European Union has seen how certain peoples of Europe have started democratic processes of independence and that, 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 programs to consolidate new, emerging democracies arising as a result of democratic processes. If this respect, this recognition and the support of the European Union for processes of independence has been a goal of its foreign policy and its

enlargement policy, there is ever more reason to give support to the free self-determination of territories and peoples of the member states.

In this sense, the European idea of «unity in diversity», which constituted the currency of the European Union (a Treaty establishing a Constitution for Europe; it does not appear in the Treaty of Lisbon), implies the possibility of political communities on the intrastate level that might be important in Europe (committee of regions) and which might be areas for expressing democratic will even if this means changing the internal limits of the member states of the Union, and particularly internal enlargement, that is, the appearance of a new member state as a result of the democratic will of the citizens living in the territory of the Union which, until that time, had belonged to another state. It is important to bear in mind the rights of people belonging to minorities (art. 2 TEU) and cultural diversity (art. 3 TEU and art. 22 TFEU).

Having established the legitimacy and relevance of the democratic will of the intrastate communities in the Union, European citizenship must be considered a substantial manifestation of the idea of Europe as a community of law. The idea of Europe as a community of law in the substantial sense is effectively the argument that connects to the manifestation of will within the democratic principle, which the compared law in states similar to the members of the Union (Switzerland, Canada) recognises in the expression and its effects, with the impossibility of depriving citizens as a sanction for being in a territory where the majority have legitimately reached a democratic decision in the sense of constituting an independent state within the Union, which means the tacit assumption of the obligations implying belonging to the Union. Effectively the idea of citizenship does not remove negative consequences for those affected by the decision to constitute a new state, even though the problem remains of the political negotiation that should occur in a manifestation of will in relation to secession.

In short, before the democratic expression of the will of a series of European citizens who are nationals of a pre-existing state and resident in a certain territory of constituting a new state within the framework of the European Union:

1. The law of the European Union is not an impediment but rather a foundation for the legitimacy of the act of expressing this will.

2. The law of the European Union cannot be interpreted in such a way as to frustrate the performance of legitimately expressed will in the sense of constituting a new state within the Union.
3. The law of the European Union requires that the new state resulting from the democratic will of a series of European citizens should be considered a member from the time of its constitution.

In short, in the light of the above arguments, 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 member state of the European Union, and at all times shall guarantee the continuity of the effective application of the legal ordinance of the Union in the new state and particularly the effectiveness of the rights and obligations recognised to its citizens. From here it will be necessary to consider the technical details of how the new state should fit in the Union, starting from its membership status.

2. THE LEGAL SYSTEM OF THE PROCESS OF INTERNAL ENLARGEMENT

The process of the succession of a state resulting from the secession or dissolution of a member state in membership of the European Union should:

— Guarantee respect for the principles, values and goals of the European Union.
— Accept the will of succession in membership of the European Union declared by the new state arising from the secession or dissolution of a member state.
— Guarantee the normal operation of the European Union, considering the consequences that dissolution would have for the European Union itself, the member states and the physical people and legal entities holding rights and obligations derived from the legal ordinance of the Union.

Starting from these premises, it is necessary to define the procedure which best guarantees this succession process in the membership of the European Union.

2.1 THE PREVIOUS CONDITIONS THAT HAVE TO BE GUARANTEED BY THE NEW STATES FOR THE INTERNAL ENLARGEMENT TO OCCUR

Forming part of the European Union means respecting and guaranteeing a series of conditions necessary for guaranteeing the feasibility of the integration and participation of the new state, while ensuring that the operation of the integration process is not jeopardised.

In the 1990s, on the horizon of an enlargement of the Union with the inclusion of the countries of Eastern Europe, the European Council defined a series of political, economic and legal criteria known as the «Copenhagen criteria», according to which, «adhesion requires the candidate country achieving institutional stability to guarantee democracy, the state of law, human rights and respect for and protection of minorities, the existence of a market economy in operation and the capacity to face the competitive pressure and the market forces inside the Union. Adhesion presupposes the candidate's capacity to assume the obligations of adhesion, including observance of the purposes of the Political, Economic and Monetary Union».[33]

Although a process of internal enlargement presents its own particularities that move it away from the scenario we have just described, we understand

[33] *«la adhesión requiere que el país candidato haya alcanzado una estabilidad de instituciones que garantice la democracia, el Estado de Derecho, los derechos humanos y el respeto y protección de las minorías, la existencia de una economía de mercado en funcionamiento, así como la capacidad de hacer frente a la presión competitiva y las fuerzas del mercado dentro de la Unión. La adhesión presupone la capacidad del candidato de asumir las obligaciones de adhesión, incluida la observancia de los fines de la Unión Política, Económica y Monetaria». The «Copenhagen criteria» for the adhesion of new states were established by the European Council in Copenhagen in meeting on 21-22 June 1993, intensified in the European Council held in Madrid on 15-16 December 1995 and confirmed on 12-13 December 2002 by the same institution in Copenhagen.*

that obviously these criteria are also binding on the states resulting from a process of secession or dissolution of a member state of the European Union.

(1) The political criteria are clearly defined by article 49 TEU in so far as it establishes one condition of access to the Union as respect for the values contemplated in the article according to TEU and the commitment of promoting them. All new states must therefore be stable democracies, respectful of the values of human dignity, freedom, equality, the state of law and respect for human rights, including the rights of people belonging to minorities. In the same line, it is necessary to assure respect for the principles of pluralism, non-discrimination, tolerance, justice, solidarity and equality between men and women.

Internally, the accomplishment of this series of demands is based on democratic principle and will have to be shown through the approval of a founding text of the new estate approved by a representative assembly and supported by the people, in other words a Constitution. The new fundamental regulation of the state shall expressly include the commitment to respect for all of these values and principles of democratic and social modern societies and states of law. It shall support a democratic institutional system that guarantees political plurality and the separation, independence and democratic control of the different bodies called to develop the main functions of the state (legislative executive and judicial). In the area of fundamental rights and freedoms there should be a system to protect and guarantee them which should also expressly include the Charter of Fundamental Rights of the European Union and the Convention for the Protection of Human Rights and Fundamental Freedoms, and which is subject to existing jurisdictions concerning the protection of rights.

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

(2) As for the 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. The nature of the Union is obviously

largely defined by its economic and monetary integration and, at present, the economic and financial stability and progress in this area is one of its goals. As a result, the solvency of the new state in the economic field would seem to have to be compared through the evolution of certain variables, such as growth in GDP, the state's macroeconomic stability, privatisation and the weight of the public sector, unemployment, foreign investment and exchanges with the Union. For all of this, it will be necessary to have the suitable infrastructures and trained human resources to be competitive and to generate sufficient resources to be able to assume the obligations of the Union. In this sense, the practice of the Union to the present time shows, as GOSALBO says, «that the economic demands are related to the economic dynamics of each state and their ability to take part in the internal market, that is, the existence of 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».[34]

(3) From a legal perspective, the new states will have to be capable of assuming the obligations inherent to the quality of a member state of the Union. On the one hand, they will have to have a legal system that guarantees the law of the European Union in its territory with the same effectiveness as it had before the secession or dissolution of the preceding member state of the European Union. On the level of regulations, an additional effort would therefore be required to adapt the rules of the Union, and particularly primary law and the rules of derived law, within the new territorial and political framework of the state. Furthermore, the correct application of Union law on its territory will also have to be guaranteed with an effective administration capable of practically managing the rules of the Union.

Finally, the new state arising from the process of secession or dissolution must expressly state its unequivocal will to continue the membership of the European Union and the European Atomic Energy Community. In this sense, its participation in the process of the European Union necessarily involves it becoming a member of both organisations, without it being possible for it not to take part in one of them.

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[34] Gosalbo, «La ampliación. El estado de la cuestión», Revista Valenciana de Economía y Hacienda, p. 12.

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

2.2 THE COMPLETION OF THE SUCCESSION IN THE MEMBERSHIP OF THE EUROPEAN UNION

The absence of specific regulations in the constituting treaties for cases of internal enlargement obliges the European Union to establish the process which must rapidly settle the situation derived from the changes to the internal borders of the Union. The solution adopted must be respectful of the declared will of the new state to continue to be a member of the Union, of the fundamental principles of the European Union and of the legal ordinance of the European Union.

As we have seen before, the practice followed with regard to succession in membership in other organisations in the event of secession or dissolution of a member state considers three possible paths: request for *ex novo* adhesion, continuity in membership and succession in the position of the member. 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 it having arisen from a state which formerly formed part of the international organisation, would not be applicable in the case of internal enlargement of the European Union as it would clash with the basic principles and the essence of the European Union itself in the sense that the uniform application of the law of the European Union would be broken in the territory of the new state and this might be interpreted as a kind of sanction on the citizens of the new state, who democratically decided to constitute it. Automatic continuity in membership of the international organisation would also seem impossible to apply in the European Union because of the institutional difficulties it would imply for the Union itself and the problems it would pose with respect to the application of certain material regulations of the European Union both for the new state and for the predecessor, which would see how certain individual and distinct rights and obligations resulting from the derived law of the Union are sized according to the situation before the secession.

On the other hand, succession in membership in the case of internal enlargement of the European Union is the solution that best adapts to its singular nature and its policies, and would be in line with the general rules contemplated for state succession with regard to multilateral treaties for states that have recently become independent,[35] provided: there is a will on the part of the new state to succeed its predecessor as a member of the European Union; the new state meets the requirements imposed on all members of the European Union and; the European Union formally recognises the succession in membership.

The declaration of the will of the new state to succeed its predecessor as a member of the European Union would have to be materialised, as it is in other international organisations, by a «notification of succession» by the new state. Here it would report the new situation and its wish to succeed its predecessor as a member of the European Union, as a new state that respects the principles and conditions required for being a member of the Union, that is, the values mentioned in article 2 TEU and the market economy model and necessary administrative capacity to guarantee the correct application of the Law of the European Union in its territory. The «notification of succession» should also contain a commitment by the new state to accept the whole of the content of the European Union, including the agreement adopted by its members in the Council of Ministers, the declarations, resolutions and other positions adopted by the European Council and the Council of Ministers, and those relative to the European Union adopted by the member states. Finally, the notification should contain its will to immediately start the adaptation process to allow it to adjust the law of the European Union to the new situation and to adopt all acts allowing it to comply with all of the international obligations assumed by the states as members of the European Union.

This notification would only serve for the new state to start on the path to continued membership in the European Union, but it would not be sufficient to complete the process derived from the internal enlargement of the European Union. Therefore, this «notification of succession» would have to be complemented by the recognition of the new situation by the European Union and the adoption of the pertinent modifications of all of the regulations of the legal ordinance of the European Union (primary

[35] *Art. 17 of the Vienna Convention on Succession of States in respect of Treaties.*

right and derived right) and succession with respect to the international agreements derived from the membership of the predecessor, to adapt to the new situation resulting from internal enlargement.

Therefore, 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 of recognition of succession in membership of the Union of a new state arising from the secession or dissolution of another member state of the European Union». This act would imply the recognition of the predecessor, if it should still exist, and of the successor/s as members of the European Union and would have to contain the necessary initial provisions to guarantee the operation of the Union.

The whole of the process which would have to be followed to correct the situation caused by state succession in membership of the European Union has to be governed by the principle of continuity. On this basis, the process would be completed in two phases: first of all a transitory system and then a definitive one.

The transitory system should be established immediately and would be intended to guarantee:

— the continuity of the uniform application of the material provisions of the legal ordinance of the European Union throughout the territory of the Union,
— compliance with the institutional provisions making the number of components of an institution, an organisation and/or an agency dependent on the number of member states,
— the effectiveness of the procedures for taking decisions in the different institutions and organisations of the Union, and
— the participation of the representatives of the governments of all of the member states in the inter-governmental institutions and organisations of the European Union.

All questions that do not require a formal modification of constituting treaties may be resolved during the transitory period. From this perspective, all questions would be included that suppose the application of the provisions of the Treaties of constitution and other acts derived from their modification and the formal adaptations of the acts of derived law and the

agreements held by the European Union, and the succession within the framework of all international agreements held by the member states in the European construction process.

The final system would be established with a Treaty modifying the European Union which would gather all of the adaptations that have to be made to the regulations of primary Law to adjust its provisions to the reality resulting from the secession or dissolution of a member state. The Treaties of constitution have not established the procedure that has to be followed to modify the regulations of primary law in the case of internal enlargement of the European Union. We believe the procedure to be followed would be that of article 48 TEU for the ordinary revision, and would discard the procedure provided for the adhesion of new member states in article 49 TEU and that provided in article 218 TFEU for reaching international agreements between the European Union and other states and/or international organisations and which also applies by virtue of article 50 TEU for negotiating the withdrawal of a member state from the European Union.

2.3 THE TRANSITORY SYSTEM

The change in the European Union regarding the number of states arising from a secession or dissolution of a member state would generally suppose taking suitable measures to guarantee the continuity of the material legal system applicable to the whole of the European Union, the adaptations of the rules of material law that do not necessarily imply the modification of the constituting treaties and the adaptation of the composition of the institutions and organisations of the European Union, on the one hand to fulfil what is established in the Treaties of constitution and, on the other, to guarantee the participation of the government representatives of all of the member states and the citizens in the organic structure of the Union. This adaptation will have to comply with the procedures provided for modifying the acts adopted in application of the Treaties.

Institutional adaptations

The composition of the institutions and organisations of the European Union is regulated in the institutional provisions of the Treaties of constitution

and their respective internal regulations. During the transitory period, the composition of the institutions and organisations of the European Union has to be modified in line with these regulations and, if necessary, the suitable adaptations must be made to the provisions regulating it in order to allow the participation of the representatives of the new states and their citizenship under equal conditions.

THE ADAPTATION OF THE COMPOSITION OF THE INSTITUTIONS OF THE EUROPEAN UNION

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

— The European Union Council: Article 16 TEU establishes that this is an institution made up of the representatives of the member states on ministerial level. As the TEU does not individually designate its members and there is an agreement of the Union recognising the new state as a member of the Union, its representatives may take part without changing any institutional provision of the Treaties of constitution. However, if the succession occurs before March 31, 2017, it will be necessary to assign the number of votes corresponding to the government representative of the new state in the case of votes for taking agreements by qualified majority. In such a case, it will be necessary to modify Protocol number 36 on the transitory provisions. The *iusinternacionalist* doctrine considers the protocol is attached to the treaties as part of the treaty itself, so the modification would, in principle, have to be made following the procedures of revising the treaties provided in article 48 TEU. However, the practice of the European Union has shown that at certain times this position has not been followed. The procedure provided by public international law with regard to the holding of treaties was not followed during the processes of ratifying the TEU and the Treaty of Lisbon, as new declarations and protocols have been attached to the Treaties and some have been modified which were agreed prior to the signing of the

treaty and with different ratifications already made.[36] Likewise, on the proposal of the Spanish government, the European Council started a process to reform the treaties, including a new protocol modifying the transitory provisions on the composition of the European Parliament of Protocol number 36 attached to the Treaties of constitution, based legally on article 48 TEU.[37] Therefore, European Union practice in accordance with the decisions taken by the European Council on whether the declarations and protocols attached to the treaties might be the object of modification 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 take a simplified international agreement in the form of an atypical decision taken by the European Council to check the provisions on voting by qualified majority in the Council of Ministers, as they are regulated in Protocol number 36 on transitory provisions, in order to reply to the new situation created as a result of the internal enlargement of the European Union.

— The European Parliament: Article 14.2 TEU establishes that this is an institution comprising representatives of the citizens of the Union. As the citizens of the new member state took part in the elections to the European Parliament and the elected members are not working under any kind of state or political party mandate, no modifications would be necessary unless the definitive system is established with the number of representatives that will be chosen in the next elections to the European Parliament. This option would suppose that the parliamentarians elected in the European elections of different member states would represent the citizens of the new state. However, during the transitory

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[36] On the practice of the European Union in the time of ratification of the Treaty of Lisbon, veg. Gutiérrez, Cervell, La adaptación al Tratado de Lisboa (2007) del sistema institucional decisorio de la Unión, su acción exterior y personalidad jurídica, p. 109-116.

[37] Letter from the Ambassador, Mr. Carlos Bastarreche Sagües, Permanent Representative of Spain, Mr. Pierre de Boissieu, Secretary General of the Council, relative to a proposed modification 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.

period it is not possible to establish the definitive system by following the procedure provided in article 14 TEU by virtue of which «The European Council shall adopt by unanimity, on the initiative of the European Parliament 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. Representation of citizens shall be degressively proportional, with a minimum threshold of six members per Member State. No Member State shall be allocated more than ninety-six seats».

This would suppose the reduction of the number of parliamentarians assigned to certain states, to be able to assign a number of parliamentarians to the new state, who would immediately have to call elections to the European Parliament. This possibility could be compromised if the text of the proposed protocol of the Spanish government presented to start a process to reform the constituting treaties in order to allow this limit to be exceeded and new parliamentarians to be assigned to represent the citizens of the member states jeopardised by the enforcement of the Treaty of Lisbon following the elections to the European Parliament in 2009 were imposed.

The legal base behind this process to reform the transitory provisions relative to the composition of the European Parliament is that of article 48 TEU and would suppose the adoption of a new protocol to modify Protocol number 36 annexed to the constituting treaties. The text of the new protocol proposed by the Spanish government increases the number of parliamentarians to 754 members and assigns the supplementary numbers for different states. This situation, exhausting the number of possible parliamentarians and using this legal base for its regulation is manifestly contrary to the regulation provided in the TEU, for instead of respecting the limit provided 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 will lose the number of their seats. This once more shows the political pragmatism reining in the European Union. If this option were imposed within the European Union, the possibility of standardis-

ing the composition of the European Parliament during the transitory period would be clearly hindered.

— The European Commission: Article 17.4 TEU establishes that this is an institution comprising one national from each member state (until October 31, 2014) chosen by reason of their general competence and European commitment from figures offering full guarantees of independence. The composition and appointment of its members is carried out with the procedure regulated in the Treaties of constitution, with the participation of the elected President of the Commission, the European Parliament, the European Council and the Council of Ministers. Article 17.5 TEU establishes that after November 1, 2014, the number of members of the Commission will be reduced to 2/3 of the member states, and will be selected from the nationals of the member states in full respect for a strictly equal rotation system among the member states provided in article 244 TFEU. When a new state is recognised as a member of the Union, the specific procedure for appointing the new member of the Commission will be started.

— The European Union Court of Justice: This is an institution that includes the Court of Justice, the General Court and the specialised Courts made up of judges and general attorneys elected in common accord by the member state governments. As for the number of judges, article 19.2 TEU establishes that the Court of Justice will comprise one judge per member state and the General Court at least one judge per member state. This would mean that it would be necessary to appoint an extra judge for the Court of Justice following the procedure provided in article 19.2 TEU and 253 TFEU in which an agreement is required between the governments of the member states. This change in the composition of the Court would later require the modification of article 9 of Protocol number 3 concerning the Statute of the EUCJ to regulate its partial renovation. As for the composition of the General Court, the increase in the number of member states would not automatically require a modification, for article 48 of the Statute of the EUCJ establishes that it will be made up of 27 judges without any other kind of referral to the number of member states. In relation to the Court of Public Function of the European Union, article 2 of Annex 1 of the Statute of the EUCJ establishes that it will be formed by seven judges and that the Council may decide to increase the number of its members by asking the Court of Justice.

Therefore, the increase in the number of member states of the Union would not necessarily suppose 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 eight general attorneys, so no adaptation will necessarily have to be made as a result of an increase in the membership of the Union.

— The European Central Bank: Article 283 TFEU establishes that the Board of Governors of the ECB is formed by the Executive Council of the ECB and the governors of the national central banks of the member states with the euro as their official currency. The same precept indicates that the Executive Council is formed by a president, a vice president and another four members appointed by the European Council from among its nationals. They will all have to be people of renowned prestige and professional experience in this area. Therefore, an internal enlargement of the European Union would only suppose the entry of the Governor of its National Central bank in the Board of Governors of the ECB if the new state should have the euro as its official currency.

— The Court of Accounts: Article 285 TFEU establishes that this is an institution comprising one national from each of the member states. In the light of the appointment procedure provided in article 286.2 TFEU, the new member states shall propose a candidate who meets the established requirements, who will be appointed by the Council having consulted the European Parliament. Therefore the pertinent agreements will have to be reached on adapting its composition to what is established in the Treaty.

THE ADAPTATION OF THE ORGANISATIONS OF THE EUROPEAN UNION

— The Committee of Regions and the Economic and Social Committee: Each of these two consulting organisations of the European Union are formed by representatives of different levels appointed by the Council of Ministers on the proposal of each of the member states (art. 302.1 TFEU and art. 305 TFEU), and exercise their functions with full independence (art. 300.4 TFEU). The Committee of Regions is formed by representatives of the regional and local entities (art. 300.3 TFEU) and the Economic and

Social Committee by representatives of the organisations of entrepreneurs, workers and other sectors representing civil society (art. 300.2 TFEU). The number of members of each of these bodies may not exceed 350, and their final composition, including the share-out of the number of members proposed by each member state, will have to be established by decision of the Council of Ministers of the Union taken unanimously (arts. 301 and 305 TFEU). In the event of an internal enlargement of the European Union these decisions will have to be taken and the new members will have to be appointed by the Council of Ministers.

— The European Investment Bank: This is a body of the European Union with its own legal character and of which all of the states of the Union will be members (art. 308 TFEU). To specify the participation of the new state in the European Investment Bank, it will be necessary to modify the Statutes of this body in Protocol number 5 attached to the Treaties of constitution, following the special legislative procedure provided in article 308 TFEU.

— The economic and financial Committee: Article 134 TFEU establishes that the member states, the Commission and the ECB will each appoint a maximum of two members of the economic and financial Committee, although this provision will be developed in a regulation adopted by the Council. Therefore, in compliance with the provisions of the TFEU, it will be necessary to check the regulations adopted by the Council in order to guarantee the presence of this body in the new state.

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

— Other bodies, organisations and agencies of the European Union: It would be necessary to analyse each of the internal regulations and legal

acts that regulate their composition to progressively make any modifications resulting from an increase in the number of member states.

Adaptation of material law

In this time, it will be necessary to analyse all of the applicable regulations in the territory of the new member state in order to guarantee their application, and particularly that of the regulations containing individualised rights and obligations distinguished for the member states. This will enable the individual and distinct obligations and rights that correspond to the new member state in accordance with these regulations to be identified and possibly fixed and any which might correspond to the predecessor, if this should still exist.

By virtue of the principle of succession, the following would have to be immediately guaranteed:

— Continuity in the application of the regulations of the Schengen content, if the predecessor should have formed part.
— Continuity in the application of the commitments derived from the Common Foreign and Security Policy, to the same extent as they were for the predecessor.
— Continuity in participation in the Economic and Monetary Union, if the predecessor should have formed part.
— The binding of the successor to the agreements provisionally held or applied by the European Union with other states or international organisations, to the extent that they were with the predecessor.
— The continuity in the uniform application of the whole of the material law of the European Union applicable to the territory of the European Union.

All of the rules of derived law must be analysed to determine the adaptations that have to be made in order to identify and fix the individual and distinct rights and obligations of the new state resulting from the derived law of the European Union. The work of identifying the regulations that have to be adapted has been greatly facilitated by the work done in the recent enlargement processes of the European Union. This adaptation process does not necessarily imply the establishment of specific transitory periods

for the new state, like those negotiated in the enlargement processes. In the event of the new state finding difficulty in meeting its obligations derived from European Union law, they may allege the exceptions and safeguard clauses that might be applicable to them.

During the time of negotiation inside the European Union and until the progressive adaptation of the material regulations containing rights and laws for member states, by virtue of the principle of sincere co-operation contained in article 4.3 TEU,[38] the successor state and the predecessor state, if still existing, or the new successor states resulting from the dissolution of a member state will reply jointly and severally for the obligations that the predecessor state had, and will be obliged to adopt all measures to guarantee the application of European Union law, and particularly that relative to the rights and obligations of physical people and legal entities.

In relation to the international agreements held by the predecessor to date with other states and/or international organisations as a member of the European Union, it will be necessary to guarantee:

— The succession in the light of what is established in public international law in the position of the predecessor state in agreements held or signed jointly by the European Union and the predecessor member state.
— The succession in the light of what is established in public international law in the position of the predecessor state in internal agreements held between the member states, in so far as the predecessor formed part, for the application of agreements held by the European Union and other states and/or international organisations. However if these internal agreements should include a share-out of obligations and rights among the member states, a revision will be necessary before the succession to

[38] *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 which flow 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 institutions of the Union.
The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives».

determine the obligations and rights which correspond to the successor state on the basis of a new share-out among the member states.

To guarantee this process, all of the international agreements signed between the member states within the framework of the European Union process must be identified, and also the mixed international agreements signed by the European Union and the member states, on the one hand, and other states and/or international organisations to start the process of succession in Treaties in order to begin the procedures that will imply succession in treaties, as is provided in regulations on the subject. In this sense, the Vienna Convention on Succession of States in respect of Treaties generally establishes the freedom for recently independent states of deciding not to continue to be obliged by the treaties of which their predecessor formed part,[39] so that it is only necessary for the depositary of the treaty to be given written notification of succession in order to state their quality as part of the multilateral treaties.[40]

2.4 THE DEFINITIVE SYSTEM

The European Union process shows the flexibility and pragmatism sometimes shown by the European Union itself in the processes of reforming the Treaties of constitution in order to enable the rapid enforcement of the agreed modifications, while respecting the fact that a modification to a primary law regulation can only be made through another primary law regulation.

Starting with the base that the Treaties of constitution do not expressly regulate the procedure to be followed in cases of internal enlargement of the European Union, the procedure has to be determined that will be followed to hold the international Treaty establish by the definitive system derived from the enlargement of the Union. In the light of the provisions of the treaties of constitution, it is possible to identify four different possibilities:

— The procedure provided in article 48 TEU for modifying the treaties of constitution.

[39] *Art. 16 of the Vienna Convention on Succession of States in respect of Treaties.*

[40] *Art.17 of the Vienna Convention on Succession of States in respect of Treaties.*

— The procedure provided in article 49 TEU for holding agreements of adhesion of other states to the European Union.
— The procedure provided in article 50 TEU for the withdrawal of a member state from the European Union.
— The procedure provided in article 218 TFEU for holding international agreements held by the European Union.

The choice of the legal base applicable in the case of an internal enlargement is conditioned by the object of the treaty to be held. In our opinion, the main object of this agreement is the modification of the provisions of the Treaties of constitution to adapt to the new situation derived from state succession in cases of secession or dissolution of a member state.

From this perspective, the procedure provided in article 50 TEU is clearly not applicable, for the situation posed is quite the opposite of what is provided in this precept.

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

Article 49 TEU deals with the entry of a new state in the European Union. On the one hand, the procedure includes checking the fulfilment of the requirements provided in the TEU and the criteria of eligibility agreed by the European Council; and on the other, establishing the conditions for admission and the derived adaptations to the legal ordinance of the Union. This procedure fails to meet the needs posed by an internal enlargement of the European Union. For example, in the adhesion processes provided in article 49 TEU, the territory and the citizens of the Union are expanded, which does not happen in the processes of internal enlargement.

Therefore, article 48 TEU is the most suitable legal base for regulating the procedure that has to be followed in modifying the treaties of constitution. This process is only intended to modify the treaties of constitution to adapt to the changes to the internal borders of the European Union resulting from the secession or dissolution of a member state.

The modifications of the provisions of the Treaties of constitution that are needed to complete the increase in the number of member states are:

The establishment of the contracting parties of the Treaties of constitution (TEU, TFEU and EAEC).

The inclusion, if required, of new declarations annexed to the Treaties adopted by the new state or by the other member states relative to the new situation created by the internal enlargement of the European Union. The adaptation, if necessary, of the protocols annexed to the Treaties that regulate aspects related to the composition of the institutions and bodies of the European Union.

Finally, one of the questions posed is that of determining the time when the process has to begin of modifying the treaties of constitution. Bearing in mind the time needed for completing and enforcing the modifying treaty, the procedure provided in article 48 TEU would have to be started at the same time as the necessary institutional adaptations to guarantee the participation of the representatives of the new member state in the intergovernmental institutions and bodies and to correct the composition of the remaining institutions that have to take part in negotiating the new treaty.

Annexes

ROUTE SHEET FOR SUCCESSION IN MEMBERSHIP OF THE EUROPEAN UNION IN CASES OF SECESSION OR DISSOLUTION OF A MEMBER STATE

-— Declaration of independence of a state arising from the secession or dissolution of a member state following a democratic process.

-— Notification of succession as a member state of the European Union by the state resulting from the secession or dissolution of a member state. The new situation would be reported in this act as well as its wish to succeed the predecessor state as a member of the European Union in the form of a new state respecting the principles and conditions required for being a member of the Union and the model of market economy and required administrative capacity. The commitment by the new state to accept the whole of the content of the European Union, its wish to immediately start the process of adaptation that has to enable the adjustment of European Union law to the new situation and the commitment to adopt all acts that allow the fulfilment of all of the international obligations assumed by states as members of the European Union.

-— Act adopted by the European Union of recognising the succession of the new state arising from the secession or dissolution of another member state of the European Union as a member of the Union. This would suppose the recognition of the predecessor state, if it should still 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 system:

Application of the principle of continuity in acts not requiring changes or modification of the acts of derived law to enable:

The continuity of the uniform application of the material provisions of legal ordinance of the European Union in the territory of the new state.

The adaptation of the institutions and bodies of the European Union in order to guarantee, on the one hand, the participation of the representatives of the new state in the intergovernmental institutions and bodies and, on the other, fulfilment of the institutional provisions that make the number of components of an institution, a body and/or an agency depend on the number of member states, and the correct operation of the procedures for taking decisions in the different institutions and bodies of the Union. These institutional adaptations must be carried out through the application of the provisions contained in the treaties and the regulations of derived law, and if necessary, by the modification of the regulations of derived law.

The succession in the international agreements held jointly by the European Union and the predecessor state.

The succession in the agreements reached among the member states derived from their status as members of the Union.

The adaptation of material law made by the European Union, implying the identification of different rights and obligations among the member states through the procedures provided in the treaties.

— Establishment of the definitive system:
Modification of the rules of original law (Treaties of constitution and annexes, if necessary) through the procedure provided in article 48 TEU.

Acronyms

CE: Constitution of Spain
EAEC: Treaty establishing the European Atomic Energy Community
ECB: European Central Bank
ECSC: Treaty establishing the European Coal and Steel Community
EUCJ: European Union's Court of Justice
FRG: Federal Republic of Germany
GDR: German Democratic Republic
GG: Grundgesetz (Basic Law for the Federal Republic of Germany)
GDR: German Democratic Republic
ILC: International Law Commission
TEC: Treaty establishing the European Communities
TEU: Treaty on European Union
TFEU: Treaty on the functioning of the European Union

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