

## **“A right of withdrawal in the Constitution: Are member states going to make use of it?”**

### **I. Introduction**

The proposed Draft of the European Constitution consists of an article guaranteeing the right of voluntary withdrawal from the European Union which deserves special consideration. Article 59 talks about the following issues:

1. Any Member State may decide to withdraw from the European Union in accordance with its own constitutional requirements.
2. A Member State which decides to withdraw shall notify the European Council of its intention; the European Council shall examine that notification. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be concluded on behalf of the Union by the Council of Ministers, acting by a qualified majority, after obtaining the consent of the European Parliament. The representative of the withdrawing Member State shall not participate in Council of Ministers or European Council discussions or decisions concerning it.
3. The Constitution shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, decides to extend this period.
4. If a State which has withdrawn from the Union asks to re-join, its request shall be subject to the procedure referred to in Article 57.<sup>1</sup>

Before releasing this article, a couple of amendments were proposed by members and alternates of the European Convention. The following tendencies could be revealed:

*1. A right of withdrawal should be part of the Constitution* so members can take the opportunity of leaving the Union at any time they desire. However special conditions and procedures are needed to be additionally set: The step of withdrawal shall not be a unilateral step from the member state, it is rather the Union taking that decision and signing an agreement between itself and the withdrawing member state.<sup>2</sup> For instance if there is an amendment to the Constitution which a member state does not agree on, it should have in the

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<sup>1</sup> Draft Treaty establishing a Constitution for Europe

<sup>2</sup> See The European Convention (2003), CONV 696/03, p. 10.

first step the opportunity of vetoing against it and in the second step of withdrawing from it.<sup>3</sup> The full member state can also become an associate member as proposed by 21 Convention Members,<sup>4</sup> which would result in a looser partnership to the Union.<sup>5</sup>

2. *A right of withdrawal should not be part of the Constitution.* By comparing diverse amendments to article 59, the following reasons could be extracted of why not including this right into the Constitution: First of all, the 1969 Vienna Convention on the “ Law of Treaties” already considers this issue and as the Constitution is regarded as an international treaty, the Convention applies.<sup>6</sup> Prof. Jürgen Meyer, delegate of the German Bundestag also insists on deleting this particular article as “a withdrawal clause is incompatible with a European Constitution and with the integration objective shared by all Member States of “creating an ever closer union among the people of Europe”.<sup>7</sup> Even though he admits that it is indeed not possible to force a country to remain in the Union he emphasizes that a right of withdrawal could lead to abuse. The European People’s Party Convention Group gets to the heart of it: “Such an explicit exit clause could allow Member States to blackmail the Union, paralyze its decision-making process and even endanger the stability of the Union. It would also give a wrong political signal with regards to the required mutual solidarity in the Union.”<sup>8</sup>

After having taken into consideration those two aspects, the issue on the necessity of keeping Article 59 in the Constitution is still discussed. Examples from history (see the case of Yugoslavia) show that the rights of withdrawal/ secession<sup>9</sup> have been used intensively in the past.

The Draft of the European Constitution contains the right of withdrawal which - when used - will have consequences to the Internal Market, the economic and monetary relations between the member states etc. Question such as how assets and liabilities are supposed to be divided between the nation deciding to withdraw and the other member states<sup>10</sup>, or if the withdrawing member can still be part of the Internal Market etc. need to be answered. Prof. Danuta Hübner, member of the European Convention emphasized in her amendment to this article that it “... should contain an exhausted list of the conditions upon which certain country could

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<sup>3</sup> See The European Convention (2003), CONV 672/03, p. 10.

<sup>4</sup> See The European Convention (2003), CONV 672/03, p. 11.

<sup>5</sup> Suggested Amendment by Duff, Dini, Helminger, Lang, Maclellan.

<sup>6</sup> See Amendment Ernani Lopes and Manuel Antunes

<sup>7</sup> Suggested Amendment by Prof. Jürgen Meyer, Germany

<sup>8</sup> Suggested Amendment on behalf of the EPP Convention Group

<sup>9</sup> From the juridical point of view there is a difference between withdrawal and secession. As this paper, however, focuses on the economic perspective of a possible right of withdrawal, the words secession and withdrawal are assumed to have the same meaning here.

<sup>10</sup> See McGee (2003).

withdraw from the Union. Therefore, it seems that this article needs further examination.”<sup>11</sup> If the right of withdrawal is part of the Constitution it also must determine or regulate how the process should be organized and how the relations to other member states and towards common policies should be regulated.

The purpose of this paper concerns two issues. The first issue is to discuss the question whether the European Constitution should contain a right of secession. The second issue is to present amendments to article 59 which alter the probability of secession. Three amendments will be discussed and analyzed in regards to their potential of leading to secession.

## **II. Shall the European Constitution contain a right of secession?**

The right of secession can be understood as the right to abandon from an association of states in order to regain sovereignty. The reasons for member states to threaten to secede the Union are numerous:

Given the fact that the European Union draws up more and more competencies, member states could complain about breaking down the principle of subsidiarity, an immanent part of the Treaties of Amsterdam and Maastricht: Competencies shall be exerted at the level best suitable for it which means a sharing of power at different levels and a prevention of tendencies of centralisation in the European Union. By including the right of secession into the Constitution that principal of subsidiarity can be operationalized by transferring state tasks vertically to lower institutions which leads to enhanced competition between institutions on different levels<sup>12</sup> and works against over-centralization in the European Union.<sup>13</sup>

Empirical evidence suggests that secession occurs more often the more the average income of the regions within the Union differs.<sup>14</sup> The European Union has initiated a redistribution mechanism in order to reduce differences in the welfare level between the member states and to help poorer member states to catch up to the average EU level. There have been struggles over the distribution within the European Union: With the help of strategic negotiation games, member states tried to get the most out of the EU funds in order to aiming at lowering the economic risks for their states on the burden of the Union. The countries with a losing position in the negotiation game, i.e. the ones with a higher average income who contribute most to the EU budget may threaten to withdraw if redistribution will not be reduced and

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<sup>11</sup> Suggested Amendment by Prof. Danuata Hübner

<sup>12</sup> See Schäfer (2003), p. 183.

<sup>13</sup> See Schäfer (2003), p. 184.

<sup>14</sup> See Berthold / Neumann (2002), p. 19.

efficiency increased.<sup>15</sup> In that case, the right of secession can be seen as an efficient instrument of strengthening the whole Union as potential threats could reveal the reasons of why member states want to leave, and gives the union the option to address the problem right at its origin before it comes to secession.<sup>16</sup>

Before considering a possible withdrawal from the European Union however, member states need to evaluate the pros and cons with the help of a cost benefit analysis. They can do so for example by assessing the situation of being a country outside the common market facing the tariffs of a custom union<sup>17</sup> and losing the benefits of EU membership.

Several costs<sup>18</sup> will be associated with the withdrawal decision and which should be - in the long run - compensated by the benefits of being a sovereign country again. Within the process of secession, transition costs consisting of different components will occur: First of all, there are transaction costs with respect to negotiating new arrangements and settings concerning trade relations, division of debt and assets, citizenship issues etc. with the Union. Those costs also include the re- nationalization of institutions and programs. Besides that, transition costs could contain fiscal issues as the seceding country may have to increase taxes in order to maintain subsidies formerly paid by the Union. Another component of transition costs are uncertainty costs which arise because economic actors have to lower expectations towards future conditions and have to take into consideration a political risk concerning political and institutional changes, a default risk if the emerging state is creditworthy and a currency risk regarding the development of exchange rates.

The full extent of the costs is variable: Besides a fixed amount of costs for negotiating and restructuring which occur in every process of secession, the overall transition costs will depend on how the seceding country and the Union interact with each other.<sup>19</sup> With respect to this interaction one has also to consider that a strategic network consisting of private and public interdependencies within the member states has evolved which can only be dissolved at high costs. Furthermore, EU politicians from different countries keep relations with each other, agree on log-rolling behaviour and create an artificial harmony in order to maximise their personal utility. Due to those aspects potential threats of withdrawal are not credible because the advantages for the EU politicians of remaining in the Union prevail.<sup>20</sup>

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<sup>15</sup> See Schäfer (2003), p. 184.

<sup>16</sup> See Doering (2002), p. 24-28.

<sup>17</sup> See Schäfer (2004), p. 218.

<sup>18</sup> In the paper only the costs of a peaceful secession will be considered as a „secession war“ within Europe will hopefully not occur.

<sup>19</sup> See Young (2003), p. 11-13.

<sup>20</sup> See Schäfer (2004), p. 218.

By conducting a cost benefit analysis the member state deciding to secede may find out whether to stay or to leave: The costs of leaving the Union have to be compared to the gains in utility when being sovereign again. Pain and Young conducted a study on the macroeconomic consequences of UK's withdrawal from the European Union and came up with the following result: The level of output in the UK would permanently be 2, 25% lower if the UK decided to withdraw from the Union due to a lower level of technical efficiency which results from a drop of inward foreign direct investment after the decision to leave the Union.<sup>21</sup>

Even though secession of countries has been occurring world-wide, rules of secession are seldom regulated in constitutional arrangements. By not embedding a right of secession into the Constitution, the Union tries to increase the exit costs for its member states. Therefore it reduces the probability of secession and contributes to its stability by forcing its member states to remain in the Union even though it is not efficient anymore. A missing right of secession may however lead to a costly break-up of countries which desire not to stay in the Union anymore – ex post an enormous loss.

In order to construct optimal secession rules ex ante and ex post analyses have to be compared. From the ex ante point of view, a right of secession should not be included in the Constitution because the overall utility of the Union will depend on its duration. When taking into account the ex post point of view, a right of secession shall be included in order to keep exit costs low.<sup>22</sup> In order to find out the utility of including a right of secession in the Constitution two settings need to be discussed: Under the conditions of full information within the member states in the Union, a right of secession may or may not be part of the Constitution. The introduction of secession rules depends on the ex ante utility of being part of the Union. The higher the ex-ante utility, the lower the probability that a member state leaves the Union. If the right of secession is introduced it should not have any kind of conditions such as compensation payments; the country shall rather leave peacefully even if ex post welfare losses for the Union occur. Under the condition of information asymmetries which is a more realistic conception, it would be optimal not to introduce a right of secession in the Constitution because countries benefiting ex post may take the risk of a secession war. By spreading false information, a country can avoid to pay compensating transfers and increase its utility. Exit costs need therefore to be increased in order to complicate the secession tendencies by the lying country and to keep the Union alive.<sup>23</sup>

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<sup>21</sup> See Pain / Young (2004), p. 406.

<sup>22</sup> See Bordinon/ Brusco (2001), p. 1812.

<sup>23</sup> See Bordinon/ Brusco (2001), p. 1828f.

In order to answer the question whether or not a right of secession shall be included in the Constitution, a trade-off between advantages and disadvantages of having the right inserted in it has to be made: The European Union is supposed to be an everlasting construction; a right of secession, however, works against this idea and would imply a possible break-up of the Union as soon as a member state decides to leave the Union. Furthermore, the process of integration especially with respect to the Internal Market and the Monetary Union will be delayed if a right of secession exists ex-ante: The utility of the Internal Market and the Monetary Union increases the more member states participate due to cost reductions, realisation of economies of scale and better access to markets. If the right of secession exists ex-ante, gains out of the realization of the economies of scale might drop if member states decide to leave which is a bad signal for potential new members of the Union with respect to their ability to realize further economies of scale and to promote further integration. A right of secession, however, contributes to the cohesion of the Union as it is a potential instrument of threatening for the member states as a reaction towards tendencies of centralisation by the European Union. A right of secession can also stabilize the Union as candidate countries will have a positive attitude towards integration because they can leave the Union if they are unhappy with their membership.<sup>24</sup> The right of secession will be a democratic element within the Constitution and should therefore be part of it.

### **III. Amendments to Article 59 and expected consequences on withdrawal**

After having discussed the necessity of having a right of secession in the Constitution, I would like to discuss possible scenarios for amendments of Article 59 and its influences on the probability that secession occurs. I am going to present 3 scenarios starting with the one having the lowest probability of leading to secession.

#### Amendment I: Inclusion of a national referendum

The process of secession can be initiated by a politician who threatens to withdraw if he doesn't receive special concessions (for example additional transfers) from other member states of the European Union who have to decide whether or not to accept the threat. If they consider the threat as credible, they will surrender. If they don't believe in a credible threat, they will oppose it with the consequence that the politician presenting the ultimatum has to decide whether to surrender or to carry on his threat. Politicians keeping up the ultimatum and in the

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<sup>24</sup> See Doering (2002), p. 55f.

worst case withdrawing at high expense from the Union are called in the model stubborn politicians. The present article 59 encourages stubborn politicians to obtain concessions from EU member states. Citizens of a country might be willing to elect a stubborn politician who is less competent in national matters but negotiates well with other member states. However, the overall utility for the citizens shrinks.<sup>25</sup> Eerola / Määttänen/ Poutvaara suggest therefore the following amendment to article 59: “Withdrawal shall be subject to a binding referendum in which all citizens of the Member State considering withdrawal shall be entitled to participate, with a requirement that a majority of participants votes in favour of withdrawal.”<sup>26</sup> Stubborn politicians will not be able to threat for concessions because they need the approval of the citizens who do not have an incentive anymore to elect a stubborn politician representing their interests. The probability of a possible secession tends to zero. The inclusion of a national referendum however requires amendments to the Constitution in the member states such as Germany where national referenda are not particularly designed.<sup>27</sup> One could also discuss the option that citizens actually agree with the politician and insist on withdrawal from the EU especially in cases where further integration is discussed. Erola / Määttänen / Poutvaara however expect that the majority of those opposing further integration will rather choose to keep up the status quo instead of leaving the EU. The suggested amendment to article 59 is going to reduce the possibility of withdrawal to almost zero as stated above.

#### Amendment II: Keeping the status quo

Article 59 in its current composition will remain. The right of withdrawal will be part of the Constitution but for the sake of deeper integration, member states are not expected to withdraw from the Union. If a possible case of secession occurs, the discussion will start whether to regulate the whole process, which kind of compensation payments have to be made between the leaving member state and the rest of the union. By keeping up the current article, the probability of leaving the European Union is an uncertain decision: Either the representative of the member state pushes for withdrawal by sticking to his ultimatum or he surrenders.

#### Amendment III: Secession into different clubs

This scenario basically includes the right of secession by allowing member states to remain in the European Union, but to have the possibility of opting out of certain policy issues in order

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<sup>25</sup> See. Erola / Määttänen/ Poutvaara (2004), p. 1f.

<sup>26</sup> Erola / Määttänen / Poutvaara (2004), p. 2.

<sup>27</sup> See Erola/ Määttänen / Poutvaara (2004),p. 2.

to postpone further integration. This option which can be seen as a partly secession from the current integration process contains several advantages and disadvantages:

First of all it can be used to stabilize the Union because minorities can use the right of partial secession to increase their bargaining power and to work against tendencies of centralization. Even if a member state decides to opt out of a policy area, the Union as a whole with its member states will remain. Another aspect is that partly secessions may be used to reduce inefficiencies which result out of information asymmetries that go hand in hand with transfers occurring in the course of the EU wide redistribution system. Opting out in that case however should be attached to conditions in order to avoid opportunistic behaviour on the part of the member states which might decide after a negative shock to secede from the Union.<sup>28</sup>

The problem that might occur with the possibility of opting out is that EU membership cannot be combined with every opting out type in the sense that a country might choose to withdraw from the EU Single Market while still keeping its EU membership. Therefore, policy areas belonging together should be determined and be written down in the Constitution with a prohibition of opting out<sup>29</sup> in order to keep the Union functioning. Another issue which has to be taken into consideration is that the utility of the remaining member states in a policy area is going to be reduced if a member state decides to opt out of it because economies of scales will shrink and shared costs per member state will increase. This reaction will be expected under the assumption that the policy area offers one good whose utility increases and whose costs sink the more member states participate. In that case a seceding member state might have to pay compensation transfers which could make it obsolete for the member state to secede if those transfers are higher than the costs to remain in the Union.

By considering the pros and cons of a right of secession one can argue that a right of partly secession needs to be part of the Constitution with a recital of all policy areas where opting out is not possible (such as the tariff union). In other areas, opting out would be allowed which is especially relevant for areas with a high degree of distribution such as labour market policy, agricultural policy etc because decisions with respect to the distribution could increase the danger of discrimination.<sup>30</sup>

The right of partial secession offers the possibility for member states to form a “Europe à la carte” where they choose areas of integration they would like to participate in and secede from others which they are not interested in. A consequence of this idea will be that the

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<sup>28</sup> See Berthold / Neumann (2002), p. 25f.

<sup>29</sup> See Schäfer (2003), p. 185.

<sup>30</sup> See Doering (2002), p. 40.

Union splits up into different clubs characterized by different degrees of integration.<sup>31</sup> This idea is theoretically embedded in the concept of club theory. A club is a "... voluntary group deriving mutual benefit from sharing one or more of the following: production costs, the member's characteristics, or a good characterized by excludable benefits."<sup>32</sup>

The European Union offers various club goods such as the Internal Market Club, the Monetary Union Club, the Common Agricultural Club, the Common Environmental Policy Club, the Common Foreign and Security Policy Club etc. They all have in common that they are only partial rival in consumption and that non-members of the club will not be able to enjoy the benefits by being excluded from consuming them.<sup>33</sup> An interesting approach is to see what happens to the clubs if more member states are becoming part of them with respect to the utility and costs of an additional member:

When considering the Internal Market Club with the free movements of goods, services, capital and labour, additional members will lead to trade and allocation gains through economies of scale effects as well as positive network externalities.<sup>34</sup> With respect to the costs it can be argued that more member states will lead to decreasing average costs.<sup>35</sup> However, it needs to be taken into consideration that the acceptance of member states increases the costs of information, co-ordination and organization for all participating member states and the more heterogeneous potential club members are, the higher will be the costs for the club as a whole taking their economic situation and preferences into account.<sup>36</sup>

The Monetary Union Club with the common currency Euro decreases currency costs, transactional costs and information costs with respect to the development of exchange rates which will altogether lead to an increase in EU internal trade, enhanced capital movements and more competition among the members. A common monetary policy however involves the danger that member states will not be able to react properly to endogenous and exogenous shocks because they gave up their sovereignty on two national policy making instruments: the monetary and exchange rate policies. The European Central Bank has to determine a common monetary policy offering stability, especially in its currency, to its members; however this stability will decrease, the more members participate and the more heterogeneous with regards to their former practice of monetary and exchange rate policies they are.<sup>37</sup>

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<sup>31</sup> See Ahrens / Hoen / Ohr (2005), p. 1.

<sup>32</sup> Sandler / Tschirhat (1980), p. 1482.

<sup>33</sup> See Ahrens / Hoen / Ohr (2005), p. 3.

<sup>34</sup> See Ahrens / Hoen / Ohr (2005), p. 5.

<sup>35</sup> See Wohlgemuth (2004)

<sup>36</sup> See Ahrens / Hoen / Ohr (2005), p. 6.

<sup>37</sup> See Ahrens / Hoen / Ohr (2005), p. 6f. / See Wohlgemuth (2004).

The Common Agricultural Club pursues the idea of establishing a high degree of autarky with an efficient division of labour in order to guarantee its members a constant supply of agricultural products at a fair price and to generate a reasonable income for persons employed in the agricultural sector. More members to the club will increase its utility as more food supplies can be transferred within the EU and more people working in the agricultural sector will benefit from higher income. The optimal club size would be infinite under those circumstances and the idea of autarky will not last anymore. Furthermore the Common Agricultural Club faces too many costs: As minimum prices are higher than world market prices, consumer prices have increased and production of numerous products have increased due to the guaranteed purchase by the European Union. Production is not efficient anymore and allocation of resources will deteriorate if more countries with a large agricultural sector become member of the club.<sup>38</sup>

By considering those aspects, the optimal size of a club will be determined by the equalization of marginal costs and marginal utility of one additional member to the club. If too many countries with a different level of integration are willing to join the club, the utility of that particular club shrinks and the idea of allowing clubs within the clubs which show different degrees of integration could become a realistic perspective.<sup>39</sup>

The concept of multiple clubs in Europe implies consequences which need to be discussed: First of all, splitting into parallel clubs increases the utility of each club as an optimal size of members can fully enjoy membership benefits. That would mean for the European Union that the offered club goods Internal Market, Monetary Union etc have sub clubs representing different preferences and different stages of integration of its member states. Through multiple clubs, different levels of integration can be realized leading to a multi-speed Europe offering the chance for member states striving for deeper integration to pursue a deeper integration – they won't be blocked by other member states that are not interested in a deeper cooperation and integration because those are in a different club. Within those clubs opting out should be possible: On the one hand member states deciding to pursue deeper integration within another club can do so by accepting standards, rules and payment regulations determined in that new club. On the other hand, if member states decide to secede from a club due to a loss of utility and / or higher costs they can do so but have to face compensation payments. In this concept the European Union acts as arbitrator between flexible and competitive integration clubs where free entry and exit options exist; however it is necessary

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<sup>38</sup> See Ahrens / Hoen / Ohr (2005), p. 7f. / See Wohlgemuth (2004).

<sup>39</sup> There have been studies on the optimal size of a club which can't be discussed here in the paper. For further reference, please see Ohr (2003) and Apolte (1995).

to have a “core *acquis communautaire*” that member states are committed to: This core *acquis* regulates principles of the Internal Market such as the freedom of goods and services, the full convertibility of the currency, competition between the member states, environmental standards, cooperation with respect to the Security and Defense Policy where withdrawal is not possible to guarantee the stability of the Union and where the European Union acts as a guardian. The Common Agricultural Club for example would not belong to this core *acquis*; it is rather a club where sovereign states associate and pool together their resources in order to provide financial resources to the club good. Accessing countries such as Turkey would participate in the core *acquis communautaire*, but could be excluded from other clubs such as the Common Agricultural Club if it doesn't fulfill the club's prerequisites.<sup>40</sup>

After having presented three possible amendments to article 59 I would like to assess their probability of being implemented in the Constitution:

Amendment I – Inclusion of a national referendum contains the lowest probability of leading to secession because it is assumed that based on a referendum, stubborn politicians will not be able to credibly threaten for secession. The idea of taming the politician is pretty innovative, however it requires that national referenda can be conducted in every member state which however is not the case (see example of Germany where national referenda are not possible because citizen elect representatives to the Lower House of the Parliament). Another interesting point which is not addressed in the model is what happens if citizens support their politician in the decision to withdraw when they consider the disadvantages of staying in the Union to be higher than the advantages? Let's consider the example of Germany vetoing against the accession of Turkey and credibly threatening with the support of its citizens to secede from the Union. One could argue that Germany as one of the countries having enormously contributed to the process of forming the Union and being one of the net payers to the EU wouldn't consider leaving the Union. Why should German citizens not support this idea? And if Germany decided to leave would other countries follow to form a new club with the seceding country? Within this present paper those questions are not addressed, but they call for more research in the future.

With respect to Amendment II - keeping the status quo, the probability of secession can't be defined. A democratic right of secession has been inserted into the Constitution. If it will be used depends primarily on the ratification of the Constitution and the future arrangement of

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<sup>40</sup> See Wohlgemuth (2004).

EU policy areas. If discrimination as a consequence of renegotiating distribution schemes prevails in the mind of the member states, the probability of seceding increases. Maybe a case of secession has to occur before guidelines on how the process of withdrawal should be regulated are postulated in the Constitution.

Concerning Amendment III – Secession into different clubs, the probability that secession occurs is the highest of all considered amendments as seceding is actually wanted. By creating flexible entry and exit options in and from clubs, the whole process of integration receives a new perspective as member states may have a better choice of where they would like to participate (besides the core- areas) and where to contribute to the further integration. By actually taking the preferences of the member states into account, the Union reaches a much higher stability. Furthermore from the economic point of view with multiple clubs an efficient combination of integration intensity and membership size can be realized. The idea of seceding into clubs is however unlikely to be realized because the Constitution doesn't speak about the formation of clubs; instead another instrument allowing integration flexibility has been inserted: The possibility of enhanced cooperation (Art. 43 in Chapter III of the Constitution) where some member states being willing and capable can foster the integration process. Even though the instrument of enhanced cooperation is a good start in the direction of club formation, it contains too many restrictions such a minimum number of participants, enhanced cooperation only in policy areas which are not subject to the Community's enhanced competence etc. so that potential member states interested in enhanced cooperation might be deterred by the regulations.<sup>41</sup>

#### **IV. Conclusion**

The present paper revealed that there is first of all a necessity of including a right of secession in the Constitution in order to guarantee a democratic and economically stable Union whose members can choose voluntarily if they want to withdraw or not. The paper also dealt with amendments to article 59 which have been analysed in their potential of leading to withdrawal. While amendment I and II have a low probability, it is amendment III that actually allows secession and it has therefore the highest probability of being used by the member states. Amendment III would generate the highest utility for the European Union itself but its implementation is only possible if on the one hand a coherent framework for club

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<sup>41</sup> See Ahrens / Hoen / Ohr (2005), S.

formation is included in Draft Constitution for the European Union and on the other hand the Constitution will be ratified by the member states.

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