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Seminar paper

The Contrastive Analysis of the Use of Passive Voice in the Constitution of the  
United States and in the Treaty establishing a Constitution for Europe

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## Abstract

The paper discusses the use of passive voice in *The Treaty establishing a Constitution for Europe* and in *the Constitution of the United States*. In the first part, the figures that represent the amounts of different verb construction (passive – active, finite non-finite, long – short) are established for both texts. They are calculated to comparable frequencies. The results show that finite passive constructions occur twice as often in the Constitution as in the Treaty and that there is a significant rise in the share of long finite constructions in the Treaty, and a major fall in the share of long non-finite constructions. There is also a fall in variety of the verbs in passive constructions of the Treaty. The second part is devoted to the analysis of passive constructions in the Treaty with the verbs that occur most frequently. The observations concerning the reasons that favour the choice of one construction over the others are given.

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## 1 Introduction

*The Constitution of the United States* consists of seven articles and twenty-seven amendments, most of them having several sections. The first ten amendments are known as *The Bill of Rights*, and were ratified in 1791, while the twenty-seventh and the most recent one was ratified in 1992. The constitutional text itself is relatively short and to the point, having just 7365 words including the preambles to the original constitution and to *The Bill of Rights*.

*The Treaty establishing a Constitution for Europe* as signed in Rome on 29 October 2004 and published in *the Official Journal of the European Union* on 16 December 2004 consists of the Preamble, Part I, Part II – The Charter of Fundamental Rights of the Union, Part III – The Policies and Functioning of the Union, Part IV – General and Final Provisions, and the Final Act. The Parts from I to IV consist of Articles numbered from 1 to 448, and in addition organizationally divided into chapters, sections and subsections. Part IV involves also 36 Protocols, each of them consisting of several Articles numbered separately, and 2 Annexes to the Treaty. Final Act of the Treaty consists of Declarations concerning provisions of the Constitution, 30 in number, and of Declarations concerning protocols annexed to the Constitution, which are 20 in number. It should be noted that the text of the Treaty will take effect only on the date of its entry into force, as provided for in Article IV – 447 (2) of the Treaty. It means that the Treaty will take effect only after the ratification of the last signatory state.

The whole text of the Treaty is relatively long, approximately 160,000 tokens, as compared to *the Constitution of the United States*, which has just 7365 tokens. In terms of the length and the general definitions provided for of the respective unions, the Part I of the Treaty corresponds the most to *the Constitution of the United States*. It has 10,619 tokens and under its titles (*Definition and objectives of the Union, Fundamental rights and citizenship of the Union, Union competences, The Union's institutions and bodies, Exercise of Union competence, The democratic life of the Union, The Union's finances, The Union and its neighbours, and Union membership*) provides the most general framework of the Union and its organization, and as such thematically and substantially corresponds to the text of *the Constitution of the United States*.

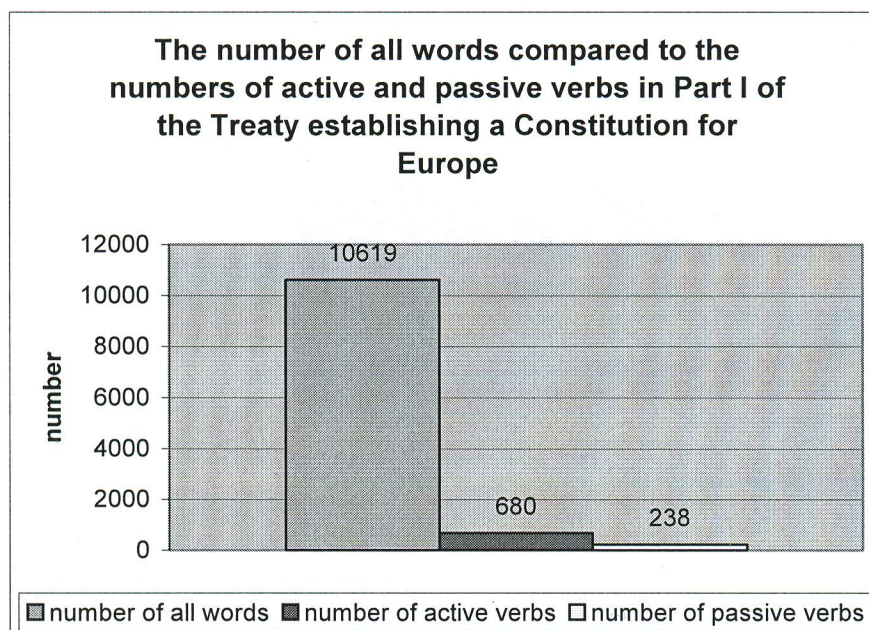
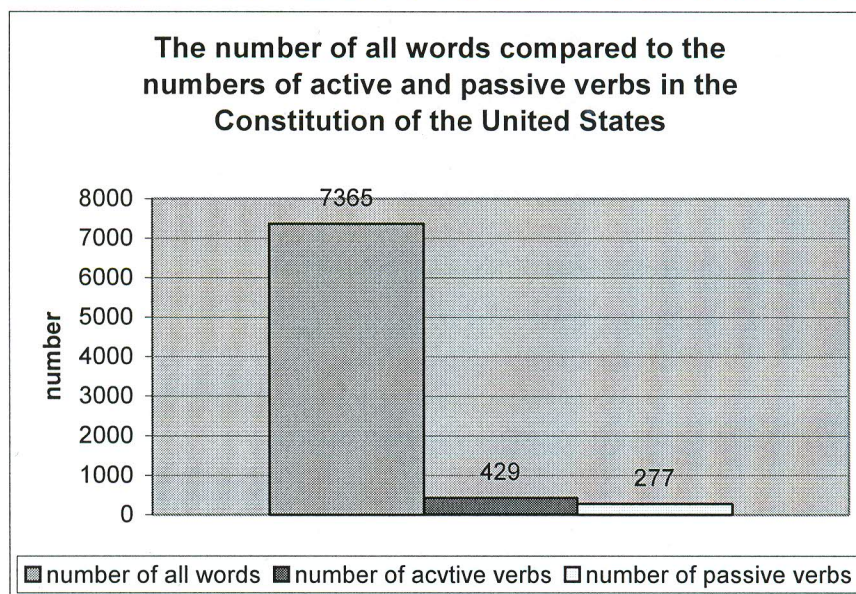
## 2 Aims

The principal aim of this seminar paper was to analyse the text of Part I of *the Treaty establishing the Constitution for Europe* in order to determine quantity of different passive voice constructions (finite, non-finite, short, long) and parallel them with the comparable data of the text of *the Constitution of the United States*. Another aim was to find out what factors favour the choice of one construction over the others in the text Part I of the Treaty by analysing the passive constructions of the verbs that occur most frequently.

### 3. Findings

#### 3.1 Frequency of active and passive verbs in the Constitution of the US compared to those in the Part I of the Treaty

The charts below present the numbers of all active and passive verbs and all tokens in the text of the Constitution of the US and in the text of the Treaty.



- The figures show a bit lower frequency of the verbs in the Treaty than in the Constitution. One verb occurs in every c. 10.5 tokens in the Constitution, while c. 11.5 in the Treaty.
- The ratio between the number of tokens and the number of active verbs in the Constitution is 17.2, while it is c. 15.6 in the Treaty.

- The ratio between the number of tokens and the number of passive verbs in the Constitution is c. 26.6, while c. 44.6 in the Treaty. Passive verbs occur in the Constitution almost twice as often as in the Treaty.

### 3.2 The distribution of finite and non-finite verbs in active and passive constructions

The table below (a1) presents the distribution of finite and non-finite verbs in active and passive constructions in *the Constitution of the United States*:

a1)

	finite	non-finite	all together
active verbs	284	145	429
passive verbs	190	87	277
all together	474	232	706

The next table (a2) shows the frequencies of the verbs in the Constitution corresponding to verb groups presented in table a1, each figure, rounded to the nearest whole number, representing the ratio between the number of tokens and the number of verbs:

a2)

	finite	non-finite	all together
active verbs	26	51	17
passive verbs	39	85	27
all together	16	32	10

The table below (b1) presents the distribution of finite and non-finite verbs in active and passive constructions in Part I of *the Treaty establishing a Constitution for Europe*:

b1)

	finite	non-finite	all together
active verbs	458	222	680
passive verbs	120	119	238
all together	578	341	918

The next table (b2) shows the frequencies of the verbs in the Treaty corresponding to verb groups in table b1, each figure, rounded to the nearest whole number, representing the ratio between the number of tokens and the number of verbs:

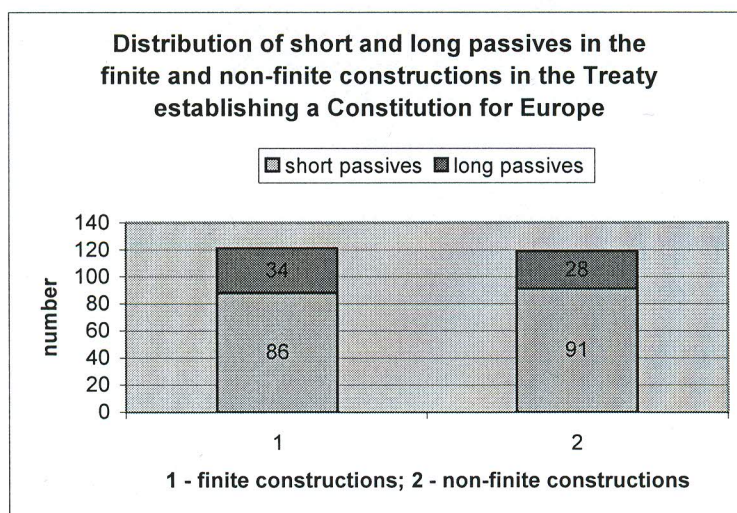
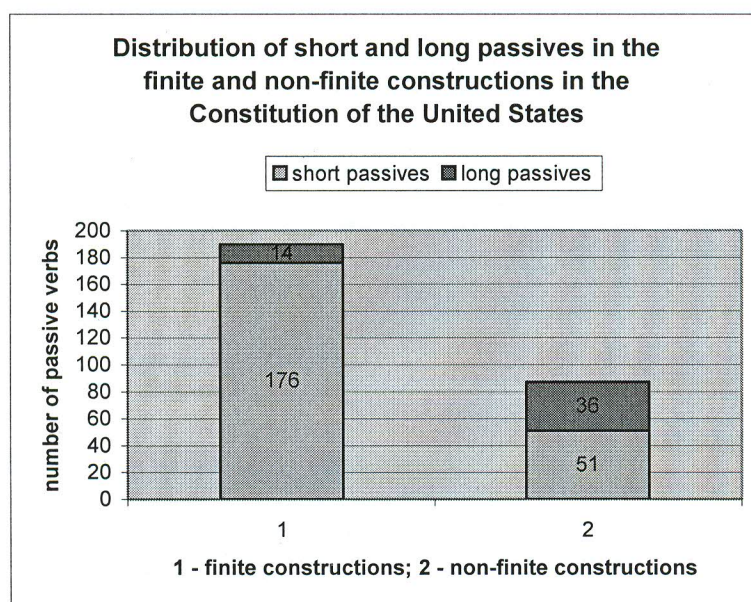
b2)

	finite	non-finite	all together
active verbs	23	49	16
passive verbs	88	89	45
all together	18	31	12

The pairs of calculated frequencies in tables (a2) and (b2) that correspond to the same type of the verb group are comparable between each other – the higher the figure, the less often the verbs of the same type occur in a text.

- Passive verbs occur in the Constitution almost twice as often (27) as in the Treaty (45).
- Non-finite passive constructions are a bit more frequent in the Constitution (85) than in the Treaty (89).
- Finite passive constructions are more than twice as frequent in the Constitution (39) as in the Treaty (88).

### 3.3 Distribution of short and long passives in the finite and non-finite constructions



- Long finite passive constructions in the Constitution account for c. 7% (14/190), which is much lower than in the Treaty – c. 28% (34/120).
- On the other hand we get a reversed situation with the distribution of long – short passives in the non-finite passive constructions. While long passives account for c. 41% (36/87) 28/119 in the Constitution, they account for c. 23% (28/119) in the Treaty.

Let us summarize the findings concerning frequencies of passive verb constructions (finite – non-finite, short – long) in the two texts:

- Finite passive constructions occur twice as often in the Constitution as in the Treaty. We witness the drop in the frequency of finite passive constructions.
- The frequencies of non-finite passive constructions stay about the same.
- However, there is a significant rise in the share of long finite constructions from 7% in the Constitution to 28% in the Treaty.
- On the other hand we witness a major fall in the share of long non-fine constructions from 41% in the Constitution to 23% in the Treaty.

### 3.4 Verbs in passive constructions

Lexical verbs in the passive voice (finite, non-finite) that occur in *the Constitution of the Unites States* (112):

Verb	number of occurrences (1)	number of occurrences (2-3)	number of occurrences (4-5)	number of occurrences (more than 5)
abridge			■	
add	■			
admit	■			
affect		■		
alter	■			
appoint				■
approve		■		
ascertain		■		
assemble		■		
attain	■			
authorize		■		
bear (born)	■			
begin	■			
bind		■		
call	■			
charge	■			
chuse/choose				■
commence	■			
commit		■		
compel	■			
compose		■		
concern	■			



confront	■			
consider	■			
construe			■	
contract	■			
convene	■			
convict	■			
count	■			
create	■			
deliver	■			
deny			■	
delegate	■			
deprive		■		
derive	■			
determine	■			
diminish		■		
disapprove	■			
discharge	■			
divide		■		
elect				■
employ	■			
enter		■		
entitle			■	
erect	■			
establish	■			
execute	■			
export	■			
find	■			
fix	■			
give		■		
grant		■		
hold			■	
impose	■			
increase		■		
incur		■		
inflict	■			
inform	■			
infringe	■			
interline	■			
invade	■			
lay	■			
impose	■			
make				■
mention		■		
modify				■
oblige	■			
pass				■
pay	■			
prescribe			■	

present		■		
preserve	■			
privilege	■			
prohibit		■		
propose			■	
prosecute	■			
prove	■			
provide		■		
publish	■			
punish	■			
purchase	■			
put	■			
quarter	■			
question		■		
ratify				■
reduce	■			
reconsider	■			
reexamine	■			
remove		■		
repass	■			
repeal	■			
require		■		
reserve	■			
resolve	■			
retain	■			
return	■			
say	■			
search	■			
seize	■			
select	■			
send	■			
state	■			
supersede	■			
support	■			
suspend	■			
take		■		
tax	■			
try		■		
vacate	■			
vest			■	
violate	■			
write	■			

Lexical verbs in the passive voice that occur in Part I of *the Treaty establishing a Constitution for Europe* (80):

Verb	number of occurrences (1)	number of occurrences (2-3)	number of occurrences (4-5)	number of occurrences (more than 5)
accept	1●			
achieve	4		●	
adopt	20			●
address	6			●
allocate	1●			
appoint	3	●		
approve	1●			
assist	3	●		
attain	1●			
authorise	1●			
base	7			●
bind	3	●		
bring	1●			
carry	1●			
celebrate	1●			
characterise	1●			
choose	2	●		
commit	2	●		
compose of	2	●		
conclude	1●			
confer	5		●	
constitute	1●			
consult	3	●		
convene	1●			
count	1●			
cover	1●			
deem	3	●		
define	14			●
determine	2	●		
divide	1●			
draw up	1●			
elect	4		●	
empower	1●			
enhance	1●			
enter	1●			
establish	5		●	
exclude	1●			
exercise	1●			
finance	2	●		
found	3	●		
give	1●			
govern	5		●	

guarantee	2	•		
hold	2	•		
impose	1•			
include	1•			
intend	1•			
involve	1•			
keep	2	•		
lay down	12			•
make	3	•		
mandate	1•			
mention	1•			
need	2	•		
negotiate	1•			
notify	1•			
observe	1•			
present	1•			
prevent	2	•		
prohibit	1•			
provide	2•			
provide for	13			•
publish	2	•		
put	1•			
realise	1•			
reappoint	1•			
refer to	26			•
regard	1•			
represent	3	•		
require	4		•	
reserve	1•			
review	1•			
safeguard	1•			
select	2	•		
set	1•			
set out	11			•
share	1•			
show	4		•	
sign	3	•		
specify	2	•		
spend	1•			
take	2	•		
treat	1•			
undertake	1•			
use	1•			

- The variety of verbs that occur in passive constructions is higher in the Constitution – 112 verbs (type tokens), than in the Treaty – 80 verbs (type tokens).

### 3.5 The analysis of the passive constructions of the verbs that occur in Part I of the Treaty

Some of the verbs on the table above occur in both constructions, active and passive, while others form just passive constructions. The analysis below deals with the verbs that occur more than three times in passive constructions. It focuses on the active – passive dyad.

Verb	Number of occurrences in active constructions	Number of occurrences in passive constructions
achieve	3	4
adopt	6	20
address	3	6
base	0	7
confer	6	5
define	5	14
elect	3	4
establish	12	5
govern	3	5
lay down	8	12
provide for	0	13
refer to	1	26
require	2	4
set out	1	11
show	1	4

#### 3.5.1 Achieve

The verb occurs in three active and in four passive constructions.

##### Active:

- i. *The Union shall coordinate the policies by which the Member States aim to achieve these objectives, ... (1<sup>1</sup>).*
- ii. *Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Constitution. (11).*

<sup>1</sup> The Articles of the Treaty are labelled e.g. *Article I-10, Article III-405*, where the first number means the number of the Part, and the second the number of the Article. When the Articles and its subordinate paragraphs are referred to in other parts of the Treaty, they are denoted by e.g. *Article III-424, Article IV-437(2)(a)*, the first number meaning the number of the Part, the second the number of the Article, while the third number in parenthesis, if any particular paragraph of the Article is referred to, means the subordinate paragraph in question. If the paragraph is further subdivided, the parts are labelled by letters beginning in *a*, and if one of these items is referred to in the text, the corresponding letter in parenthesis is added (*Article IV-437(2)(a)*).

As all of the examples provided in the paper are taken from Part I of the Treaty and the Articles of the Treaty are not so extensive, for the purpose of this paper the parenthetical references by the examples of passive and active voice will involve only the number of the Article from which the example is taken.

**Passive:**

- iii. ... as the objectives of the proposed action cannot be sufficiently achieved by the Member States, ... (11)
- iv. A European framework law shall be a legislative act binding, as to the result to be achieved, upon each Member State to which it is addressed, ... (33)

Both active and passive constructions have either *objectives* or *result* as the object of the active form. The passive constructions above emphasize *results* and *objectives*, while in the active ones the emphasis is given to *the Union* and what it shall coordinate or to *the principles of proportionality* respectively.

**3.5.2 Adopt**

The verb appears in six active and in twenty passive constructions.

**Active:**

The active construction below postmodifies *the institution*, so the active voice is the simplest solution.

- i. In other cases they shall be signed by the President of the institution which adopted them. (39)

In the example below the present participle is in the function of predicator in the non-finite prepositional phrase.

- ii. The Union shall constitute an area of freedom, security and justice:
  - (a) by adopting European laws and framework laws intended,

**Passive:**

Most of the passive constructions are non-finite. They postmodify a nominal phrase as in the examples below:

- iii. ... acts adopted by the institutions. (29)
- iv. Acts adopted in the framework of enhanced cooperation shall bind only participating Member States. (44)

**3.5.3 Address**

The verb appears in three active and six passive constructions.

**Active:**

The Article provides the regulations of how to apply for the membership of the Union. It is important to set the subject of the active verb at the beginning of the sentence, so the active voice is sensible.

- i. Any European State which wishes to become a member of the Union shall address its application to the Council. (58)

**Passive:**

The subject of the active verb of all passive constructions is known in general. It is the one who writes or adopts the regulations.

- ii. European regulations, and European decisions which do not specify to whom they are addressed, shall be signed by the President of the institution which adopted them. (39)*

**3.5.4 Base****Passive:**

The verb does not appear in active but just in seven passive constructions, which are short and non-finite without exception. In the examples below the construction postmodifies *the sustainable development of Europe* and *measures*.

- i. The Union shall work for the sustainable development of Europe based on balanced economic growth, ... (3)*  
*ii. Measures based on this Article ... (18)*

**3.5.5 Confer**

The verb appears in six active and five passive constructions.

**Active:**

The very first paragraph of the Treaty below reasonably emphasizes *the will of the citizens of Europe*, while the Constitution is a secondary formation. Such explanations deserve active voice to say clearly that the member states are those who renounce something in favour of someone else.

- i. Reflecting the will of the citizens and States of Europe to build a common future, this Constitution establishes the European Union, on which the Member States confer competences to attain objectives they have in common. (1)*

**Passive:**

The clause beginning in *which* in (ii), which postmodifies *the competences*, is a finite construction, while further mentioning *the competences* in (iii), continues with a non-finite passive construction as it does not need additional emphasis.

- ii The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Constitution. (3)*  
*iii. The Constitution and law adopted by the institutions of the Union in exercising competences conferred on it shall have primacy over the law of the Member States. (6)*

**3.5.6 Define**

The verb appears in five active and fourteen passive constructions.

**Active:**

The verb appears in active constructions below, although non-finite, where there is a clear intention to clarify the subject of the active verb.

- i. The Union shall have competence to define and implement a common foreign and security policy, ... (12)*
- ii. The Union shall take measures to ensure coordination of the employment policies of the Member States, in particular by defining guidelines for these policies. (15)*

**Passive:**

Most of the passive constructions carry additional information, either the place where the definition is precisely specified (iii, iv) or they are predicators in a finite construction, as in (v).

- iii. Such accession shall not affect the Union's competences as defined in the Constitution. (9)*
- iv. ... social policy, for the aspects defined in Part III; (14(2)(b))*
- v. A qualified majority shall be defined as at least 55 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States. (44)*

**3.5.7 Elect**

The verb appears in three active and in four passive constructions.

**Active:**

The writer uses active voice to avoid changing the subject, with other words to avoid setting the discourse new element before the discourse old.

- i. The European Parliament shall, jointly with the Council, exercise legislative and budgetary functions. It shall exercise functions of political control and consultation as laid down in the Constitution. It shall elect the President of the Commission. (20)*

**Passive:**

The sentence provides the information about the term and the type elections and avoids mentioning the object of the passive construction, which would be at least awkward.

- ii. The members of the European Parliament shall be elected for a term of five years by direct universal suffrage in a free and secret ballot. (20)*

However, when the subject of the active verb is a more limited body, the construction is long as in (iii).

- iii. This candidate shall be elected by the European Parliament by a majority of its component members. (27)*



In (iv) the past participle *elected* is in an adjectival function.

iv. ... *politically accountable to an elected assembly.* (32)

### 3.5.8 Establish

The verb appears in twelve active and in five passive constructions.

#### Active:

The DO of the verb is usually an organization or a body as *multinational forces* and *the European Union*. The opening paragraphs that establish the relations are therefore active.

i *Reflecting the will of the citizens and States of Europe to build a common future, this Constitution establishes the European Union, ...* (1)

ii. *Those Member States which together establish multinational forces may also make them available to the common security and defence policy.* (41)

iii *Member States which wish to establish enhanced cooperation between themselves within the framework of the Union's non-exclusive competences ...* (44)

The present participle functions as a predicator in the non-finite clause as in (iv) and in a number of repetitions of the phrase *Treaty establishing a Constitution for Europe* throughout the text.

iv ... *a European decision establishing the composition of the European Parliament, respecting the principles referred to in the first subparagraph.* (20)

#### Passive:

In order to modify a noun, a non-finite passive construction is used as it is presented in the examples below.

v. ... *in accordance with the conditions established by a European decision of the European Council.* (24)

vi. ... *and be compatible with the common security and defence policy established within that framework.* (41)

### 3.5.9 Govern

The verb appears in three active and in five passive constructions.

#### Active:

Generally the writers of the constitutional text avoid passive constructions as it is perceptible with all paragraphs of Article 50, which means that they begin with primary source, e.g. *European laws, rules*.

- i. *European laws shall lay down the general principles and limits which, on grounds of public or private interest, govern the right of access to such documents. (50)*
- ii. *Rules governing the composition of these Committees, ... (32)*

**Passive:**

The paragraph below introduces *Title III – UNION COMPETENCES* and reasonably begins in *The limits of Union competences*, which determines the passive voice; while the following paragraphs of the constitutional text precisely define the principles in question, which is a discourse new element in the passive.

- iii. *The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality. (11)*

The same is true with the paragraph below, which is a part of the section entitled *The European Central Bank*.

- iv. *The European System of Central Banks shall be governed by the decision-making bodies of the European Central Bank. (30)*

Passive voice constructions also successfully organize the text and help avoid redundant repetitions by showing to the part which specifies the subject in question.

- v. *Such cooperation shall be governed by Article III-312. It shall not affect the provisions of Article III-309. (41)*

### 3.5.10 Lay down

The verb appears in eight active and in twelve passive constructions.

**Active:**

Active constructions are generally used to establish a new relation between the subject and the object, e.g. *European laws – the conditions, the general principles*.

- i. *European laws and framework laws shall explicitly lay down the conditions to which the delegation is subject; these conditions may be as follows: ... (36)*
- ii. *European laws shall lay down the general principles and limits which, on grounds of public or private interest, govern the right of access to such documents. (50)*

**Passive:**

Passive constructions, on the other hand, all of them short, are adverbial clauses of manner (iii, iv) and participial clauses (v).

- iii. *The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. (11)*
- iv. *It shall exercise functions of political control and consultation as laid down in the Constitution. (20)*
- v. *... and with the conditions laid down in the Statute of the European System of Central Banks and of the European Central Bank. (30)*

### 3.5.11 Provide for

#### Passive:

The verb is restricted to passive constructions, thirteen in number, two finite and eleven non-finite. The former are used when the subject needs a longer explanation as in the example below:

- i. *The Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or insofar as its conclusion may affect common rules or alter their scope. (13)*

Non-finite passives are used to specify the cases by telling the legal act or a part of it that allows the case in question.

- ii. *With the exception of the common foreign and security policy, and other cases provided for in the Constitution, it shall ensure the Union's external representation. (26)*
- iii. *In the specific cases provided for in the Constitution, ... (34)*
- iv. *... and in the cases provided for in Article I-40, on the Council. (37)*

### 3.5.12 Refer to

The verb appears in one active but in twenty-six passive constructions.

#### Active:

The active construction in (i) regulates the composition of legal acts.

- i. *Legal acts shall state the reasons on which they are based and shall refer to any proposals, initiatives, recommendations, requests or opinions required by the Constitution. (38)*

#### Passive:

On the other hand, the passive constructions of the verb are in the function of postmodifier in a nominal phrase; they either direct the reader to the place where the subject is laid down or introduce a shorter version of the name, which is used hereinafter.

- ii. *The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles I-13 and I-17. (14)*
- iii. *... European decisions referred to in paragraph 2. (59)*
- iv. *— The European Commission (hereinafter referred to as the 'Commission'), ... (19)*

### 3.5.13 Require

The verb appears in two active and in four passive constructions.

#### Active:

The active construction in (i) introduces a restriction.

- i. *The implementation of expenditure shown in the budget shall require the prior adoption of a legally binding Union act ... (53)*

#### Passive:

Passive constructions are used to refer to the restrictions laid down somewhere else.

- ii. *It shall act unanimously in those areas in which unanimity is required for the adoption of a Union act. (35)*
- iii. *Legal acts shall state the reasons on which they are based and shall refer to any proposals, initiatives, recommendations, requests or opinions required by the Constitution. (38)*

### 3.5.14 Set out

The verb appears in one active and in eleven passive constructions.

#### Active:

The only active construction below explains the manner of how something is to be done.

- i. *... 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. (60)*

The passive constructions are used to direct the reader to the sections that specify the subjects in question in writing.

- ii. *The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes Part II. (9)*
- iii. *... the objectives set out in the Constitution. (11)*
- iv. *The detailed arrangements for implementing this Article are set out in Article III-329. (43)*

### 3.5.15 Show

The verb appears in one active and in four passive constructions.

#### Active:

In the example below the active construction maintains the subject unchanged through the whole passage.

*i. Member States shall ensure, through the convergence of their actions, that the Union is able to assert its interests and values on the international scene. Member States shall show mutual solidarity. (40)*

#### Passive:

The same is true with the passive construction below, which maintains the subject unchanged through the passage.

*ii. All items of Union revenue and expenditure shall be included in estimates drawn up for each financial year and shall be shown in the Union's budget, in accordance with Part III. (53)*

In the example below the non-finite participial clause is in the function of postmodifier in the nominal phrase.

*iii. The revenue and expenditure shown in the budget shall be in balance.*

## 4. Conclusion

The results show that:

- passive verb constructions occur in the Constitution almost twice as often (1 in 27 token) as in the Treaty (one in 45 tokens);
- non-finite passive constructions are a bit more frequent in the Constitution (1 in 85 tokens) than in the Treaty (1 in 89 tokens);
- finite passive constructions are more than twice as frequent in the Constitution (1 in 39 tokens) as in the Treaty (1 in 88 tokens);
- the variety of verbs that occur in passive constructions is higher in the Constitution – 112 lexical verbs, than in the Treaty – 80 lexical verbs.
- there is a significant rise in the share of long finite constructions from 7% in the Constitution to 28% in the Treaty.
- there is a major fall in the share of long non-finite constructions from 41% in the Constitution to 23% in the Treaty
- from the length of the text of the Treaty arises a need for organizational devices that is not present to such extent in the text of the Constitution. They can be found in the passive constructions of lexical verbs as *adopt*, *base*, *define*, *govern*, *lay down*, *provide for*, *refer to*, *set out*, which occur most frequently.
- other factors that favour the choice of passive constructions over the active and vice versa stay the same as in the Constitution. Let us mention just the strongest: the omission of the subject of the active verb; each article covers a

set of regulations, which largely determine the voice of verbal structures; initial relation is usually set by using an active construction.

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