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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT FEDERAL CONSTITUTIONAL LAW
ON AMENDING THE FEDERAL CONSTITUTIONAL LAW
ON THE PROCEDURE OF ADMISSION
TO THE RUSSIAN FEDERATION
AND CREATION OF A NEW SUBJECT OF THE RUSSIAN
FEDERATION IN ITS COMPOSITION
OF THE RUSSIAN FEDERATION

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Draft

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Federal Constitutional Law On Amending the Federal Constitutional Law on the Procedure of Admission to the Russian Federation and Creation of a New Subject of the Russian Federation in Its Composition

The Federal Constitutional Law on the Procedure of Admission to the Russian Federation and Creation of a New Subject of the Russian Federation in Its Composition dated December 17, 2001 # 6-FKZ (Legislation Bulletin of the Russian Federation, 2001, #52, p.4916; 2005, 45, 4581) shall be amended as follows:

1) Article 4:

a) Shall be supplemented by paragraph 2.1 as follows:

“2.1. When it is not possible to conclude an international treaty because of the absence of efficient sovereign state government in the foreign state, whose duty is to protect its citizens, observe their rights and freedoms, enabling actual permanent and peaceful exercise of state functions, the admission to the Russian Federation of a part of the foreign state in the capacity of a new subject may take place on the basis of a referendum conducted in accordance with the legislation of the foreign state in the territory of the relevant part of the foreign state, if its accession to the Russian Federation was approved, or on the basis of request of state authorities of the said part of the foreign state”,

b) Paragraph 4 shall read as follows:

“4. In case of admission to the Russian Federation of a part of the foreign state in the capacity of a new subject, such subject shall be given the status of a republic, krai, oblast, autonomous oblast or autonomous district in accordance with the international treaty referred to in paragraph 2 of this Article, or, in the absence of such a treaty, in accordance with the federal constitutional law on admission of a new subject to the Russian Federation”;

2) Article 6:

a) Shall be supplemented by paragraph 1.1 as follows:

“1.1. State authorities of the part of the foreign state may initiate proposals to admit to the Russian Federation a part of the foreign state in the capacity of a new subject in cases provided for in paragraph 2.1 of Article 4 of this Federal Constitutional Law”,

b) In paragraph 2, words “as indicated in paragraph 1 of this Article” shall be replaced with words “as indicated in paragraphs 1 and 1.1 of this Article”,

3) Article 7:

a) The Article shall be named:

“Issues Regulated During Admission to the Russian Federation of a New Subject”

b) Shall be supplemented by the following paragraph:

“5. The federal constitutional law on admission to the Russian Federation of a part of the foreign state in the capacity of a new subject in accordance with paragraph 2.1 of Article 4 of this Federal Constitutional Law may regulate issues listed in paragraphs 1 and 2 of this Article. Following the adoption of the said federal constitutional law, in accordance with paragraph 3 of Article 11 of the Constitution of the Russian Federation, state authorities of the Russian Federation and state authorities of the new subject of the Russian Federation may conclude a treaty on division of competences and authorities”;

4) Article 8:

a) The Article shall be named:

“Article 8. Submission to the State Duma of the International Treaty for Ratification and (or) Draft Federal Constitutional Law on Admission to the Russian Federation of a New Subject”,

b) Paragraph 2 shall read as follows:

“2. Simultaneously with the international treaty or without it, in accordance with paragraph 5 of Article 7 of this Federal Constitutional Law, draft federal constitutional law on admission to the Russian Federation of a new subject shall be submitted to the State Duma”,

c) Paragraph 3 shall read as follows:

“3. Under paragraphs 1-3 of Article 7 of this Federal Constitutional Law, draft federal constitutional law on admission to the Russian Federation of a new subject shall contain provisions determining name, status and borders of the new subject, and other provisions resulting from the international treaty and protocols to it”;

5) Paragraph 3 of Article 9 shall read as follows: “The federal constitutional law on admission to the Russian Federation of a new subject approved simultaneously with the international treaty shall enter into force no earlier than the date of entry of the international treaty for the Russian Federation and the foreign state”.

President of the Russian Federation

Explanatory Note

Of the Federal Constitutional Law on Amending the Federal Constitutional Law on the Procedure of Admission to the Russian Federation and Creation of a New Subject of the Russian Federation in Its Composition

1. The proposed draft on Amending the Federal Constitutional Law on the Procedure of Admission to the Russian Federation and Creation of a New Subject of the Russian Federation in Its Composition was brought to life by the events taking place in Ukraine and results from the obligations of the Russian Federation under the Treaty on Friendship, Cooperation and Partnership between the Russian Federation and Ukraine dated May 31, 1997. Under Article 11 of the said Treaty, both sides shall take on their territory necessary measures, including legislative, to prevent and suppress any activities representing incitement to violence or violence against individuals or groups of citizens based on national, racial, ethnic or religious intolerance.

Russia cannot extend the application of its legislation beyond its territory. However, Russia can and should foresee possible consequences of the events taking place in Ukraine directly indicating that public authorities of Ukraine are paralyzed. Executive authorities are completely disorganized, law enforcement are at a standstill and are under attacks by well-organized gangs of fascist elements. Thereby the fundamental principle of state sovereignty as such – the existence of efficient sovereign government (à titre de souverain) that must protect its citizens, their rights and freedoms – is violated.

According to international law, efficient government means ‘the actual continuous and peaceful display of state functions’. These provisions are enshrined in an award of an international tribunal (Island of Palmas arbitration 1928).

Deprived of state protection in their country, regions of Ukraine, where Russian-speaking citizens comprise majority, seek ways of defending their autonomy and distinctiveness by addressing Russia first of all. In some regions there are movements for referendums to determine their state affiliation.

Following the disintegration of the USSR, Ukraine exists in the present borders, which are recognized by the international community, primarily by Russia. The same provisions are consolidated in the interstate agreements between Russia and Ukraine. It was Russia, which guaranteed Ukraine's territorial integrity alongside several nuclear powers upon withdrawal of Soviet nuclear weapons from it. Actually, Russia, as guarantor of Ukraine's territorial integrity, is not only eligible, but it is obliged to take measures of support of the people of Ukraine that would push Ukraine's authorities towards establishing proper order without violence and discrimination of national minorities.

2. Relating to Ukraine's regions, this entails not a part of a state (as a subject of international law and apparatus of securing authority), but a part of territory and its population legally separated from Russia fairly recently. It is known that historically these territories were for centuries positioned as a part of a single country – the Russian Empire followed by the Soviet Union.

Taking into account their legal attribution to another state in 1991, presently the expression of will of relevant population has prevailing legal effect.

[It should be expressed] Without any power politics – from the present emerging government in Kiev, Western Ukrainian militants or from NATO.

It should be taken into account that forcible takeover of authority by a group of individuals from the Maidan in Kiev is illegitimate from the point of view of international law. In this regard, Russia can even claim *rebus sic stantibus* (a profound change of circumstances) and terminate the validity of previously concluded (at that time with legitimate government of Ukraine) international economic treaties.

3. The proposed draft law is compliant with the Constitution of the Russian Federation and universally recognized principles of international law, as they contain a complex of legal measures in force in the territory of Russia in case if any regions of Ukraine self-determine their state affiliation.

International practice has seen cases of inclusion of a part of one state into another without an international treaty. Moreover, international law contains no requirement for conclusion of such a treaty with the foreign state. According to UN Charter, universally recognized principles of international law include self-determination of peoples (paragraph 1, Article 1 of UN Charter). Self-determination (e.g. of the Republic of Crimea) may be expressed as a result of a referendum or another form of expression of will of population of relevant territory. These may include: request of the Supreme Council of the Republic to the President of the

Russian Federation, simplified acquisition of Russian citizenship by Crimea residents etc.

On the contrary, enforcement upon such self-determining population of the requirement of contractual consent by the whole state (Ukraine) to self-determination of population of a specific region (Crimea) would contradict the said international legal principle of self-determination of peoples. At the same time, under international law, use of armed force is inadmissible: both during the expression of will of the population (e.g. during referendum) and for the purpose of changing the results of the expression of will.

Because of that, the provision contained in the Law on the Procedure of Admission to the Russian Federation and Creation of a New Subject of the Russian Federation in Its Composition providing for mandatory international treaty with the foreign state to admit to the Russian Federation self-determining regions (parts of territory and population of the foreign state) should be considered limiting and not required by international law.

4. The proposed draft law provides for a complex of legal measures aimed at the regulation of the procedure of the admission to the Russian Federation of a part of the foreign state in the capacity of a new subject, if the following conditions are met:

1) absence of efficient sovereign state government in the foreign state, which makes it impossible for Russia to conclude an international treaty with it,

2) the accession to the Russian Federation was approved at a referendum conducted in accordance with the legislation of the foreign state in the territory of the relevant part of the foreign state, or legitimate state authorities of the part of the foreign state made a request to Russia to admit it as a new subject into the Russian Federation,

3) The Federal Assembly of the Russian Federation approves a federal constitutional law on admission of a new subject to the Russian Federation, which regulates all issues related to the status of the new subject.

5. The adoption of the draft law will create additional legal guarantees to prevent and suppress any violent acts based on national, racial, ethnic or religious intolerance, without the violation of the principle of non-interference in domestic affairs of another state.

