

## **APPENDIX VIII**

### **TREATY ESTABLISHING A CONSTITUTION FOR EUROPE<sup>1</sup>**

Rome; 29 October, 2004

#### **CONSTITUTIONAL PROCESS**

The signing of the Treaty establishing a Constitution for Europe in Rome on 29 October 2004 was a decisive step for the European Union. The Constitution represents the completion of a long process of integration marked by ever closer integration and by the successive enlargements of the Union.

It was the first European Parliament to be elected by universal suffrage which really launched the debate on the constitutionalisation of Europe. On 14 February 1984 it adopted by a large majority Altiero Spinelli's visionary report proposing, in a "draft treaty on European Union", a fundamental reform of the European Community.

Since then, the succeeding treaties have each represented stages along the road to the effective constitutionalisation of Europe. Each of them has brought progress in the building of Europe, through the following innovations:

- The first step was taken in 1987 with the signing of the Single European Act, the first reform of the treaties since the 1950s. The objective of this Treaty was to complete the single market by 1992.
- In 1992 the Treaty on European Union (EU Treaty) signed in Maastricht saw the start of a new development; it established the European Union and introduced a common foreign and security policy (CFSP) as well as cooperation in the field of justice and home affairs (JHA).

With this major step, Europe thus embarked upon its transformation from an economic community to a political union. This reform also opened the door to economic and monetary union and the euro.

- The Treaty of Amsterdam signed in 1997 intensified European integration, particularly by formally establishing the principles of freedom, democracy and respect for human rights, creating a basis for a common policy on freedom, security and justice and adding new domains to the Community scope. It also paved the way for a reform of the European institutions, in particular with a view to enhancing the role of the European Parliament.
- This reform of the institutions, necessary in the run-up to the biggest enlargement in the history of the Union to embrace the countries of eastern Europe, was fleshed out by the Treaty of Nice signed in 2001.

#### **BIRTH OF THE CONSTITUTION**

Once the Treaty of Nice was signed, the body of Community law as a whole was based on eight treaties and more than 50 protocols and annexes. The treaties mentioned above did not just amend the original EC Treaty, but also produced further texts which were combined with it. The combination of these various treaties made the European structure more and more complex and very difficult for European citizens to comprehend.

The Treaty of Nice, the technical adaptations in which did little to clarify the situation, opened the door for a process of institutional reform which had become

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<sup>1</sup> [http://europa.eu/scadplus/constitution/index\\_en.htm](http://europa.eu/scadplus/constitution/index_en.htm).

essential. The declaration on the future of the European Union annexed to the Final Act of the 2000 Inter-Governmental Conference (IGC) mapped out the route towards a new reforming treaty. It was on the basis of this declaration that the move towards the Constitution took on a concrete form.

At its meeting in Laeken in December 2001, the European Council established the European Convention to prepare the reform and make proposals. The choice of a Convention represented a significant departure from previous treaty revision procedures, reflecting the desire to do away with meetings of government leaders held behind closed doors.

The Convention, which brought together representatives of the Member States, European Parliament, national parliaments and Commission, debated in public between February 2002 and July 2003. It proposed an in-depth reform of the Union to make it more effective, more transparent, more comprehensible and closer to European citizens. The fruit of its labour, the draft Treaty establishing a Constitution for Europe, served as a basis for the 2003/2004 IGC negotiations.

The IGC took place between October 2003 and June 2004 and reached a consensus on the Treaty establishing a Constitution for Europe. This Constitutional Treaty replaces all the treaties signed over the last 50 years, with the exception of the Euratom Treaty.

## **STRUCTURE OF THE CONSTITUTIONAL TREATY**

The Constitutional Treaty is divided into four main parts, which are all of equal rank. Following a constitution-style Preamble recalling the history and heritage of Europe and its determination to transcend its divisions, Part I is devoted to the principles, objectives and institutional provisions governing the new European Union. Divided into nine Titles, Part I covers:

- the definition and objectives of the Union;
- fundamental rights and citizenship of the Union;
- Union competences;
- the Union's institutions;
- the exercise of Union competence;
- the democratic life of the Union;
- the Union's finances;
- the Union and its neighbours; and
- Union membership.

Part II of the Constitutional Treaty comprises the European Charter of Fundamental Rights. It contains seven Titles, preceded by a Preamble:

- dignity;
- freedoms;
- equality;
- solidarity;
- citizens' rights;
- justice;
- general provisions.

Part III comprises the provisions governing the policies and functioning of the Union. The internal and external policies of the Union are laid down, including provisions on the internal market, economic and monetary union, the area of freedom,

security and justice, the common foreign and security policy (CFSP), and the functioning of the institutions. Part III also contains seven Titles:

- provisions of general application;
- non-discrimination and citizenship;
- internal policies and action;
- association of the overseas countries and territories;
- the Union's external action;
- the functioning of the Union; and
- common provisions.

Part IV groups together the general and final provisions of the Constitution, including entry into force, the procedure for revising the Constitution and the repeal of earlier Treaties.

A certain number of protocols have been annexed to the Treaty establishing the Constitution, in particular the:

- Protocol on the role of national parliaments in the European Union;
- Protocol on the application of the principles of subsidiarity and proportionality;
- Protocol on the Euro Group;
- Protocol amending the Euratom Treaty;
- Protocol on the transitional provisions relating to the institutions and bodies of the Union.

In addition, a large number of declarations have been annexed to the Final Act of the IGC.

## **MAIN ACHIEVEMENTS**

In the interests of clarity, the main innovations in the Constitutional Treaty have been grouped together in four chapters, as summarised below.

The founding principles of the Union

- The values and objectives of the Union are enshrined, as are the rights of European citizens, thanks to the incorporation into the Constitution of the European Charter of Fundamental Rights.
- The Union is accorded a single legal personality (merger of the European Community with the European Union).
- The competences (exclusive, shared and supporting) and their distribution between the Member States and the Union are defined clearly and permanently.
- For the first time, with the introduction of a voluntary withdrawal clause, Member States may withdraw from the Union.
- The instruments of action available to the Union are simplified, reducing their number from 15 to six, as is the terminology, with the introduction of European laws and European framework laws.
- For the first time, the democratic underpinnings of the Union, including participatory democracy, are defined, and a genuine right of popular legislative initiative is introduced.

The institutions

- The seats in the European Parliament are distributed on a degressively proportional basis.

- The European Council, which will be chaired by a President elected for two and a half years, is formally institutionalised, and the rotating Presidency of the European Council is discarded.
- The size of the Commission will be reduced from 2014, to make the number of Commissioners equal to two-thirds of the number of Member States.
- The President of the Commission is to be elected by the European Parliament based on a proposal from the European Council.
- A Minister for Foreign Affairs is to be appointed, taking over the tasks of the External Relations Commissioner and the High Representative for the Common Foreign and Security Policy attached to the Council.

#### Decision-making

- A new qualified majority system is established, under which 55% of the Member States representing 65% of the population will constitute a qualified majority.
- Qualified majority voting in the Council of Ministers is being extended to cover around 20 existing and 20 new legal bases.
- The joint adoption of European laws and framework laws by the European Parliament and the Council is to become the norm (ordinary legislative procedure).
- Several bridging clauses are created for facilitating subsequent extensions of qualified majority voting and switchover to the ordinary legislative procedure.

#### Union policies

- Economic coordination between the countries that have adopted the euro is to be improved, and the informal role of the Euro Group is to be recognised.
- The pillar structure is abolished. The second (common foreign and security policy) and third (justice and home affairs) pillars, which were hitherto subject to the intergovernmental method, are brought within the Community framework.
- The common foreign and security policy is strengthened with the creation of a European Minister for Foreign Affairs and the progressive definition of a common defence policy through, for example, the creation of a European Defence Agency and the authorisation of enhanced cooperation in this field.
- A genuine area of freedom, security and justice is to be created through the planned implementation of common policies on asylum, immigration and external border control, in the field of judicial and police cooperation, and through the development of Europol and Eurojust actions and the creation of a European Public Prosecutor's Office.

### **RATIFICATION: THE FINAL STEP**

Ratification of the Constitution is the final step in the process of institutional reform initiated by the Treaty of Nice.

As with the earlier treaties, ratification by all Member States is needed for the new Treaty to enter into force. The Member States are proceeding in accordance with their own constitutional provisions, involving ratification either by parliament or by a referendum.

The ratification process is expected to last for two years. The Constitution is expected to enter into force on 1 November 2006.

At the European Council of 16 and 17 June, 2005, the Heads of State and governments decided that, despite the negative referendum results in France and the Netherlands, the process of ratification should be pursued saying: "We have agreed to come back to this matter in the first half of 2006 to make an overall assessment of the national debates and agree on how to proceed." A meeting has already been fixed for the first semester of 2006.