

Non-paper of the European Commission on the Constitutional Treaty (28 June 2004)

Caption: Summary of the agreement on the Constitutional Treaty, submitted as a non-paper on 28 June 2004 by the European Commission.

Source: Summary of the agreement on the Constitutional Treaty (28 June 2004). [ON-LINE]. [Brussels]: European Commission, [26.11.2004]. Available on http://europa.eu.int/comm/press_room/presspacks/constit/oth250604_2_en.pdf.

Copyright: (c) European Union, 1995-2012

URL: http://www.cvce.eu/obj/non_paper_of_the_european_commission_on_the_constitutional_treaty_28_june_2004-en-9a1af300-8e03-4bf2-92df-fd5775c56e04.html

Publication date: 05/09/2012

Summary of the agreement on the Constitutional Treaty (28 June 2004)

This provisional document is a non-paper prepared by the Commission in order to provide prompt information. It has no legal status and does not necessarily reflect the views of the European institutions.

A provisional consolidated version of the draft treaty establishing a Constitution for Europe has been prepared under the responsibility of the Secretariat of the Intergovernmental Conference. It can be found on the Futurum website at the following address: <http://europa.eu.int/futurum>.

Please note that the Constitution has yet to be translated into all the official languages, signed by the Heads of State and of Government (probably in October/November 2004) and ratified by all the Member States in accordance with their respective constitutional provisions (parliamentary approval and/or referendum). The Constitution will only enter into force once it has been ratified by all the Member States.

TO FIND OUT MORE ABOUT THE CONSTITUTION:

The FUTURUM website

<http://europa.eu.int/futurum>

Summary of the agreement on the Constitutional Treaty 1

The fact that the elaboration of a Constitution was entrusted to a Convention in which representatives of national parliaments, the European Parliament, the national Governments and the Commission openly discussed the future of the Union has been one of the most outstanding developments of recent years. The result of these deliberations went beyond expectations. The Intergovernmental Conference that had to give its final agreement has largely taken on board the Convention's proposals. In the end, even though the Intergovernmental Conference introduced a large number of editorial modifications, the real changes were limited to a somewhat lesser ambition with regard to the scope of qualified majority voting.

What are the key elements of the European Constitution?

The Union will have a single foundation, the Constitution

Europe has been built in stages and is based on different Treaties that have been concluded over time. This is why the European construction is difficult to understand today. From now on, there will be only one European Union replacing the present "European Communities" and the "European Union"; the three "pillars" will be merged, even though special procedures in the fields of foreign policy, security and defence are maintained; the EU and EC Treaties, as well as all the treaties amending and supplementing them will be replaced by the "Treaty establishing a Constitution for Europe".

The integration of the Charter for Fundamental Rights into the text, the clear acknowledgement of the Union's values and objectives as well as the principles underlying the relationship between the Union and its Member States, allow us to call this basic text our "Constitution". It also contains a clearer presentation of the distribution of competences and a simplified set of legal instruments and procedures. In future, European laws will be known as laws.

In legal terms, however, the Constitution remains a treaty. Therefore, it will enter into force when only all Member States have ratified it, which implies popular consultations in some Member States. It should be noted that any modification of the Constitution at a later stage will require the unanimous agreement of the Member States and, in principle, ratification by all. For some modifications, however – for example with regard to the extension of the scope of qualified majority voting – a unanimous decision by the European Council will suffice. The Constitution also provides for the establishment of enhanced cooperation or structured cooperation in the field of defence.

A revised institutional framework

The attention paid to the Member States' divergences of opinion, particularly with respect to the definition of qualified majority and the composition of the Commission, has somehow veiled the fact that the Intergovernmental Conference (IGC) has to a large extent confirmed the Convention's efforts to reform and clarify the institutional framework.

In fact, the Constitution clarifies the respective roles of the European Parliament, the Council and the Commission. In particular, it recognises the different missions of the Commission, including its near monopoly of legislative initiative, its executive function and its function of representing the Union externally, except in the field of common foreign and security policy. The Constitution devotes the principle of interinstitutional programming to the Commission's initiative. It extends very substantially the scope of the co-decision procedure, which, significantly, will henceforth be called the legislative procedure (95% of European laws will be adopted jointly by the Parliament and the Council).

The main institutional innovation is the creation of the post of Union Minister of Foreign Affairs, who will be responsible for the representation of the Union on the international scene. This function will merge the present tasks of the High Representative for the Common Foreign and Security Policy with those of the Commissioner for external relations. The Minister of Foreign Affairs will thus be mandated by the Council for common foreign and security policy, while being a full member of the Commission and as such in charge of the Commission's responsibilities in the field of external relations as well as of the coordination of the other aspects of the Union's external action; in addition, he will chair the External Relations Council. The Union's newly acquired single legal personality will also enable it to play a more visible role in world affairs.

The Constitution establishes the European Council as an institution, distinct from the Council. The European Council will be chaired by a President, with limited powers, appointed for a period of two and a half years. On the other hand, and in contrast to what had been proposed by the Convention, the system of twice-yearly rotation among the Member States of the presidency of the different Council formations (with the exception of the External Relations Council) will be maintained, although within a "team presidency" of three countries. This system will be able to evolve in the future since it can be altered by the European Council acting by qualified majority.

As to the composition of the institutions, the IGC finally decided to raise the maximum number of seats in the European Parliament to 750. These seats will be allocated to the Member States according to the principle of "degressive proportionality", with a minimum of six and a maximum of ninety-six seats. The precise number of seats attributed to each Member State will be decided before the European elections in 2009.

The IGC decided to maintain the current composition of the Commission – one Commissioner per Member State – until 2014. From then on, the Commission will comprise a number of Commissioners corresponding to two thirds of the number of Member States. The members of the Commission will be chosen according to a system based on equal rotation among the Member States, which had been already decided by the Nice Treaty.

The definition of qualified majority for decision-making in the Council was, as is well known, the most difficult question the IGC had to deal with. As proposed by the Convention, the Council will henceforth decide on the basis of the double majority of the Member States and of the people, which constitutes an expression of the Union's double legitimacy. The IGC nonetheless decided to raise the thresholds: instead of the majority of Member States representing 60% of the population, the IGC decided that a qualified majority will require the support of 55% of the Member States representing 65% of the population. This definition is accompanied by two further elements. First, in order to avoid the situation where, in an extreme case, only three (large) Member States would be able to block a Council decision due to an increase in the population threshold, a blocking minority needs to comprise at least four Member States. Moreover, a number of

Council members representing at least three-quarters of a blocking minority, whether at the level of Member States or the level of population, can demand that a vote is postponed and that discussions continue for a reasonable time in order to reach a broader basis of consensus within the Council.

Progress relating to the achievement of the area of freedom, security and justice, and in the field of common foreign and security policy

The Convention did not modernise all the Union's policies. The content of most provisions that govern the Union's policies thus remains unchanged. As opposed to, for example, the Single European Act or the Maastricht Treaty, the Constitution does not extend the Union's competences considerably.

However, the Constitution significantly updates provisions in the field of Justice and Home Affairs, in order to facilitate and improve the establishment of the area of freedom, security and justice. In fact, the Community method will from now on apply to all the areas in question. Moreover, they will fall to a large extent within the scope of qualified majority voting. Nevertheless, the Constitution retains or introduces some special features in these areas, namely in the area of judicial cooperation in criminal matters and in the area of police cooperation.

The provisions regarding external relations have been re-written, but in essence, the distinction between common foreign and security policy and the other aspects of EU external action still determines the respective roles of the institutions and the procedures that apply. Nevertheless, the creation of the post of Union Minister of Foreign Affairs, with the task of developing mutual confidence and the European reflex of the Member States, undoubtedly strengthens the Union's role in world affairs, in all areas. Moreover, the possibility of providing more ways for the Member States to cooperate more closely in the field of defence will underpin the credibility of the Union's foreign policy.

For some other policies, such as economic governance, the Commission would have liked to strengthen the Union's means of action. However, the essential changes are limited to a further extension of the scope of qualified majority and a near generalisation of the co- decision procedure. It should be noted that, in addition to some specific provisions, unanimity is retained in the field of taxation and, partially, in the field of social policy and common foreign and security policy. Although "passerelles" allow a unanimous decision that henceforth qualified majority will apply in a given area, it remains to be seen whether the existence of such clauses will be sufficient to maintain the Union's capacity to act. Moreover, the future development of the Union means that account must be taken of the fact that laws on own resources and the financial perspectives must be adopted unanimously, as must revisions of the Constitution itself.

A system marked by increased democracy and transparency

The Constitution introduces, or confirms in a fundamental text, an important number of provisions aiming at more democratic, transparent and controllable EU institutions that are closer to the citizen. As an example, the Constitution provides citizens with the right to invite the Commission to submit an appropriate proposal to the legislator, if they manage to collect one million signatures in a significant number of Member States. The proceedings of the Council, when exercising its legislative function, are to be open to the public. The role of the European Parliament has been strengthened. National parliaments are to be informed about all new initiatives from the Commission and, if one third of them consider that a proposal does not comply with the principle of subsidiarity, the Commission must review its proposal. New provisions on participatory democracy and good governance have acquired constitutional status. The Charter will guarantee better protection of fundamental rights.

¹ This document is a non-paper prepared by the Commission in order to provide prompt information. It has no legal status and does not necessarily reflect the views of the European institutions.