



Conference of European Churches  
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## CSC Report on the Constitutional Debate

### BACKGROUND

In October 2004, the EU countries signed a Treaty establishing a Constitution for Europe (TCE)<sup>1</sup>. The text, which was to replace the existing treaties, was an outcome of a three-year development. Its draft had been elaborated by the European Convention and amended during the Intergovernmental Conference.

In the summer 2005 the Treaty was rejected by the referenda in France and in the Netherlands. This halted the ratification process and led to a “period of reflection”. That period ended late in 2006 when the Finnish EU Presidency held confidential talks among the Member States on the Treaty in order to prepare the German Presidency in its task to re-launch the process.

### STARTING POINT OF THE GERMAN NEGOTIATIONS

At the December 2006 European Council, the Finnish Prime Minister Matti Vanhanen gave an oral report concerning the results of the consultation. His conclusions were that:

- All States agree that the reform of the current (in force) Treaty is necessary.
- It is inconceivable to start from scratch.
- Most members would like to either keep the Constitutional Treaty or at least retain as much of its substance as possible.

### Status of the ratification process

18 countries<sup>2</sup> have ratified the Treaty. Ireland and Portugal have not ratified the Treaty but support it. Sweden and Denmark have not ratified it but have expressed their willingness to proceed with the ratification process as soon as its status is clarified.

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<sup>1</sup> TCE is available at: <http://www.consilium.europa.eu/showPage.asp?id=748&lang=en&mode=g>

<sup>2</sup> Lithuania, Hungary, Slovenia, Italy, Spain, Austria, Greece, Malta, Cyprus, Latvia, Luxemburg, Belgium, Estonia, Bulgaria, Romania, Slovakia, Germany and Finland.

France and Netherlands, as mentioned, voted 'no' in the summer 2005. In some countries (Germany, Slovakia), the ratification process is facing a challenge pending the decision of the Constitutional court.

## **SUBSTANCE - GENERAL**

Besides France and the Netherlands, the most fundamental objections on the substance of the Treaty have been expressed by the United Kingdom and Poland. The opposition of the UK is likely to grow after Tony Blair leaves his position in the summer 2007.

In relation to France, the future of the Constitutional Treaty will be largely influenced by the results of their presidential elections due to be held on 22 April (and if necessary on 6 May) 2007.

### **Retaining the substance of the current Treaty**

The 18 countries who have ratified the Treaty, plus Portugal and Ireland, gathered in Madrid on 26 January 2007 under the heading "the Friends of the Constitutional Treaty". The meeting had a double goal: to help the German Presidency in its work for a new proposal on the Constitutional Treaty and to make sure that the voices of the countries that already ratified the Treaty are heard. The meeting did not adopt a formal statement but indicated its readiness to listen the proposals of those countries that have not ratified it. However, the meeting stated in a press release that the basis of the work is on the current Treaty proposal, which should "retain its substance and balance".

Although Germany only attended the above-mentioned meeting as an observer, its official line is the same as stated in Madrid. Among other supporters of this approach are the new European Parliament (EP) President Hans-Gert Pöttering (EPP-DE) and the majority of the EP Constitutional Affairs Committee.

### **Mini-Treaty or shorter Treaty**

Nicolas Sarkozy, the right-wing candidate in the French presidential elections, wants the EU countries to adopt a simplified functional treaty that would create a more stable presidency of the European Council, a European foreign minister, and extend qualified majority voting to areas such as the judiciary and immigration.

Sarkozy's suggestion of a mini-Treaty has not been getting much direct support although there are quite a few who favour a shorter Treaty. Sarkozy himself has told the media that even the German Chancellor Angela Merkel has a positive view on a mini-Treaty although she cannot admit that publicly.

Jo Leinen (PES-DE) who chairs the EP Committee on Constitutional Affairs does not support a mini-Treaty but is in favour of a shorter and more readable text. The new vice-chair of the Constitutional Committee Anneli Jäätteenmäki (ALDE-FIN) also prefers a short and readable text. Although she did support the idea of the Constitutional Treaty earlier on, she would not like to have it enforced against the public opinion. Furthermore, the Centrist candidate of the French presidential elections, François Bayrou, also supports the idea of "a simple and readable text".

Alain Lamassoure (EPP-FR) has rejected the idea of a mini-Treaty but his concrete suggestion still goes in that direction. He proposes to cut out all the controversial elements. These include "a couple of statements of principle" in part I. He suggests that part II (Charter for Fundamental Rights) should be dropped and to have instead an article referring to it. He would also like to see part III reduced to some 30 articles (now close to 350 articles) concerning legal innovations.

The European Trade Union Confederation (ETUC) considers that the core of the Treaty is in parts I, II and IV and would like to see part III shortened. For instance, ETUC considers that the last-minute introduction of 'price stability' puts the balance between competition and social market economy into question. The Social Platform, the platform for European social NGOs, is not worried about the 'price stability' objective.

For the United Kingdom, even a mini-Treaty is too much. The UK Foreign Secretary Margaret Beckett has said that UK would "favour proposals that modernise the workings of the EU" but in concrete terms this would only require a few modifications to the existing treaties, not a constitution. British officials consider that the only essential treaty change needed in the foreseeable future is the review of the size of the Commission.

### **Treaty plus**

Alexander Stubb (EPP-FIN) and Iñigo Mendez de Vigo (EPP-ES) have called for a Treaty plus, which would mean the improvement of the current text and additions to part III on e.g. climate change, energy policy, social Europe and immigration. The idea of a Treaty plus has also won support among members of the EP Constitutional Affairs Committee.

Along the same lines, the Belgian Prime Minister Guy Verhofstadt has asked the parties not to try and identify what should be removed from the Treaty but to reflect on what should be added to it in order to achieve a consensus.

Andrew Duff (ALDE-UK) has asked to retain parts I and II, and to improve part III. Richard Corbett (PES-UK) also calls for an improved part III.

The idea of a Treaty plus is also presented in the working document prepared by the EP co-rapporteurs on the EU's constitutional process, Elmar Brok (EPP-DE) and Enrique Baron Crespo (PES-ES). The rapporteurs also invite the June European Council to adopt a mandate for arranging a short intergovernmental conference under the Portuguese presidency in the second half of 2007, which would not re-open parts I and II.

### **Clearly different new text**

The new Dutch coalition government (Christian Democrats of the CDA, the Labour PvdA and ChristenUnie) wants to have a new EU treaty which would respect the principle of subsidiarity and democratic control and which would have a clearly different content, volume and name than the current draft. The Netherlands is not planning to hold a second referendum but the Government will ask its consultative body Raad van Staat to give its opinion on the issue.

In their common statement of 19 February, Czech Prime Minister, Civic Democratic leader Mirek Topolánek and the Polish President Lech Kaczyński, said that they do not want to see energy wasted on the old text and prefer to opt for a new substantially different text. However, after the visit of Angela Merkel in mid-March, Kaczyński announced that Poland would agree to negotiate on the basis of the existing text.

## **SUBSTANCE - SPECIFIC QUESTIONS**

### **Title**

There seems to be a large agreement to drop the word 'constitutional' because it generates misunderstanding.

### **Christianity**

#### **Summary of the debate during the years 2002-2004**

During the process which led to the now existing Treaty proposal, several countries (Italy, Lithuania, Malta, Poland, Portugal, the Czech Republic, Slovakia and Greece) urged for the preamble of the Constitution to include a reference to Christianity. The strongest opponents to any reference to Christianity were France and Belgium. Other countries opposing such a reference were Denmark, Sweden, Finland, Slovenia, Spain (after the change of the government) and Cyprus. In its final form, the Constitutional Treaty makes no explicit references to Christianity but mentions the "cultural, religious and humanist heritage of Europe".

Throughout the re-launched debate on the Constitutional Treaty, Angela Merkel has emphasised that she deplores the absence of a clear reference to Christianity in the Constitutional Treaty. According to her, "no-one doubts that they [Christian values] significantly shape our life, our society." The reference to Christianity is also strongly supported by Poland, the EP President Hans-Gert Pöttering (EPP-DE) and the chair of the EP Foreign Committee, Jacek Saryusz-Wolski (EPP-PL).

### **Institutional affairs**

Poland is against the new voting system in the Council. Some Member States are against an EU foreign minister. Some reject the permanent president of the European Council.

### **Charter for Fundamental Rights**

Germany wants to preserve the Charter for Fundamental Rights (part II). Finland regards the Charter as an essential part of the Treaty. It also sees the prospect of the EU acceding to the European Convention for Human Rights (ECHR) as an important issue (and that requires a legal personality).

ETUC and most civil society organisations want to preserve the Charter. ETUC calls for its further reinforcement. It wishes the right of initiative for citizens, the legal base for services of general interest (SGI) and the social clause to be added to it. The Social Platform supports the right of initiative for citizens but does not call for a legal base for SGI.

UK is not excited about the Charter. The supporters of a short treaty are keen on dropping that part.

### **Social aspects**

The current Treaty proposal includes a social clause (art III-117) which stipulates the requirement to promote a high level of employment, adequate social protection, fight against social exclusion, high level of education, training and protection of human health.

Germany and Luxemburg want to add a new social protocol to the Treaty in order to win the French and Dutch support. Ségolène Royal, the Socialist candidate in the French Presidential elections, has requested social and workers' rights to be better taken on board. The French Prime Minister Dominique de Villepin also supports the strengthening of the social dimension of the Treaty.

Luxemburg has appealed for an EU-level commitment to a minimum income.

The General Secretary of ETUC has warned about the UK opposition. ETUC's support for the social protocol depends on its concrete content. It would need to be strong enough to address the charge that the constitution is an economically liberal document. ETUC wants to reinforce social values and principles (solidarity, equality, gender equality and non-discrimination) as well as social and employment objectives (full employment, social market economy) and to enhance the role of social partners. The Social Platform agrees with ETUC's suggestions except that it does not lobby for a more important role for social partners.

Jo Leinen (PES-DE) has said that the social protocol might be optional for Member States to sign up to.

Martin Schulz (PES-DE), the leader of the EP socialist group, has called for a social impact assessment of the new legislation.

## **ENLARGEMENT versus CONSTITUTIONAL REFORM**

Angela Merkel has endeavoured to win the support of the countries most against the Treaty (UK, Poland and the Czech Republic) by arguing that no further enlargement (and the above-listed countries are very much in favour of them) can take place before the constitutional reform.

## **PROCESS**

### **Step by step approach**

A French MP (and a chair of its Delegation for Europe) Pierre Lequiller, among others, has suggested a two-step approach. According to Lequiller's plan, the EU states should

first decide on a limited institutional treaty. In a second stage, a new Convention should be convened to define the policies of the Union.

Italy's proposal follows the same line. It would first want to see an agreement which safeguards the fundamental elements of the Treaty (e.g. Minister for Foreign Affairs, non-rotating presidency of the European Council, extension of majority voting based on double majority (states and population), binding legal force for the Charter for Fundamental Rights) and then have a plan enabling Europe to meet global challenges.

The President of the association "Confrontations Europe" also suggests a two-step approach. He would first like to see an institutional reform treaty put into place. Secondly, a "Single Cooperation and Participation Act" should be developed which would set firm commitments, binding objectives and a timetable (compare with the Single Act).

Finland has expressed its disapproval against a process in which a part of the Treaty (essentially the parts related to the institutional changes) would be agreed upon first, and which would leave the rest of the Treaty for a later adoption. Finland considers that such an approach would alter the balance of the current text. It also doubts whether the leftovers would ever be adopted. Furthermore, it believes that a constant revision process would decrease the Union's credibility.

### **Division of Europe over the Constitution**

Guy Verhofstadt has stated that the EU should move forward with those who want to have the Constitutional Treaty even if all Member States were not on board. The idea of a European Union consisting of two circles has recently gained more support. In France, all three main candidates (Ségolène Royal, Nicolas Sarkozy and François Bayrou) running in the presidential elections have expressed views that go in that direction. Italy has also indicated that it does not exclude the possibility of a two-speed Europe.

### **Timetable and process during the German Presidency**

The German EU Presidency will present a proposal on the Constitutional Treaty in early June 2007. In the preparation of the new proposal, the German Presidency has opted for the "Sherpa method" (preparation by government-mandated experts). It considers that there is no alternative to such method if it was to come up with a viable compromise by June.

The use of the Sherpa method has raised criticism among many MEPs, who have demanded either the involvement of the Parliament (e.g. Cristiana Muscardini [UEN Group-IT]) or an even more open process (e.g. Daniel Cohn-Bendit [Greens/EFA group-DE], Monica Frassoni [Greens/EFA-IT], Hartmut Nassauer [EPP-DE], Johannes Voggenhuber [Green-AT]).

Alexander Stubb (EPP-FIN) has called for both a Commission and an EP representative to be associated to the process.

The German Presidency has promised to include the EP once its proposal is ready.

## **Furthering of the process**

Germany hopes that the EU countries will come to a final agreement under the French Presidency, in the second half of 2008 at the latest. The President of the European Commission José Manuel Barroso has expressed similar wishes regarding the timetable.

The German Presidency envisages the setting up of an intergovernmental conference to decide upon the new treaty.


Finland is in favour of a clearly-mandated and short IGC, in case major changes for the Treaty were required.

## **Referenda**

The EP Constitutional Affairs Committee is currently debating a proposal for an EU-wide consultative referendum on the future of the EU. The proposed referendum would focus only on a few specific questions linked to the EU's political dimension.

There are also many voices in the EP calling for an EU-wide consultative referendum on the entire (new) text at the same time as the EP elections in 2009. Following the logic of a two-step approach, Gerard Onesta, a Green MEP and vice-president of the European Parliament, has suggested to preserve the content of the over 300-page Treaty but to hold two separate ratification procedures. The first referendum should relate to the objectives and aims of the Treaty and the Charter for Fundamental Rights, and the second to the policies. According to Onesta, his proposal would satisfy both the Yes camp in France because it keeps what they voted for and the No camp because it takes into account their fears that "Europe is being made without [them]."

Ségolène Royal has expressed support for an EU-wide referendum which would be linked with the next EP elections. Nicolas Sarkozy would like to see the Treaty ratified only through national parliaments. Angela Merkel is not in favour of an EU-wide referendum.



For comments or further information on the issue, please contact Ms Elina Eloranta ([elo@cec-kek.be](mailto:elo@cec-kek.be)).