

The CER's Guide to the Draft EU Constitution



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More than seventy business leaders from 22 countries convened in Helsinki in the beginning of July 2003 to discuss the proposals of the EU's constitutional convention and to put forward views on how to improve Europe's competitiveness and its international standing. In addition to business executives, internationally recognised academic and policy experts were present as well as eminent guests from the USA and Russia. The following article was written by Ms Heather Grabbe as a background briefing for the session on EU governance. The Finnish Centre for Business and Policy Studies (EVA) acted as the Secretariat of the European Business Leaders' Convention.

The grandly named 'Convention on the Future of Europe' completed its work in June 2003 on a draft constitution for the European Union. It was set up to prepare the EU for enlargement, after the EU's prime ministers and presidents had failed to reach agreement on the most knotty issues in a series of inter-governmental conferences (IGCs). The principal aims of the Convention were to make the EU more efficient – so that it can cope with 25 and more member-states – as well as more democratic. The constitution is supposed to make the EU simpler and easier to understand, as well as making necessary reforms to its procedures and institutions.

The draft as it stands does not make the EU significantly simpler, or more comprehensible to the average citizen. It is still a long legal text that preserves the complex deals struck over the past half-century of EU history. However, the draft contains many useful improvements that would make the EU more efficient and democratic. The text brings together previous treaties and other documents, and it helps to rationalise the EU's complex and messy legal framework.

The current draft is far from the end of the road on institutional reform. The draft constitution was prepared by the Convention's president, Valéry Giscard d'Estaing, and his steering-group (the 'praesidium'), but the members of the Convention made numerous amendments to it. The member-states will haggle over a final text in an IGC starting next Autumn.

Ultimately, the text of the constitution produced by the Convention is just a draft. Most governments have a particular part of the constitution that they would like to change at the IGC. But if they re-open too many of the deals struck in the Convention, that could unravel agreements on other areas, because so many of the deals are linked in complex trade-offs. All the work of the Convention over 16 months could be undone if each member-state tries to use the IGC to regain what it lost in the compromises already agreed.

However, the member-states probably will not dare to throw out much of the draft constitution. After all, the Convention was more repre-

representative of a cross-section of the EU than is a traditional IGC, at which only the member governments have a say. The Convention involved a much wider group than the traditional IGCs. It included not just government representatives but also national parliamentarians and MEPs, as well as representatives of the EU institutions – around 250 people in all. For the IGC to dismiss the Convention's outcome entirely would be undemocratic because – for all the complaints about Giscard's sometimes autocratic style – the constitution is the result of a process of deliberative democracy.

The final constitution could take up to another year to complete. Every member-state then has to ratify it, and several will hold a referendum on the new constitution. If any of the 25 members rejects it, the EU will probably have to hold another IGC to sort out the problem. Even if ratification goes smoothly, it could take 12-18 months. The new reforms will probably come into effect in 2006, and some of its most important innovations – such as new rules on majority voting – will apply only from 2009. This will mean a long delay before the implementation of much-needed reforms after enlargement to 25 countries.

What's in the Draft Constitution?

The draft constitution makes the **division of powers** between the EU institutions and member-states much clearer than in previous treaties. It states explicitly that the EU draws its powers from the member-states, not the other way around. It defines clearly where the EU can and cannot act. The constitution names just five areas where the Union has exclusive powers: competition rules within the single market; monetary policy for the euro members; common commercial policy; customs union; and the conservation of marine biological resources under the common fisheries policy.

The draft constitution proposes improvements to increase the **efficiency** of the EU's institutions, the most important of which is the European Council. Consisting of the heads of government and the president of the European Commission, it meets quarterly to set the Union's broad strategy and priorities. Currently the **chairmanship of the European Council** – like that of the many sectoral councils of ministers – shifts from one member-state to an-

other every six months. This 'rotating presidency' is widely recognised as an inefficient system: each country uses its stint in the chair to promote its own pet projects, while countries outside the EU find it confusing that a new group of people take over every six months.

The constitution calls for the European Council to elect a chairman or woman for a period of two-and-a-half years. His or her task would be to "drive forward" the work of the European Council, "ensuring proper preparation and continuity"; and to facilitate "cohesion and consensus" within it. This proposal is a very good one. It would abolish the ludicrous system of the rotating presidency at the level of the European Council. With ten more countries due to join the EU in May 2004, that body is going to grow to unwieldy proportions. A competent individual needs to guide and steer the European Council, lest it become ineffective. He or she will also need to ensure follow-through of European Council decisions: too often the prime ministers sign up to promises that they soon forget.

The chairman would have a role in representing the EU in the wider world, but only "without prejudice to the responsibilities of the Minister for Foreign Affairs". This caveat was added at the insistence of the smaller countries, which are worried that the chair might only listen to the large member-states. But the credibility of the EU's foreign policy would be enhanced if a senior, well-respected politician could represent the EU externally. The EU's new 'foreign minister' will meet foreign ministers of countries on other continents, but only the chairman would have the standing to visit George W Bush or Vladimir Putin.

The Commission, the federalists and the small countries hate the plan for a European Council chairman – partly because the Commission president would no longer be able to claim to speak for Europe on the international stage. The Commission would be obliged to focus on its core internal and economic tasks. The appointment of the new chairman would confirm that the EU's foreign policy and grand strategy rest with the governments, represented in the European Council, rather than the Commission. The small countries believe – correctly – that this scheme would enhance the influence of the European Council, which the big countries tend to dominate, against that of the Com-

mission, which often protects the interests of small countries.

The powers of the **Commission** are not extended significantly. The constitution makes provision for reducing the number of commissioners with voting rights to 15, which will prevent inefficiency after enlargement brings in more commissioners. However, in a last-minute deal to bring the smaller countries on board, the Convention agreed that this reform will only come in effect in 2009. But the postponement will be counter-productive to the interests of the small countries. A Commission with a college of 25 voting members will be more fractious and weaker than one in which the president can manage a smaller, more cohesive team of commissioners. The small countries want the Commission to be more effective and stronger, but they have sacrificed this ambition in order to keep all their commissioners for the first five years after enlargement.

The draft proposes a **simpler system for voting** to replace the complicated 'qualified majority vote'. To pass, a measure would have to be supported by a majority of states which also represents at least three-fifths of the EU's population. This is a more democratic system because it ensures that people living in big countries are represented equally with those living in small ones. However, this new system would only take effect on November 1st 2009. This postponement was a concession to Spain, which wants to keep wielding its over-weighted vote in decisions on the next two budgetary plans to ensure it retains its subsidies even when poorer countries enter the Union. In the CER's view, this delay is absurd. If a reform is needed for enlargement, why wait until 2009?

The constitution would enhance **democracy** in EU decision-making – although the CER believes it should go further. The Council of Ministers and the European Parliament would explicitly share the task of law-making. All areas with majority voting would be subject to 'co-decision', meaning that they are scrutinised by directly elected MEPs. The constitution proposes the establishment of a separate 'legislative council', so that a single body deals with all EU law-making. The UK opposes this idea, but the CER supports it because it would increase transparency by making it more obvious that ministers make most EU laws, not bureaucrats.

Moreover, the constitution proposes that the Council should meet in public when it is passing laws, making it easier for citizens to follow how their national ministers vote.

National MPs would become more directly involved in European affairs, through a more systematic exchange of information between EU bodies and national parliaments. The draft proposes a special procedure whereby one-third of national parliaments could block Commission proposals at an early stage if they risked breaking the subsidiarity principle (which is that decisions should be taken at the lowest appropriate level of government).

Citizens would gain from the inclusion of the **Charter of Fundamental Rights** in the constitution. It will protect citizens from any EU laws that might infringe their rights, for example invasion of their privacy. The Charter could not be used to strike down national laws that affect the citizens of only one country. The economic and social rights in the Charter – including the right to strike – are mostly hedged with the proviso that they apply only "in accordance with Union law and national laws and practice".

Changes to EU Policies

On **economic policy**, the draft constitution does little more than consolidate the EU's existing powers. The EU's approach is primarily based on the 'co-ordination' of policies, which means that member-states remain in ultimate control of their budgetary, employment and social security systems. Member-states have a veto on all tax matters.

The draft constitution would grant formal powers to the **Euro Group** – the committee of eurozone members which at present meets only informally. In future, the Euro Group alone would vote on issues relating solely to the single currency, such as enforcement of the EU's fiscal rules. These fiscal rules, currently enshrined in the **Stability and Growth Pact**, would become an integral part of the treaty. The draft foresees a more flexible approach to the Pact, for example by taking into account public investment spending and the long-term sustainability of public finances – which is remarkably similar to the budget rules of Gordon Brown, the British finance minister.

Like previous treaties, the draft constitution encourages EU member-states to work together to create more and better **jobs**. Co-operation here means comparing what works and what does not across different countries, and drawing up recommendations – a process known as the 'open method of co-ordination' in EU terminology. The Commission and the Council gain no new powers to dictate member-states' employment policies.

Similarly, the EU would gain few new powers in the area of social policy. The EU already requires its member-states to protect certain minimum rights of workers, such as non-discrimination between men and women. The Council of Ministers has long been able to adopt such minimum standards, especially for health and safety, by a majority vote. But decisions on key issues of **social security** would still require unanimity in the new constitution.

The member-states, rather than the EU, will also continue to be responsible for their own national **pensions**. EU countries have started a useful process of comparing notes on their pension reform efforts. Like previous treaties, the new constitution explicitly prohibits both the EU and its member-states from paying to get any member-state out of fiscal trouble. This 'no bail-out' clause also includes national pension systems.

The draft constitution has missed an important opportunity to propose reforms to the **European Central Bank**. The draft confirms the independence of the ECB and only provides broad guidelines on the ECB's decision-making structure and its monetary policy targets. This is a shame, since the ECB has not proven very good at reforming itself.

In **foreign policy**, the draft constitution proposes some modest reforms, but they do not amount to a step-change. The biggest innovation is the creation of a new post of 'minister for foreign affairs'. The Convention has yet to work out the details, including the precise name and institutional affiliation for this post. But the basic idea is to merge the roles of Javier Solana, the High Representative for Foreign Policy, and that of Chris Patten, the Commissioner for External Relations. The point of this merger is to ensure that these two sides of EU external relations – broadly, diplomacy and aid – work better together. But the draft is careful

to emphasise that the new foreign minister will be an agent of the Council of Ministers, whose meetings on foreign affairs he or she will chair. The foreign minister will be answerable to the member-states, not the Commission.

The text contains a 'loyalty clause' which states that "member-states shall support the Union's common foreign and security policy actively and unreservedly". But the key question is: who decides the objectives and provisions of this EU foreign policy? The answer is national governments, taking decisions through the Council of Ministers and the European Council. The draft does not give greater foreign policy powers to the Commission and it explicitly preserves every country's right to wield a veto.

The main innovation for **defence policy** is that member-states can sign up to a 'mutual assistance' clause which allows each country to ask for help – military or otherwise – from other EU members if it is attacked. But member-states would not be obliged to sign this mutual assistance clause, and the neutral countries are unwilling to do so. In addition, to ensure that progress in EU defence policy cannot undermine NATO, the constitution says that EU commitments should "respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO)". Governments are also supposed to provide the EU with military and civilian capabilities when the Union needs them to deal with international crises, but the constitution does not establish a standing EU force that could become a European army.

On **asylum and immigration**, the draft constitution introduces provisions that would make it harder for countries to ignore EU laws or fail to apply them properly. Immigration and asylum measures would be passed by a majority vote rather than a unanimous one. The draft treaty allows the member-states to establish a **European Public Prosecutor** if they want to in future. However, all member-states would have to agree unanimously to do this, and there is no deadline for the creation of this job. The draft proposes that such a European Public Prosecutor would be able to investigate and prosecute serious cross-border crimes – such as terrorist acts – and fraud involving EU funds.

Will This Constitution Allow the EU to Function After Enlargement?

The Convention has put forward some useful proposals, but they do not go far enough. When the EU enlarges from 15 to 25 member-states in 2004, it will change much more than the constitution's drafters expect. Later this year, the member governments will have a chance to revise the constitution. They ought to make many of the reforms more radical. But many governments are now in defensive mode, seeking to reduce the impact of the Convention's proposed reforms rather than deepening them. If they unravel the deals reached in the Convention, major problems will quickly emerge after enlargement. It will be much harder to gain consensus between 25 countries with a much greater variety of views.

The most likely date for another round of reforms is 2008. The new constitution will probably come into effect in 2005-06 – assuming that all the member-states ratify it. Meanwhile, the EU's 25 leaders will be locked in combat over the next EU budget for the first two years after enlargement, as the current financial deal runs out at the end of 2006. They will have little energy for more institutional reform. But by 2008 EU decision-making could be gridlocked.

A crisis could ensue, but it will be a necessary one to force the EU to take an axe to its unwieldy institutions. The history of European integration shows that the Union rarely reforms itself until the need is urgent. The Convention would probably never have existed if expansion had not been imminent. Enlargement is a necessary catalyst for long-overdue reforms, but the new constitution will be only the first step.