

THE EU CONSTITUTION

and two alternative visions

TREATY
ESTABLISHING A

CONSTITUTION
FOR EUROPE



The European Union

ADOPTION OF THE EU CONSTITUTION

- The Member States must adopt it unanimously in a conference between governments “IGC” (meaning that each will have a ‘guaranteed right of veto’) (Nice Treaty TEU 48)
- All countries must sign and ratify it (Nice Treaty TEC 313)
- The Constitution will replace all earlier treaties (IV-438), and enter into force in November 2006 if all states have ratified it (IV-447.2)
- If not all, but at least 80% of the countries have ratified it within 2 years, a **political solution** agreed by all should be found (political declaration)
- A country may withdraw, giving 2 years notice (I-60.3)

AMENDMENT OF THE EU CONSTITUTION

METHOD REQUIRING RATIFICATION:

- A proposal may be drawn up by a Member State, the European Parliament or by the Commission (IV-443.1)
- The proposal may be dealt with by a Convention (IV-443.2)
- All countries must agree and must ratify, or meet again (IV-443.3 and 443.4)

OTHER METHODS NOT REQUIRING RATIFICATION:

- Several countries may take their co-operation further – ‘enhanced co-operation’ (I-44)
- The requirement for unanimity may on most issues be changed to qualified majority voting by heads of state and government – ‘deepening clause’, IV-444.1 (so-called passerelle)
- New subjects may be added – ‘flexibility clause’ I-18.1, if within the Constitution’s objectives

STRUCTURE OF THE CONSTITUTION

- Introduction ('Preamble')
- TITLE I – Definitions and objectives of the Union
- TITLE II – Common fundamental rights (the 'Charter')
- TITLE III – The various policies and categories of competence
- TITLE IV – Concluding provisions
- ANNEX – Protocols and declarations
 - Protocols are legally binding, declarations are not
 - Earlier protocols and declarations become invalid if they are not incorporated or reformulated

INSTITUTIONS OF THE UNION

- **The European Parliament** (I-20)
 - 750 Members from 2009 (smaller countries have a relatively larger proportion than bigger countries) (I-20.2)
- **The European Council** (I-21)
 - The heads of state and government of the EU countries and the President of the Commission (I-21.2)
 - A permanent “President of the European Council” will be introduced (I-22)
- **The Council of Ministers** (I-23)
 - One minister per country (I-23.2)
 - Decisions normally taken by qualified majority (I-23.3)

INSTITUTIONS OF THE UNION

- **The Commission** (I-26)
 - One Member from each country until 2014 (I-26.5 and Nice Treaty 211 TEC)
 - Thereafter, only 2/3 of the Member States have a commissioner. In EU25 that means 17 members of the Commission (I-26.6)
- **The Court of Justice** (I-29)
 - At least one judge per country (I-29.2)
 - Supreme court for all EU law (III-375 2-3)
 - Special courts may be established by qualified majority (III-359)

THE ORDINARY LEGISLATIVE PROCEDURE

- The Commission has the monopoly of initiating legislation (I-34 and III-396.2)
- The Council of Ministers and European Parliament may call for legislation, but not propose it (I-34 and III-396)
- A majority of the members in the Parliament can adopt, propose amendments and reject legislation (I-34 and III-396)
- The Council of Ministers can adopt and amend legislation by a qualified majority (I-25)
- Unanimity is required in the Council if it wishes to adopt an amendment rejected by the Commission (III-396.9)

DOUBLE MAJORITY IN THE COUNCIL OF MINISTERS

- 55% of the countries; (but at least 15 countries) (I-25.1)
(72% of the countries if the proposal does not originate from the Commission or the EU's Foreign Minister – special rules for police and judicial co-operation)
- ...representing at least 65% of the EU population (I-25.1)
Until 2009, the weighting of votes in the Council of Ministers still applies, where 232 of 321 votes will be needed for a qualified majority in an EU consisting of 25 countries

EXAMPLES FOR AN EU25:

- 3 big countries, together with one more country can block a proposal (at least 4 countries are always needed to block)
- The 10 new members acting together cannot block a decision

THE COMPETENCES OF THE UNION

- **Exclusive competences of the EU** (I-13)
 - Member States may act only with EU authorisation
- **Shared competence** (I-14)
 - Where the EU legislates, the Member States no longer have the right to legislate themselves in that area
- **Competence for coordinating action** (I-17)
 - Union competence to take ‘actions to support, coordinate or supplement’ Member States’ action
 - The EU may adopt legal acts, but may not harmonise the Member States’ own laws (I-12.5)

THE COMPETENCES OF THE UNION

- Traditional EU policy areas
- Coordination of economic policy (I-15)
- Special rules for the Euro zone (I-15.1 and protocol)
- Common foreign and security policy, and gradually a common defence (I-16, I-40-41)
- Area of Freedom, Security and Justice (I-42)
- EU negotiates international agreements on behalf of all member states in areas where EU can legislate internally (I-13.2 and I-7)
- Legal personality (I-7, I-40, I-41, I-42)

EXCLUSIVE COMPETENCES

(I-13)

- Customs Union
 - Competition rules for the functioning of the internal market
 - Monetary policy for the Euro countries
 - Conservation of marine biological resources
 - Common commercial policy
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- International agreements = “legal personality” (I-13.2 and I-7)

SHARED COMPETENCE (I)

(I-14)

- Internal market
- Social policy, for aspects defined in Part III
- Economic, social and territorial cohesion
- Agriculture and fisheries (excluding conservation of marine biological resources)
- Environment
- Consumer protection
- Transport
- Trans-European networks
- Energy
- Area of Freedom, Security and Justice
- Common safety concerns in public health matters, for aspects defined in Part III

When the Union exercises its competence, the member states can no longer exercise theirs (I-12.2)

SHARED COMPETENCE (II)

- In *research, technological development, space, development cooperation and humanitarian aid*, the exercise of the Union's competence does not prevent the Member States from exercising theirs (I-14.3-4).
- The coordination of *economic and employment policies* can also be considered as a shared competence, although the Union's competence is limited to the *coordination* of Member States' policies (I-15).
- The *Common Foreign and Security Policy* is similar to shared competence although the adoption of legislative acts is excluded (I-16, I-40.6))

COMPETENCES FOR COORDINATING ACTION

(I-17)

- Protection and improvement of human health
- Industry
- Culture
- Tourism
- Education, youth, sport and vocational training
- Civil protection
- Administrative co-operation

For example, the EU can establish a parallel education system, but not legislate on the content in national education

LEGAL INSTRUMENTS OF THE UNION

Legislative acts

- Laws – former “regulations”, binding in their entirety and directly applicable (I-33.1)
- Framework laws – former “directives” directed towards the Member States (I-33.1)
- Are adopted by Council and Parliament together (75% of all policy areas)

Non-legislative acts

- Regulations and decisions (I-35.2)
 - Binding (regulations directly applicable), adopted by Council, Commission or ECB (European Central Bank)
- Recommendations and opinions (I-33 and I-35.3)
 - Non-binding

LEGAL INSTRUMENTS OF THE UNION

- Delegated regulations for non-essential legislation (I-36)
 - Decided by the Commission, binding as with laws
 - Commission laws can only be blocked by an absolute majority in Parliament or a qualified majority in Council (I-36.2)
- Implementing acts
 - Give the Commission or Council implementing powers where uniform implementation is needed (I-37)

THE CHARTER OF FUNDAMENTAL RIGHTS WILL BE LEGALLY BINDING

The EU Court in Luxembourg will judge, and its verdicts will prevail

- Right to human dignity
- Right to life
- Right to the integrity of the person
- Prohibition of torture and inhuman or degrading treatment or punishment
- Prohibition of slavery and forced labour
- Right to liberty and security
- Respect for private and family life
- Protection of personal data
- Right to marry and right to found a family
- Right to education
- Right to property
- Right to asylum
- Right of collective bargaining and to strike
- Right of access to placement services
- Right to vote and to stand as a candidate at municipal elections
- Right to good administration
- Right of access to documents
- Right to refer to the Ombudsman
- Right to petition
- Right to an effective remedy and to a fair trial
- Right not to be tried or punished twice in criminal proceedings for the same criminal offence
- Freedom of thought, conscience and religion
- Freedom of expression and information
- Freedom of assembly and of association
- Freedom of the arts and sciences
- Freedom to choose an occupation and a right to engage in work
- Freedom to conduct a business
- Freedom of movement and of residence
- Principles of legality and proportionality of criminal offences and penalties
- Right to diplomatic and consular protection
- Right to vote and to stand as a candidate at elections to the European Parliament
- Presumption of innocence and a right of defence
- Right to equality before the law
- Right to non-discrimination
- Right to cultural, religious and linguistic diversity
- Right to equality between men and women
- The rights of the child
- The rights of the elderly
- Integration of persons with disabilities
- Workers' right to information and consultation within the undertaking
- Protection in the event of unjustified dismissal
- Fair and just working conditions
- Prohibition of child labour and the protection of young people in the workplace
- Protection of family and professional life
- Social security and social assistance
- Access to health care
- Access to services of general economic interest
- Environmental protection
- Consumer protection

PARTLY NEW LEGISLATIVE AREAS IN THE CONSTITUTION

- Protection of intellectual property rights
- Outer space
- Energy
- Culture
- Sport
- Civil protection
- Administrative co-operation
- Humanitarian aid
- Tourism
- Immigration
- Services of general interest
- Area of freedom, security and justice
- Asylum
- European penal co-operation
- Fundamental rights – the Charter in part III

(Some areas have been dealt with under the flexibility clause in Nice Treaty TEU Art. 308)

FOREIGN AND SECURITY POLICY

- **In foreign and security policy**, important areas still require unanimity (I-40.6)

Unanimity may, by unanimity at an EU summit, be changed to qualified majority decision-making (I-40.7)

- **Military conscription** remains with the Member States

However:

- An EU summit, acting unanimously, may introduce common defence. This must then be ratified according to the countries' constitutional requirements (I-41)
- A group of EU countries may do the same by way of structured co-operation, open to countries fulfilling higher military criteria (I-41.6)

THE EU FINANCES

- The EU has its ‘own resources’ within a ceiling, currently set at 1.24% of GNP (*Decision 2000/597 EC of the Council and Communication COM (2001) 801 final of the Commission*)
- Additional ‘own resources’ (EU funding) must be approved unanimously (I-54)

However:

- The European Council can unanimously decide that the Council shall adopt the multi-annual financial framework by qualified majority voting (I-55.4)
- Annual budget – Both European Parliament and Council can request a new proposal (I-56)
- A majority within European Parliament and Council may create additional revenue in the form of ‘negative expenditure’ and fines
- The Member States shall provide the Union with the necessary resources (I-54.1)

VALUES OF THE UNION

The EU Constitution introduces common values which shall be respected:

(I-2)

Human dignity, liberty, democracy, equality, the rule of law, human rights and the rights of minorities

The EU are also founded on the following values:

Pluralism, tolerance, justice, solidarity, non-discrimination and equality between men and women

OBJECTIVES OF THE UNION

- The EU has many different objectives (I-3):

- To promote peace, its values and the well-being of its peoples
- An area of freedom, security and justice without internal frontiers...
- ...and a single market where competition is free and undistorted
- Sustainable development of Europe based on balanced economic growth
- A highly competitive social market economy
- Price stability
- Full employment and social progress
- A high level of protection and improvement of the quality of the environment
- To promote scientific and technological advance
- No social exclusion and discrimination
- Social justice and protection
- In its relations with the wider world, the Union shall uphold and promote its values and interests and shall...
- ...contribute to peace
- Security
- The sustainable development of the earth
- Solidarity and mutual respect among peoples
- Free and fair trade
- Eradication of poverty
- To protect human rights...
- ...in particular children's rights
- Strict observance and development of international law...
- ...including respect for the principles of the United Nations Charter
- Equality between women and men
- Solidarity between generations
- Economic, social and territorial cohesion
- Solidarity among Member States
- Cultural and linguistic diversity
- The need for Europe's cultural heritage to be safeguarded and enhanced

THE ROLE OF THE VOTERS IN THE CONSTITUTION

- Voters may elect representatives to the European Parliament every five years. Therefore they can influence laws in Europe as a whole. When the EU legislates the voters cannot change the laws in their own country
- Voters can vote in national elections and thus influence their country's vote in the Council of Ministers
- The voters cannot elect their country's commissioner, the Commission or the President of the European Council
- The voters can get their national parliament to withdraw their country from the EU altogether with 2 years' notice.

APPOINTMENT OF EXECUTIVE POWER

- 25 Heads of Government will meet following the new European Parliamentary elections. An extended qualified majority (18 of 25) of Member States, representing 65% of citizens, will appoint: (I-22 and I-25.2)
 - The President of the European Council (“The EU President”)
 - The EU “Prime Minister” (President of the Commission)
 - The EU Foreign Minister (also Vice-President of the Commission)
 - The full Commission

APPOINTMENT OF EXECUTIVE POWER

- The European Parliament has to approve:
 - The President of the Commission (I-27.1) by a absolute majority, but cannot propose another candidate
 - The full Commission (I-27.2) by a simple majority, but cannot propose candidates
- The governments propose candidates for Commission President and Commissioners (I-27)
- European Council appoints Commission President and Commissioners by qualified majority (I-27.1)
- The European Parliament can dismiss the Commission with a two-thirds majority and an absolute majority of its Members, but it cannot elect a new one (I-26.8 and III-340)
- Commission president can reshuffle commissioners (I-27.3)

Alternative Report

THE EUROPE OF DEMOCRACIES

- The Constitution was not drafted democratically
 - The applicant countries were only represented in the Praesidium by a single observer
 - Only 3 political families were represented in the Praesidium
 - Members were refused translation, distribution, discussion and voting upon their amendments
- The Convention was not representative of the peoples of Europe
 - No representatives from the 49% who voted 'no' to the Maastricht Treaty in France in 1992
 - Only substitutes representing the majority voting 'no' to the Nice Treaty in Ireland (2002) and the majority voting 'no' to the Euro in Sweden (2003)
 - No Eurorealists or Eurosceptics in the Praesidium or the secretariat
- The Alternative report demands a **NEW CONVENTION** that is much more representative and democratic both in procedures and content

15 POINTS TO CONSIDER

1. **A treaty instead of a constitution:** A Europe of democracies instead of an EU state
2. **A slimmer treaty:** Slim down and simplify the 100,000 pages of EU legislation, focus on cross-border issues where national parliaments cannot legislate effectively by themselves
3. **Open to all** democratic states in Europe which respect the European Convention on Human Rights
4. **Simplify** the 30 different ways of **taking decisions** to two: laws and recommendations decided by 75% of the Member States, unless otherwise stated
5. **Vetos on vital issues**, decided by a national parliament and presented at the next European summit

15 POINTS TO CONSIDER

6. **Laws for common, core issues:** Common market rules with minimum standards for employees, consumers, health, safety and the environment

7. **Flexible co-operation:** Closer co-operation decided by unanimity

8. **Transparency:** All meetings and documents open and transparent unless 75% of the states decide otherwise

9. **One vote per state** in the Council, 75% of the states decide when they also represent half of the EU population

10. The **Commission:** Composed of one representative from each national parliament, responsible to, and who can be fired by, his national Parliament; the Commission President elected by all national parliaments who also decide the annual catalogue of laws

15 POINTS TO CONSIDER

11. The **Court** shall not “legislate” and shall respect the European Convention on Human Rights

12. **Partnership agreements** with other countries, assist poorer nations

13. **Better scrutiny** by the Ombudsman, the Court of Auditors and the Budget Control Committee, which shall have access to all documents

14. **Equality of languages** in legislation

15. **No EU army**, peace keeping by the United Nations, defence through NATO or independent

The Alternative Report's **DEMOCRATIC** power structure

- The Commission is appointed by national parliaments which represent the voters directly
- National parliaments propose laws
- Cross-frontier laws are decided by 75% of the States in the Council and read in parallel by the national parliaments
- The national parliament will normally accept the majority vote, but can veto a very vital law
- The European Parliament can veto all laws, but the legislative power then lies with the national parliaments
- In this structure, the voters have the last say, laws can be amended after elections, ministers and commissioners are responsible to their parliaments and can be dismissed

The FEDERALIST DEMOCRATIC power structure

- The Commission is elected by the European Parliament and can always be dismissed by it
- When national parliaments move powers to Brussels they are replaced by a democratic European parliamentary system working like the national system
 - Laws are decided in a two chamber system by a simple majority in both chambers
 - The states are represented in the Council (one vote per state) and the citizens are represented directly in the European Parliament (seats distributed proportionally or through a system of minimum representation)
- In this structure the European voters have the last say, laws can be amended after elections, ministers are responsible to their national parliament and commissioners to the common European Parliament

THE EU CONSTITUTION, WILL IT?

- Move powers from the national parliaments to the civil servants in Brussels?
- Turn legislative powers into executive powers?
- Increase or limit the influence of voters?

ALTERNATIVE I: EUROPE OF DEMOCRACIES WILL

- Move power back to the member states and focus on cross-border issues
- Use national parliaments to control EU decisions and elect commissioners
- Allow the voters in the nation states to have the last say, always respecting the national constitutions
- Does not accept that there is one European people – Europe consists of many peoples

ALTERNATIVE II: THE FEDERALIST VISION WILL

- Move decisions from national parliaments to a two-chamber European Parliament
- Not permit legislative powers from the member states to be turned into executive, non-transparent powers
- Give the last say to the voters of Europe, organised in a European federation with a common parliamentary democracy, run by the European voters

CONCLUSION

Do you prefer:

- the EU Constitution?
- the alternative European vision for a Europe of Democracies where voters always have the last say?
- the federalist vision for a democratic EU with a common European parliamentary system?

• **It is your choice**