



Conference of European Churches
Conférence des Églises Européennes
Konferenz Europäischer Kirchen

June 2007¹

CSC Report on the Constitutional Debate

BACKGROUND

In October 2004, the EU countries signed a Treaty² establishing a Constitution for Europe (TCE)³. The text, which aimed at replacing the existing treaties, was the outcome of a three-year development process. 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 referendums 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 amongst the Member States on the Treaty in order to prepare the German EU Presidency in its task to re-launch the process.

18 EU countries⁴ ratified the Treaty. Ireland and Portugal did not do so but support it in principle. Sweden and Denmark did not ratify it but at an earlier stage indicated their willingness to proceed with the ratification process as soon as its status would be clarified.

SUMMARY OF THE CURRENT SITUATION

At present the EU Member States and politicians remain divided between those who either wish to safeguard the current text or even expand it, those who would like to see the Treaty drastically reduced and those who declare it dead.

¹ This document reports on the developments of the constitutional debate until the end of May 2007.

² When written with a capital letter, the word “treaty” refers to the Constitutional Treaty signed in 2004.

³ TCE is available at: <http://www.consilium.europa.eu/showPage.asp?id=748&lang=en&mode=g>

⁴ Lithuania, Hungary, Slovenia, Italy, Spain, Austria, Greece, Malta, Cyprus, Latvia, Luxemburg, Belgium, Estonia, Bulgaria, Romania, Slovakia, Germany and Finland.

Besides France and the Netherlands, the most fundamental objections on the substance of the Treaty come from the United Kingdom, Poland and the Czech Republic.⁵ The opposition of the UK is expected to grow after Tony Blair leaves his position as the UK Prime Minister on 27 June 2007, even if his successor Gordon Brown has publicly indicated that contrary to his labelling as a Euro-sceptic, he is willing to cooperate at the European level.⁶ Although, the victory of Nicolas Sarkozy in the French presidential elections has been considered to improve the perspectives of having a new EU treaty approved⁷, his preference for a more modest treaty is clear.

During the German EU Presidency on the first half of 2007 it has become clear that the present treaty proposal will not enter into force but needs to be radically changed in order to be accepted by all EU countries. The drastic curtailing of the text would allow the French, Dutch and UK governments to announce that the Constitutional Treaty has been buried and yet push through a number of reforms in the form of an institutional treaty or as changes to the existing treaties. However, all Member States are not likely to accept this approach. The Belgian Prime Minister Guy Verhofstadt as well as the former President of the European Commission and the current head of Italian Government Romano Prodi have both 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. On the side of the supporters of a simplified treaty, Nicolas Sarkozy has expressed his support for a two-speed Europe, if that proved to be necessary.

DEBATE DURING THE GERMAN EU PRESIDENCY

SUBSTANCE - GENERAL

Retaining the substance of the current Treaty

The 18 countries that 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 to the proposals of those countries that have not ratified it. The meeting, however, stated in a press release that the basis of the work is 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.

⁵ In France, UK and the Netherlands the present heads of government have to temper their EU ambition in the face of the public opposition, whereas in the Czech Republic and Poland the public support for the European integration exceeds that of the current political leadership.

⁶ Gordon Brown has also been reported as considering creating a first-ever written constitution for UK. BBC news report at: http://news.bbc.co.uk/1/hi/uk_politics/6644717.stm

⁷ Unlike Sarkozy, his rival Ségolène Royal would have submitted the treaty to a referendum.

Mini-treaty or a shorter treaty

The new French President Nicolas Sarkozy 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.

Thoughts about a mini-treaty or a shorter treaty are gaining support. 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.

In May the German Presidency gave in to pressures and suggested the Treaty to be split into two parts. The basic treaty (\approx the current Part I) would contain institutional arrangements, competencies, objectives and the values. It would be accompanied by a separate text concerning policies (\approx the current Part III) with an indication concerning the way decisions would be taken in these policy areas. The German proposal is very much in line with Jo Leinen's earlier proposal. Jo Leinen (PES-DE) who chairs the EP Committee on Constitutional Affairs has suggested that the current draft to be divided into two parts. The "fundamental treaty" would include 70 articles - articles 1-60 of the Part I and articles 437-448 of the Part IV (on the revision of the treaty) - and it would be accompanied by the Charter for Fundamental Rights in a form of a protocol. The "treaty on the EU's policies" would correspond to the Part III and would be accompanied by protocols on climate change and social Europe.

In a similar way, Alain Lamassoure (EPP-FR) has proposed 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.

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.

In their common statement of 19 February, Czech Prime Minister, Civic Democratic leader Mirek Topolanek and the Polish President Lech Kaczynski, 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, Kaczynski announced that Poland would agree to negotiate on the basis of the existing text and that it accepted Germany's plan to define a roadmap and agenda for institutional reform.

Treaty plus

Alexander Stubb (EPP-FIN) and Iñigo Mendez de Vigo (EPP-ES) called earlier this year 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. Along the same lines, 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.

The idea of a Treaty plus has also won support among members of the EP Constitutional Affairs Committee. Besides reaffirming its endorsement of the content of the Constitutional Treaty, the report of the EP Committee on Constitutional Affairs calls the Member States to agree a common approach in the fields of climate change, energy security, migration policy, the fight against terrorism, dialogue between civilisations, European social model and economic governance of the euro-zone.⁸ The German Presidency has been said to be working on additional protocols on social Europe, climate change and energy security.

SUBSTANCE - SPECIFIC QUESTIONS

Constitutional elements

There seems to be a broad agreement to remove all the constitutional elements (title, symbols, preamble - including reference to Christianity etc.) from the scope of the treaty.

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 Germany, 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 inheritance of Europe".

⁸ The report, which represents Parliament's contribution to the constitutional debate will be discussed and voted at the EP plenary session on 5-6 June.

For long during the re-launched debate on the Constitutional Treaty, Angela Merkel emphasised that she deplores the absence of a clear reference to Christianity in the Treaty. According to her, "no-one doubts that they [Christian values] significantly shape our life, our society." However, since some time already Merkel has been explicit saying that there are few chances for a reference to Christianity or God to be included. She has responded to enquires about reference to God saying "There is already a reference to churches in the draft Constitutional Treaty, which is important. -- unfortunately I can't guarantee anything else".

The reference to Christianity has been 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 remains insistent that it cannot accept the Treaty proposal especially due to the changes it would bring to the Council voting. Poland's own proposal for the revision of Council voting is that each Member State would get votes based on the square root of its population. This would mean, for example, that Germany with 82 million people would get 9 votes and Poland with its 38 million inhabitants 6. The qualified majority would require 14 countries out of 27 and 62% of votes. In the current draft, the qualified majority requires 55% of Member States and 65% of the population. In May the Czech Republic expressed its support for Poland's demand stating that also it cannot accept losing voting power in the change of the system. Other countries do not seem to support opening the voting weighs debate.

Some Member States are against an EU foreign minister and others reject the permanent president of the European Council. Tony Blair considers these key elements of a new treaty in addition to changes to the voting system and the reforms of the European Commission. On the other hand, UK does not want any more qualified majority voting for Justice and Home Affairs.

Red card mechanism

Poland, the Czech Republic and the Netherlands have joined forces to request a new mechanism to be established allowing a group of governments to call powers to be returned to Member States from the EU institutions. Both the European Parliament and the European Commission find the idea of a take-back mechanism unacceptable.

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.

The UK insists that the Charter should not have legal force. The supporters of a short treaty are keen on dropping that part. Some capitals are pushing for the Charter to be referred to only in one article which would stipulate that it will only be applicable to EU law and would give the Member States the right to adapt it to their own traditions and legislation. Others agree on only having a reference to it in one article but insist it to be fully legally binding.

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, requested social and workers' rights to be better taken on board. 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.

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

Chancellor 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.

Some countries (Netherlands) would like the Copenhagen criteria (accession criteria) to be written into the text but others warn that this might lead to the use of criteria as a legal barrier to further enlargements.

PROCESS

Step by step approach

Especially earlier in 2007, suggestions were made concerning a two-step approach. According to a French MP (and a chair of its Delegation for Europe) Pierre Lequiller, 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.

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.

Timetable and process during the German Presidency

The German EU Presidency will present a new treaty proposal 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 raised criticism in the European Parliament. The German Presidency has promised to include the Parliament once its proposal is ready.

Germany is now making its last efforts to prepare the talks at the European Council meeting of 21-22 June. The Summit will agree on the mandate of the Intergovernmental Conference (IGC) foreseen to take place during the Portuguese Presidency on the second half of this year. IGC may also be launched already by the German Presidency at the end of June. The ratification process is hoped to be concluded by the end of 2008, which would allow the new treaty to enter into force before the June 2009 European elections.

Referenda

Recently, as realism has gained ground over idealism, the voices calling for a referendum have tempered. Many of those who in principle would favour such procedure consider that even more important than having a referendum is to have some reforms through without further delays.

The Netherlands is not planning to hold a second referendum but the Dutch Government will ask its consultative body Raad van Staat to give its opinion on the issue. Nicolas Sarkozy would like to see the treaty ratified only through national

parliaments. In April Tony Blair dropped plans to hold a British referendum on the treaty. Angela Merkel is not in favour of an EU-wide referendum.

Denmark and Ireland have an obligation to hold a referendum.

OTHER DEVELOPMENTS

Berlin Declaration

On 25 March 2007 in Berlin, the EU celebrated the 50th anniversary of the Treaties of Rome. To reaffirm their commitment to the European project, the German EU Presidency representing the Member States together with the Presidents of the European Commission and the European Parliament signed a joint declaration.

This Berlin Declaration pays tribute to the positive outcomes of integration - peace, prosperity and the end of the division of the continent. It also reminds Europeans about common ideals including inviolability of human dignity, equality between men and women, peace and freedom, democracy and rule of law, mutual respect and shared responsibility, prosperity and security, tolerance and participation, and justice and solidarity.

Furthermore, the declaration depicts the shared challenges such as terrorism, organised crime and illegal migration, racism and xenophobia. It states the EU's endeavour to promote freedom and development in the world and to lead the way in energy policy and climate protection. It also states that it is only by acting together that the EU countries will be able to preserve the European ideal of society, which combines economic success and social responsibility.

Berlin Declaration (text available in all official EU languages):

[http://eu2007.de/en/About the EU/Constitutional Treaty/BerlinerErklaerung.html](http://eu2007.de/en/About%20the%20EU/Constitutional%20Treaty/BerlinerErklaerung.html)

Birthday speech of Angela Merkel:

http://eu2007.de/en/News/Speeches_Interviews/March/0325BKBerliner.html

CSC INVOLVEMENT IN THE DEBATE

The Church and Society Commission of the Conference of European Churches (CSC/CEC) has been involved in the debate on the future of Europe in numerous ways. It is currently preparing a letter to be sent to the German EU Presidency in early June.

The other recent initiatives include:

CEC Press Release issued on the eve of the 50th anniversary of the Rome Treaties, 23 March 2007.

<http://www.cec-kek.org/content/pr-cq0716e.shtml>

Meeting with the German Foreign Minister Frank-Walter Steinmeier to discuss the future of Europe, 15 January 2007.

<http://www.cec-kek.org/content/pr-cq0703e.shtml>

Church Leaders' meeting organised on 12-13 December 2006 approved an "Open Letter from church leaders to political leaders in Europe".

<http://www.cec-kek.org/content/openletter13.shtml>



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