



Conference of European Churches
Conférence des Églises Européennes
Konferenz Europäischer Kirchen

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CSC Report on the treaty reform

The European Council held on 21-22 June 2007 managed to reach an agreement on the main questions which have divided the EU Member States throughout the debate on the treaty reform (constitutional debate)¹. The hard work of the German EU Presidency paid off and it was able to hand over the Presidency to Portugal with a very detailed and precise mandate for the Intergovernmental Conference (IGC).²

The approved mandate preserves the substance of the Constitutional Treaty (CT). However, as the Prime Minister of Luxembourg Jean-Claude Juncker rightly stated, the June Summit agreed on “a simplified treaty which is very complicated”.

IGC MANDATE

STRUCTURE

The Constitutional Treaty signed in October 2004 will not enter into force. Instead, most of its innovations will be incorporated in the existing two treaties: Treaty on the European Union (TEU) and the Treaty establishing the European Community (TEC). Of these the latter will be renamed the Treaty on the Functioning of the Union. The entire package of innovations is also called “Reform Treaty”.

CONSTITUTIONAL ELEMENTS

All the constitutional elements were deleted, including any terminological reference to “constitution” and symbols such as the flag, the anthem and the motto. The proposed denominations “law” and “framework law” will be abandoned and the existing denominations “regulations”, “directives” and “decisions” will be retained.

¹ For detailed information on this debate, please consult the CSC Report on the Constitutional Debate March 2007 (<http://www.cec-kek.org/pdf/ReportConstitutionalDebate2007.pdf>) and the CSC Report on the Constitutional Debate June 2007 (<http://www.cec-kek.org/pdf/ConstitutionalDebate.pdf>).

² Presidency conclusions of the Brussels European Council 21-22 June 2007 including the draft mandate of IGC: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/94932.pdf.

PREAMBLE

The preamble of the EU Treaty (TEU) will be amended in order to include the following sentence: "Drawing inspiration from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law."

VALUES AND OBJECTIVES

Article 2 of the CT on the values of the Union will be inserted into the TEU. Article 3 of the CT regarding objectives will be adopted with one exception. France successfully lobbied to exclude the objective of "free and undistorted competition". On the request of the UK however, this removal will be compensated by a legally-binding protocol reaffirming the commitment to ensuring that competition is not distorted. Furthermore, the number of references to competition in the existing treaties will remain. The legal position in relation to competition therefore remains unchanged.

DIALOGUE WITH CHURCHES AND CIVIL SOCIETY

The content of Article 52 (CT) regarding the status of churches and religious associations and the open, transparent and regular dialogue with them will be retained. It is also foreseen to incorporate into the treaties the innovations concerning democratic equality, representative democracy and participatory democracy (open, transparent and regular dialogue with civil society and the citizens' initiative).

Article I-52 (CT) on the status of churches and non-confessional organisations stipulated the following:

1. Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.
2. The Union equally respects the status under national law of philosophical and non-confessional organisations.
3. Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations.

CHARTER OF FUNDAMENTAL RIGHTS

Reference to the Charter of Fundamental Rights will only be made in Article 6 (TEU) but it will become legally binding except for the UK which was allowed to opt-out.

SINGLE LEGAL PERSONALITY

The EU will have a single legal personality, which allows it to adhere to international conventions.

PRIMACY OF EUROPEAN LAW

Concerning the primacy of European law, the IGC will adopt a Declaration which reiterates that, in accordance with well settled case-law of the EU Court of Justice, the Treaties and the legislations adopted by the Union on the basis of those Treaties have primacy over the legislations of Member States.

QUALIFIED-MAJORITY VOTING

The Summit agreed to extend the QMV to more than 50 new areas (energy market liberalisation, space policy, humanitarian aid, judicial cooperation in criminal matters etc.) as provided for in the CT, except for allowing the UK to opt-out in respect of its criminal law system and police and judicial processes in addition to its earlier opt-outs in migration and asylum issues. Unanimity remains the rule for foreign policy, social security, taxation and culture.

COUNCIL VOTING SYSTEM

Poland lost its battle over the Council voting system but managed to postpone the entering into force of the new system until the beginning of November 2014 with a possibility for further delay until the end of March 2017. According to the new system, the qualified majority requires at least 55% of the members of the Council representing Member States comprising at least 65% of the population of the Union.

WITHDRAWAL FROM EU MEMBERSHIP

As foreseen, the Reform Treaty will include an article on the voluntary withdrawal of a Member State from the Union.

EU FOREIGN MINISTER

The title of a Union Minister for Foreign Affairs was changed to that of “High Representative of the Union for Foreign Affairs and Security Policy”. The High Representative will have a challenging task in fulfilling the functions currently exercised by both the High Representative for Common Foreign and Security Policy and that of the Commissioner for External Relations. Furthermore, the High Representative will hold the position of European Commission Vice-President and lead the EU diplomatic corps.

STABLE COUNCIL PRESIDENCY

The creation of a stable European Council presidency was agreed. The President of the European Council will have a mandate of two and half years which can be renewed once.

NATIONAL PARLIAMENTS

The Summit agreed on further enhancement of the role of national parliaments. The revised article on the subject affirms the right of national parliaments to be kept informed on EU developments and stipulates their role in safeguarding the respect of the principle of subsidiarity. Moreover, national parliaments will be granted a role in controlling the initiatives of the Commission. If a draft legislative act is contested by a simple majority of the votes allocated to national parliaments, the Commission will re-examine the draft. It will have to deliver a reasoned opinion if it chooses to maintain the draft.

EUROPEAN PARLIAMENT

After the ratification of the Reform Treaty, co-decision procedure will become the ordinary legislative procedure for the great majority of legislative acts (cf. Arts I-34 and III-396 of the CT), thus substantially strengthening the role of the European Parliament (EP). The main new areas where the co-decision procedure will apply are agriculture, police and judicial cooperation in criminal matters. EP legal services will in the near future study the concrete effects of the change.

EUROPEAN COMMISSION

The number of Commissioners will be reduced to two thirds of the number of Member States as of 2014. The member of the Commission shall be selected on the basis of equal rotation between the Member States.

SERVICES OF GENERAL INTEREST

There will be a specific protocol (III, 19, i) concerning services of general economic interest. The protocol recognises that the shared values of the Union include, in particular, “the essential role of the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of users”. Furthermore, it acknowledges “the diversity between these services and the differences in the needs and preferences of users that may result from different geographical, social and cultural situations”. The shared values also include a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights.

Finally, the protocol states that the provisions of the treaties do not in any way affect the competence of Member States to provide, commission and organise *non-economic* services of general interest.

SOCIAL ASPECTS

The social clause (cf. III-117 of the Constitutional Treaty) will be incorporated into the treaties. It 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.

ENLARGEMENT

The Dutch proposal to make the Copenhagen criteria legally binding was not approved. The Copenhagen criteria are the rules that define whether a country is eligible to join the European Union. The criteria require that a state have the institutions to preserve democratic governance and human rights, a functioning market economy, and that the state accept the obligations and intent of the EU.

ENERGY AND CLIMATE CHANGE

The Summit agreed on new references regarding “the spirit of solidarity between Member States” in relation to energy and climate change without conferring new competences on the Union in those areas.

INTERGOVERNMENTAL CONFERENCE

The Intergovernmental Conference (IGC) will be launched on 23 July with the aim of adopting the new Treaty at the extraordinary European Council on 18-19 October 2007. The Portuguese EU Presidency is to submit a new draft Treaty proposal right at the beginning of the IGC.

The IGC will be conducted under the overall responsibility of the Heads of State or Government assisted by their foreign ministers. The European Parliament will have three representatives at the IGC and the European Commission one.

The EP, together with the European Commission and the European Central Bank (ECB), has been invited to present its formal opinion on the opening of the IGC. The EP approved its opinion on 11 July. The report prepared by the chairman of its Constitutional Affairs Committee, Mr Jo Leinen (PES-DE) gives green light to IGC. In line with the generally positive view of the European Parliament regarding the treaty reform (the EP supported the Constitutional Treaty), it welcomes the precision of the mandate and the tight timetable for the IGC and the fact that the Reform Treaty safeguards much of the substance of the CT. Consequently, it regrets the lack of ambition to creating a single constitutional treaty and the removal of constitutional elements. Moreover, it considers that the number of opt-outs granted to certain Member States could lead to a weakening of the cohesion of the Union. The report also states that the mandate does not sufficiently address the new challenges the Union is facing since the CT was signed.³

REFERENDA

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. In France the new treaty will only be ratified through the national parliament. In the United Kingdom both Tony Blair, who took part in the Summit, and his successor Gordon Brown have indicated that, due to derogations obtained at the June Summit, a referendum will not be required. This decision has raised fierce criticism among the British press and the Conservatives.

Denmark and Ireland have an obligation to hold a referendum in the case of a transfer of sovereignty to a supranational organisation but a definitive decision will only be made later this year. Poland, Slovakia and the Czech Republic have not yet adopted their position in this regard.

The ratification process is hoped to be concluded by the end of 2008, which would allow the new Treaty to come into force before the June 2009 European elections.

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.

Recent initiatives include:

³ The Jo Leinen report on the convening of the Intergovernmental Conference (IGC): the European Parliament's opinion (Article 48 of the TEU) is available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2007-0279+0+DOC+PDF+V0//EN&language=EN>. The text as adopted in the EP Plenary will soon be available here: <http://www.europarl.europa.eu/activities/expert/ta/calendar.do?language=EN>.

A joint CSC-Eurodiaconia statement on the social dimension of the Constitutional Treaty, 19 June 2007.

<http://www.cec-kek.org/content/pr-cq0729e.shtml>

A CSC letter to German Chancellor Angela Merkel on the eve of the June Summit, 6 June 2007.

<http://www.cec-kek.org/content/pr-cq0725e.shtml>

A 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>

A 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>

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

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



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