

# The European Constitution

"The European Parliament endorses the Constitutional Treaty and wholeheartedly supports its ratification"(\*): it creates greater clarity as to the nature and objectives of the Union, gives it greater effectiveness and a strengthened role in the world, improves democratic accountability and gives more rights to its citizens.

(\*European Parliament resolution of 12 January 2005).

## What is the European Constitution?

In order to work well with 25 Members, the European Union needs to be more effective, more transparent, more democratic. This is why the 25 have decided to replace the existing Treaties with a Treaty establishing a Constitution for Europe, commonly known as the *European Constitution*<sup>1</sup>.

The European Constitution defines the values, fundamental objectives and spheres of action of the European Union and puts in place the machinery whereby its institutions can operate.

In determining the Union's powers, it also sets the boundaries which it must not overstep. The Union takes action only when it can achieve the desired objective more effectively than would be possible at national, regional or local level. This is known in political jargon as the "subsidiarity" principle.

So the Constitution sets the rules: the players then have to play the game!

## Who drew up the Constitution?

A Convention, made up of holders of elected offices at European and national level, and of representatives of the governments and the European Commission, was held and produced a draft European Constitution. The 25 adopted this in June 2004 and signed it in October 2004. In order to enter into force, it will have to be ratified by the 25 Member States of the European Union. This may happen either by vote in parliament or by referendum.

## What you need to know about the Constitution

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<sup>1</sup> The Treaty establishing a Constitution for Europe comprises 448 articles divided into 4 parts :

1. The fundamental provisions of the Constitution: definition of the European Union, its objectives, its powers, its institutions and its decision-making procedures.
2. The Charter of Fundamental Rights.
3. The policies and functioning of the Union.
4. The procedures for adoption and revision of the Treaty.

- ▶ **The Constitution defines the Union as a democratic and open Union of equal citizens and equal states. It proclaims the Union's values.**

The European Union is founded first and foremost on values. The preamble and the opening articles of the Constitution set the tone: the Union "draws inspiration from the cultural, religious and humanist inheritance of Europe" and thus defends universal values: the rights of the human person, freedom, democracy, equality and the rule of law. It aspires to be "united in diversity" and open to all European States which respect its values.

It highlights the rights of persons belonging to minorities, pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men.

Finally, by invoking "the will of the citizens and States of Europe to build a common future," the Constitution clearly affirms that the European Union is both a Union of citizens and a Union of States (Article 1 of the Constitution).

#### What is new in the Constitution

**Fundamental rights for a fundamental law.** The economic foundations are still essential, but the Constitution places the European citizen at the forefront.

This is shown by the fact that it incorporates the Charter of Fundamental Rights which the Member States have already signed, thus giving it binding force. Specifically, citizens may rely on the European Court of Justice to ensure that these rights are respected in the carrying out of the Union's policies. So the Union will not confine itself to the proclamation of grand principles!

- ▶ **... it confirms and clarifies the Union's policies...**

Internal market without borders, freedom of movement and establishment, competition, currency, agricultural policy, reducing the development gaps between regions, the budget...<sup>1</sup> : these European policies are not substantially changed by the European Constitution. It sets out the objectives of the various policies. It does not define their content. It also permits the Member States to lead the way in some policies without forcing the others to keep up. Finally, it opens the way to a form of direct democracy.

#### What is new in the Constitution

**The economy, social security, the environment.** In terms of economic and

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<sup>1</sup> The annual budget of the European Union currently represents some 1% of the Union's Gross Domestic Product. The Constitution provides that the European Parliament and the Council will adopt this budget jointly. The annual budgets form part of a financial framework set for a period of several years by the Council and the Parliament.

social policy, the Constitution aims at "a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection ... of the environment".

The countries of the Euro Group (those countries which have the euro as their currency) may decide by qualified majority (65% of the population, 55% of the Member States in question) on economic policy guidelines concerning the euro area. As at present, the European Central Bank will be independent in its conduct of the Union's monetary policy.

**Enhanced Cooperation.** The Constitution will allow one third of the Member States to pursue joint action among themselves, subject to approval by the European Parliament and the Council: this is known as "enhanced cooperation". The others may join them later. Such cooperation is already possible in the area of defence.

**Participatory Democracy.** The Constitution provides for regular dialogue with citizens, associations representing civil society, and the social partners.

**Popular initiative.** A million citizens from several Member States may ask the Commission to propose a law.

► ... it promises freedom, security and justice within the borders of the Union...

Faced with the scourges of organised crime and terrorism, which obviously do not stop at borders, the European Union is naturally concerned with problems of justice and policing, which were initially the preserve of the Member States. Hence the concept of the "area of freedom, security and justice", which appeared in the European Union in the 1990s. This area will be established gradually: no identity checks at internal borders, introduction of a common policy on the right of asylum, immigration and external border controls, Europol, mutual recognition of court judgments, etc....

**What is new in the Constitution**

**Better protection for citizens.** The Constitution strengthens the Union's capacity to protect itself and its citizens. For example, it envisages the creation of a European Public Prosecutor's Office to combat fraud affecting the Union's finances. The powers of this Office may be extended to cover the fight against cross-border serious crime (terrorism, the traffic in human beings, etc. ...).

As a general rule, the Member States' veto over matters of justice and policing is abandoned, and the European Parliament is placed on the same footing as the Council for the adoption of laws.

► ... it gives Europe a role in the world, and a common Foreign Policy...

Foreign affairs are a sensitive area, close to the hearts of the Member States. At the same time, the European Union can only play a role in world affairs if it is able to let its voice be heard.

What is new in the Constitution

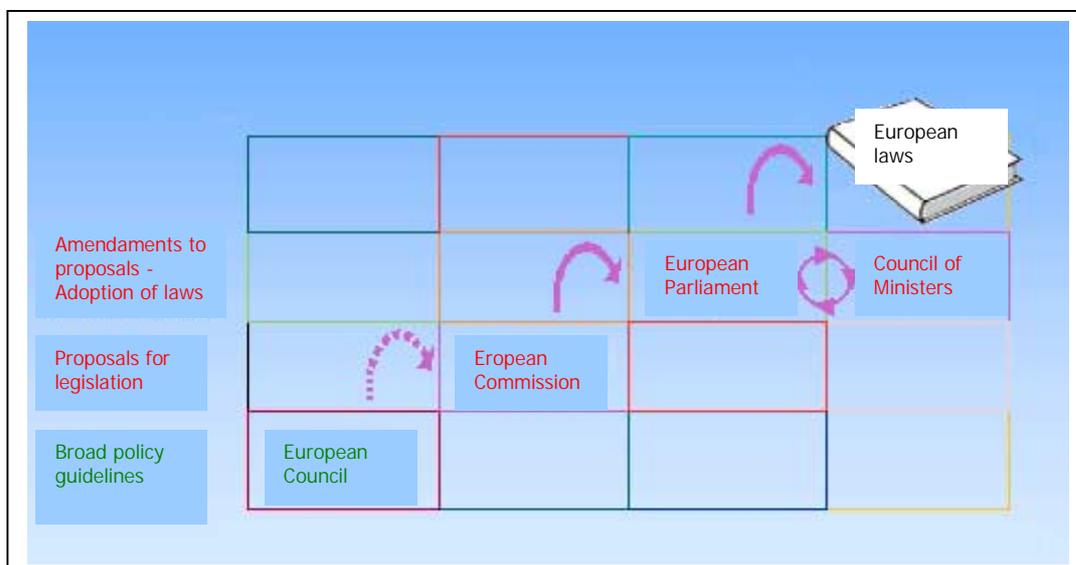
**A Foreign Minister for the European Union.** The Constitution creates the post of Foreign Minister of the Union, with the job of conducting the European Union’s fledgling foreign policy - a policy which remains largely subject to the rule of unanimity. The Minister of Foreign Affairs will also be concerned with trade relations and development policy.

**A defence for Europe.** To guarantee peace and security, the Constitution permits Member States, if they wish, to take joint action (particularly operational missions) and even to undertake structured cooperation among themselves. This does not affect the position of the Member States in relation to NATO.

Another new feature: the Constitution expressly provides that the Member States must provide one another with aid and assistance in the event of armed aggression, terrorist attack or natural disaster.

- ... it improves the functioning of an enlarged European Union: The European Parliament will adopt most European laws, the European Council will have a full-time presidency, and the post of Minister of Foreign Affairs of the Union will be created.

The ordinary legislative procedure will look like this: the European Commission proposes laws, taking account of the European Council’s broad policy guidelines. The European Parliament and the Council of Ministers, on an equal footing, must reach agreement on any changes they judge necessary, and then adopt the amended proposals.



## What is new in the Constitution

**The European Parliament becomes a fully-fledged legislature.** In a number of areas, the European Parliament already adopts laws on an equal footing with the Council. Under the Constitution, this becomes the rule in 9 cases out of 10.

There are currently 732 Members of the European Parliament. This number may rise to 750, but no further. No Member State may have more than 96 or less than 6 MEPs.

**A (full-time) President for the European Council.** The European Council, comprising the Heads of State or Government and the President of the European Commission, draws up the Union's broad policy guidelines. At present its rotating presidency is held every 6 months by a different country. The Constitution provides that it will appoint a President for a period of 2½ years, renewable once.

**A new system of voting in the Council of Ministers** The Council of Ministers, on which the governments of the Member States are represented, will vote much less often by unanimity and much more by "qualified majority". At present this qualified majority is calculated by means of complicated weightings. Under the Constitution, a majority will be obtained in most cases if the votes represent 55% of the Member States and 65% of the population.

**Selection of the Commission President to be linked to the result of the European elections.** On the basis of the broad policy guidelines, the European Commission proposes laws and ensures they are applied. It negotiates international agreements.

Every 5 years, the President of the Commission will be elected by the European Parliament on a proposal from the European Council, taking account of the results of the European elections. The votes of citizens are thus doubly important, since it is the Parliament which adopts laws together with the Council of Ministers, while the Commission proposes them.

**The number of Commissioners – currently equal to the number of Member States – is due to be reduced in 2014 to two-thirds of the number of Member States. The equality of States in this area will be guaranteed by means of a rotation system.**

**The European Court of Justice and citizens' fundamental rights.** The Court of Justice interprets the law of the European Union and ensures that it is

applied. National courts, European institutions, businesses or individuals may bring cases before it. One important change: it will ensure that the fundamental rights incorporated in the Constitution are respected in the law of the European Union and in the implementation of European policies by the Member States.

A role for national parliaments. As soon as a European law is proposed, national parliaments will ensure that it does not overstep the boundaries set by the Constitution.

## Questions

**What will happen if there is a problem with ratification?**

The Constitution will enter into force on 1 November 2006 if all the Member States have ratified it. If at that date not all Member States have done so, it will enter into force shortly ("the first day of the second month") after the final ratification.

The text of the Constitution itself does not provide for the possibility of one or more Member States refusing to ratify it. Until all Member States have ratified it, the former Treaties will continue to apply. However, if by November 2006 four fifths of Member States have ratified the Constitution but one or more states "have encountered difficulties in proceeding with ratification", the "the matter shall be referred to the European Council" (Declaration annexed to the Constitution).

Problems have arisen with ratification in the past, for example with the ratification of the Maastricht Treaty by Denmark in 1992, and of the Treaty of Nice in 2001 by Ireland. Political solutions were found then to prevent the common project from being abandoned.

**What if a Member State violates the fundamental values of the Union?**

If a Member State commits a serious breach of the values of the European Union, its rights may be suspended, after the launching of a procedure which must obtain the approval of the European Parliament. This is already the case, and the European Constitution confirms this possibility.

**What if a Member State wishes to leave the European Union?**

There is often talk about the problems posed by joining the Union, but would it be possible for a Member State to decide to leave? In the past there was no provision for this eventuality, but this omission has now been rectified. The State in question notifies the European Council of its intention. The arrangements for withdrawal are negotiated and an agreement is concluded by the Council after the approval of the European Parliament.

**How can the Constitution be revised?**

To revise the Constitution, unanimity among the Member States will still be needed, as has always been the case in the past. What is new is that the European Parliament, like any government or the European Commission, may also request such revision, which will in principle be prepared by a new Convention.