

## **Questions & answers on the Constitution**

### **1. Why do we need this new Constitution? Can't we live with the treaties we already have?**

The European Union works reasonably well under its present treaties. But the system has become very complex and hard for most people to understand.

That's why, several years ago, the EU's presidents and prime ministers asked a team of experts to draw up a single, simplified Treaty - the "Constitution for Europe". EU leaders finalised the new text in 2004.

The Constitution brings together the achievements of the last fifty years. It makes the European Union clearer and more transparent for everyone. Simpler decision-making rules also make the EU work more effectively.

The Constitution makes the European Union more democratic by giving a bigger role to the European and national Parliaments, and by giving EU citizens the right to ask the Union to launch new initiatives.

All in all, the Constitution is a big improvement over the present treaties, and brings important new benefits to the EU's citizens and its Member States.

### **2. Will the Constitution create a European « super-State »?**

No, it won't. Although it is called a "Constitution", it is quite simply an international treaty agreed and ratified by sovereign countries, which remain in charge of the Union.

Article I-1 of the Constitution clearly states that the Union reflects the will of its citizens and its Member States, and that its powers are given to it by these States.

The Constitution will make the Union stronger and more effective, but not by taking any powers away from its Member States.

The basic relationship between the Union and the Member States will stay the same, and any further major changes to the Constitution will still have to be decided unanimously by the Member States.

Article I-5 of the Constitution explicitly requires the Union to respect the national identities of the Member States, including their systems of regional and local self-government.

### **3. Does the Constitution restrict the sovereignty of its Member States?**

Being part of the European Union means that countries pool their sovereignty. In other words, in areas where they have decided to work together, EU countries take joint decisions.

They do so via EU institutions (such as the Parliament, Council and Commission) which they have set up for that purpose. They have given these institutions specific powers and responsibilities.

This way of taking decisions jointly is called the "Community method". It is designed to work for the common interest of all EU countries. The rules of the system are spelt out in the EU treaties, which are agreed unanimously by the Member States.

The Constitution does not make any major changes in the present system. It does extend the scope of the "Community method" to cover the areas of judicial and police cooperation and defence – but this has been agreed unanimously by all the Member States, and the purpose is to enable them to tackle new challenges more effectively together.

### **4. Does the Constitution overrule national law?**

Yes, but so do the present EU treaties, so this is nothing new. We also have to be clear what "overrule" means.

The Constitution says that EU law (i.e. the Constitution itself and the laws passed by the EU institutions) have "primacy" over the law of the Member States. What does this mean?

First, by transferring powers to the EU institutions and setting up the "Community method" of decision-making, the EU Member States have created a body of law which applies to themselves and their citizens. EU law is an integral part of the law in each Member State, and the courts in every EU country are bound to apply it.

This is spelt out in the Constitution for the first time, but it is not new. Indeed, it was made clear as long ago as 1964 by the European Court of Justice in its judgment in the case of Costa v. ENEL.

Second, this "primacy" applies only in fields where the EU Member States have given powers and responsibilities to the Union. EU law does not in any way affect national laws unless they deal with matters for which the EU has responsibility.

## **5. Does the Constitution define the geographical limits of the Union?**

Not really. Article I-1 says that "The Union shall be open to all European States which respect its values and are committed to promoting them together". Since there is no legal definition of what "European" means, geographical, historical and political considerations will have to be taken into account when interpreting this Article.

Even more important, applicant countries must be committed to the Union's values, which are spelt out in Article I-2: respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.

Also to be taken into account is Article I-57 of the Constitution, concerning the special relationship that the Union may develop with its neighbouring countries.

## **6. Will the Constitution make it easier for new members to join the Union?**

No, the Constitution does not make it any easier. As before, the accession of any new member requires first a unanimous decision of the Council and the consent of the European Parliament for starting the negotiations. At the end of the negotiations, a formal agreement must be concluded and ratified by all the Member States and the applicant country itself (see Article I-58).

The actual conditions a country must meet before joining are rather tougher than before. Article I-58 makes it clear that the candidate country will have to subscribe to the Union's fundamental values. These include respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities (see Article I-2). Moreover, the applicant country must not only respect, but also be committed to promoting these values (see Article I-1).

## **7. Why was the reference to God not included in the final text of the Constitution?**

In some countries, the national constitution traditionally contains a reference to God. When the "Constitution for Europe" text was being drafted and negotiated, some governments said they wanted it to include a reference to God or to the Christian tradition of the Union. Others, defending the secular nature of the State and its neutrality with regard to different religions, didn't want any specific religion to be named in the text of the European Constitution.

In its preamble, the Constitution recognises that the EU draws inspiration from Europe's cultural, religious and humanist inheritance. This wording is neutral and appropriate. Indeed, any reference to individual religions could be seen as causing division between European citizens.

In addition, Article I-52 of the Constitution obliges the Union to engage in an open, transparent and regular dialogue with churches and religious associations, just as it does with civil society.

Finally, the Charter of Fundamental Rights now enshrined in the Constitution lays down that everyone has the right to freedom of thought, conscience and religion (Article II-70).

## **8. Does the Constitution increase the number of decisions taken in "Brussels"?**

No, quite the opposite. By making clear who is responsible for doing what in the European Union, the Constitution reduces the risk of unnecessary centralization.

It starts from the principle that the Union has only the powers which are conferred on it (Article I-11). This means that the Union ("Brussels") cannot act in a field where the Constitution, approved by all Member States, does not give it any powers or responsibilities.

Then the Constitution goes on to classify the Union's powers and responsibilities (its "competences") into three categories:

- The Union has exclusive competence in areas such as the customs union, the common commercial policy and monetary policy in the euro area (Article I-13).
- The Union shares competence with the Member States in many other important areas, such as environment, consumer protection, transport, energy and the internal market (Article I-14).
- In other areas such as education or sport, the Union can only support, coordinate or complement action taken by the Member States (Article I-17).

The Constitution also states that the Union must respect the national identities of Member States, including their systems of regional and local self-government (Article I-5).

The principle of *subsidiarity*, enshrined in the Constitution, means that the Union can act only if the objectives of the action cannot be sufficiently achieved by the Member States at central, regional or local level (Article I-11). The Constitution gives national parliaments a new and important role as "watchdogs," making sure the European Commission respects this principle when it puts forward proposals for legislation.

**9. Does the Constitution make the decision-making process simpler and more efficient?**

Yes it does. The Constitution clearly sets out three categories of competences for the EU, which makes it easier for citizens to understand who does what (Article I-12). It introduces a single set of six types of legal instrument (Article I-33), which will replace the present jumble of 36 different types!

The Constitution extends "co-decision" to almost all policy areas. In other words, the European Parliament and the Council will take most decisions together, sharing legislative power equally in almost every field.

It also introduces simpler rules for "qualified majority" voting in the Council. Under the new rules, a decision will be adopted if it gets the support of 55% of the member states representing 65% of the population.

**10. What will the Constitution change for an "ordinary citizen"?**

The Constitution confirms everything the present treaties say about Union citizenship, and it gives the subject a higher profile. Article I-10 guarantees that all European citizens have the following rights:

- to move and reside freely within the territory of the Union;
- to vote and to stand as candidates in elections to the European Parliament and in municipal elections in the Member State where they live, under the same condition as nationals of that country;
- to diplomatic protection in third countries;
- to petition the European Parliament;
- to apply to the European Ombudsman;
- to write to, and obtain a reply from, EU institutions in any of the Constitution's languages.

In addition, the Constitution incorporates the Charter of Fundamental rights (see answer to question 11).

## **11. How will the Charter improve the rights of European citizens? What impact will it have?**

The Charter of Fundamental Rights was approved in Nice in 2000. It sets out in some fifty articles a real catalogue of rights that all citizens of the Union should enjoy. They cover issues relating to dignity, freedom, equality, solidarity, citizenship and justice.

Making the Charter an integral part of the Constitution gives it binding legal force, and some rights in the Charter go beyond the more "traditional" rights guaranteed by the European Convention on Human Rights.

Some of the articles lay down clear prohibitions, such as the article which forbids the death penalty in the Member States of the Union (art.II-62). Others are of a more "declaratory" nature, such as the articles stating that the Union shall ensure a high level of consumer protection (art.II-98) or a high level of environmental protection (art.II-97). Articles like this will obviously need legislation to give them real substance.

The EU institutions and member states must respect the rights written into the Charter, and the Court of Justice will ensure that they do so.

All this guarantees the rights and freedoms of EU citizens. But it does not in any way extend the European Union's powers.

## **12. Will citizens be able to present initiatives to the Union's institutions?**

Yes, and this is a great step forward for democracy.

Article I-47 of the Constitution introduces the European Citizen's Initiative. This is the EU's first ever "bottom-up" decisionmaking process.

If EU citizens think a new EU law is needed in order to implement the Constitution, they may ask the Commission (within the limits of its powers) to propose such a law. The petition must be signed by at least one million citizens who are nationals of a significant number of Member States.

The European Citizens' Initiative can cover any subject matter for which the EU has responsibilities. It might be child protection on the internet, nature conservation, food labelling, health and safety at work, etc.

The Commission is not obliged to automatically endorse a citizens' initiative, and it has to act within a framework of rules. So a European law will be needed, specifying (for example) how European citizens can draft an initiative, collect signatures and present their petition. It must also set time limits and conditions for the Commission's response.

### 13. Will national parliaments have a greater say in European affairs?

Yes, undoubtedly. For the first time, national parliaments will be directly involved in the European decision-making process. At a very early stage, when a European law is being drafted, national parliaments will act as “subsidiarity watchdogs.”

That means that every draft European law must be sent to all national parliaments of the twenty-five Member States. The parliaments will then have the opportunity (within 6 weeks) to check whether the draft complies with the principle of *subsidiarity*<sup>1</sup> - in other words, whether the author of the proposed legislation (usually the Commission) has exceeded its powers.

If a third of the parliaments (a quarter in the area of freedom, security and justice) consider that the proposed legislation does not comply with the principle of subsidiarity, the draft must be reviewed. Although the Commission will be free to maintain its proposal, in practice the Commission will find it very hard to ignore the collective will of national parliaments, and is very likely to amend or withdraw its proposal.

So this “yellow card” in the hands of the national parliaments is likely to be very effective. Never before have national parliaments enjoyed such rights.

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<sup>1</sup> “Subsidiarity” means that – in the areas of shared competence – the Union may only act if it can demonstrate that the proposed action can be better achieved at Union level than by Member States (it has to show that there is an “added value”).

#### **14. Does the Constitution weaken what the EU has achieved in the field of social protection?**

Not at all. The existing arrangements are maintained, and the word "social" appears 89 times in the Constitution!

Only minor changes have been introduced, and these are not a step backwards. Quite the opposite, in fact: the Constitution contains some useful improvements such as extending the normal voting procedure to cover the coordination of social security arrangements for migrant workers.

A highly competitive social market economy, full employment and social progress are listed among the Union's objectives (Article I-3). The Union is responsible for coordinating the Member States' economic policies and employment policies (art.I-15), and this allows for a possible coordination of their social policies.

When defining and implementing its policies, the European Union has to take into account social goals such as promoting a high level of employment, adequate social protection and fighting against social exclusion (Article III-117).

The Charter of Fundamental Rights, now an integral part of the Constitution, has a section on "solidarity". This sets out a number of rights and principles directly relevant to the social field, such as the right of workers to be informed and consulted, the right to negotiate collective agreements and to take collective action, the right to protection against unjustified dismissal, the right of access to social security and social assistance, etc.

## **15. Does the Constitution put public services at risk?**

No. For the first time in the history of the Union, the Constitution gives an autonomous legal existence to public services, and recognises their vital role in social and regional cohesion (Art.III-122).

In its title IV on Solidarity, the Charter states that the Union recognises and respects the right of access to services of general economic interest. The Constitution describes them as services to which "all in the Union attribute value", and recognises their role in promoting the EU's social and territorial cohesion.

The Constitution requires the Union and its Member States to ensure that these services operate under conditions that enable them to play their role. For example, in the section on transport, the Constitution clearly says that (state) aids are compatible with the Constitution if they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of public service (art.III-238).

Finally, the Constitution contains a new basis for laws laying down the principles and the conditions (especially economic and financial conditions) under which services of general economic interest operate (Article III-122).

These laws must not encroach upon the competence of the Member States to provide, to commission and to fund such services. This is an innovation: under the present treaties, these services are subject only to the EU's competition and internal market rules.

## **16. Does the Constitution maintain the EU's achievements in the environmental field?**

Yes, entirely. The Constitution states that one of the Union's objectives is to work for the sustainable development of Europe based, in particular, on a high level of protection and improvement of the quality of the environment (Art.I-3).

Although the existing treaties refer to the concept of sustainable development, it is not very clear or visible. The Constitution gives it a much higher profile and a clearer definition. Sustainable development is also listed as one of the fundamental objectives of the Union in its relations with the wider world (Art.I-3 and III-292). This is totally new.

The environment is one of the competencies shared between the Union and the Member States. When the Union takes action in this field, it must be in pursuit of clear objectives: preserving, protecting and improving the quality of the environment; protecting human health; promoting prudent and rational utilisation of natural resources; promoting measures at international level to deal with regional or worldwide environmental problems.

For the first time, the Constitution contains a section on energy. It says that the EU's objectives in this field are to ensure the proper functioning of the energy market, in particular energy supply and the promotion of energy efficiency and energy saving, and the development of new and renewable forms of energy.

Finally, the Constitution contains a "solidarity clause" (Art.I-43) indicating that the Union and its Member States must act jointly in a spirit of solidarity if a Member State is the victim of a natural or man-made disaster.

## **17. Does the Constitution give Europe a stronger voice in the world?**

Yes, undoubtedly, and that is one of its main achievements.

Everything the present treaties say about the EU's relations with the rest of the world is brought together in Title V of the Constitution. This makes it all more coherent and easier to read.

The Constitution also spells out the principles and objectives for the Union's external action: democracy; the rule of law; the universality and indivisibility of human rights and fundamental freedoms; respect of human dignity; the principles of equality and solidarity (Article III-292).

The Constitution creates the post of EU Minister for Foreign Affairs. This person will have two roles: within the Council, he/she will be the High Representative for the Common Foreign and Security Policy; at the same time, he/she will be the Commissioner for External Relations.

This will give the EU a higher profile in the world, and a single human face to represent it in international relations. It also means that the "common European interest" can be promoted in foreign and security policy.

The Constitution also introduces a specific legal basis for humanitarian aid, emphasising the principles of impartiality, neutrality and non-discrimination. In addition, it contains the legal basis for setting up a European Voluntary Humanitarian Aid Corps (Article III-321).

## **18. Will the Constitution create a European army?**

No, it won't. The Constitution makes the common security and defence policy an integral part of the common foreign and security policy (Art.I-41) and it says that Member States must make civilian and military capabilities available to the Union for implementing this policy. But it also makes clear that any decisions in this area must be taken by the Council unanimously. Every Member State has the right to veto such operations.

The Council may entrust disarmament operations, humanitarian and rescue tasks, military advice, assistance and peace-keeping tasks to a group of Member States which are willing and able to carry them out (Article III-310). No Member States can be forced to take part.

The European Defence Agency will be open to all Member States wishing to be part of it (Article III-311). Equally, permanent structured cooperation on security and defence is only open to Member States that wish to participate, that meet the criteria and have made commitments on military capabilities (art.III-312). Any Member State wishing to withdraw from a permanent structured cooperation on defence may do so at any time.

## **19. Why are there different national procedures for ratifying the Constitution?**

It is up to each country to decide how it will ratify the Constitution, according to its own constitutional rules. It could do so by parliamentary approval and/or by referendum.

If the approval is done by the national Parliament, the procedure depends on the structure of the State and of the parliament. Some parliaments are composed of a single chamber (Greece for example); some have two chambers, and both must vote on the Constitution (as in Germany). In some Member States, such as Belgium, the Constitution also has to be approved by the regional assemblies.

Referenda will be held in ten Member States: the Czech Republic, Denmark, France, Ireland, Luxembourg, the Netherlands, Poland, Portugal, Spain and the United Kingdom. Some of the referenda (in Luxembourg, the Netherlands, Spain and the United Kingdom) will be consultative only, not legally binding, but the governments concerned are nevertheless likely to act in accordance with the people's wishes expressed in those referenda.

## **20. What will happen if the Constitution is rejected?**

To come into force, the constitutional Treaty has to be ratified by all the twenty-five Member States (Article IV-447).

There are no formal rules saying what should be done if ratification fails. However, the Heads of State or Government of the 25 Member States took a political commitment to deal with the matter within the European Council to try to find a solution if, two years after its signature, four fifths of the Member States have ratified it and one or more Member States have had difficulties in going ahead with ratification.

They might, for example, try a second time to have the Constitution ratified; they might hold a new intergovernmental conference, or make other ad hoc arrangements.

Until a solution is found, the current treaty of Nice would remain fully in force.

## **21. If the Constitution is not ratified, can a group of Member States go ahead using the system of “reinforced cooperation”?**

Yes, they could, but following the rules laid down in the present treaties, and under certain strict conditions.

If the Constitution is not ratified by one or more Member States, the current Treaties (Nice) would continue to apply. This means that all current twenty-five Member States would continue to belong to the existing Union.

The Nice Treaty (Article 43) allows Member States to go ahead with enhanced cooperation under very stringent conditions.

First, the enhanced cooperation must involve a minimum of eight Member States.

Second, it may be undertaken only as a last resort, when the Council has accepted that the objectives of such cooperation cannot be attained within a reasonable period by applying the Treaty rules.

Third, the enhanced cooperation must respect several conditions. For example, it must aim at furthering the objectives of the Union, and it must respect the Treaties and the single institutional framework of the Union. It must remain within the limits of the powers of the Union and it must respect the competences, rights and obligations of those Member States which do not take part.

## **22. Is the Constitution set in stone? Can it ever be changed?**

The Constitution, like any other international treaty, can always be changed provided the correct procedure is followed. The normal procedure is that, any time after the Constitution comes into force, a Member State government, the European Parliament or the Commission may put forward proposals for amending it (Article IV-443).

The proposed changes must be first discussed in a Convention (identical to the one chaired by President Giscard d’Estaing on the Future of Europe); they then have to be agreed by all Member States acting unanimously and they must subsequently be ratified by all the Member States in accordance with their respective constitutional requirements.

But the Constitution also introduces two simplified revision procedures.

The first (art.IV-444) allows moving from unanimity vote in a given area to qualified majority vote, or moving from a special legislative procedure to the ordinary legislative procedure. This, however, requires the unanimous agreement of the European Council and the consent of the European Parliament.

The second simplified procedure (art.IV-445) concerns the internal policies of the Union (part III of the Constitution). This part of the Constitution can be amended by the European Council acting unanimously, without the need for the Convention.