

THE PERILS OF A EUROPEAN CONSTITUTION

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Drafting a Constitution is no picnic. Candidates embarking on such an experiment must know that it is more like an ocean cruise. Long, requiring an awful lot of preparation, and sometimes fraught with nasty surprises. Meanwhile, the decor may sometimes seem monotonous and limited. Nevertheless, the Convention on the future of Europe is set to draft a “Constitution of the European Union”. Progressively this ambition has been endorsed by various people. It is thus necessary to reflect now in depth on the impacts of such a project.

This draft has been realised by Franklin Dehousse and Wouter Coussens of the Royal Institute of International Relations, with the support of the EPC and of the Collège Européen Miguel Servet. We thank the numerous persons in these institutions (and others) who have helped us with their comments. The text remains of course our responsibility. It also remains a draft, not cast in stone. It aims at illuminating the debate around the European Constitution, and at stimulating discussions. We hope it will help to generate new propositions and look forward to discussing them.

In such an endeavour, the notion of Constitution itself has to be explained. There are also a lot of presuppositions. Finally, a lot of preliminary questions have to be dealt with. The present note aims at presenting these elements as clearly as possible .

1. WHAT IS A EUROPEAN CONSTITUTION ?

Like all apparently simple questions, this one is rather complex.

1.1. What is a Constitution ?

There has always been an ambiguity surrounding the notion of Constitution. A Constitution may be the founding text of a State. Generally, the well-known exception of the UK notwithstanding, this text is written. Most of the Member States of the European Union have such a Constitution.

It can, however, also be the founding text of an international organisation. Revealingly, the Universal Postal Union, one of the oldest international organisations, created in 1865, also has a Constitution. The international Labour Organisation is another example.

In itself, giving a Constitution to the European Union consequently implies nothing about the nature of the European Union.

1.2. What is a European Constitution ?

This being said, the present debate will according to us have no real meaning unless it produces some changes. If the Convention is a repetition – or worse an amplification – of Nice, it will be a failure. To prevent this failure, two changes are necessary : one concerning the form of the text, the other one concerning its content.

Concerning the form, *we need a text which lays the foundations of the new European Union, and which is shorter, clearer, and more attractive*. However, we must have no illusions about the final outcome. The text cannot be very short, because it must provide essential information about a complex structure. Most Constitutions have a natural tendency to grow in a more complex world. The text cannot be perfectly clear either, since this would require an interminable text. Finally, it cannot be extraordinarily attractive. This being said, there is undeniably a scope for a substantial improvement of the present situation. This re-writing will help the Union to reconnect with the average citizen, even if it is not the most important step in that direction.

Concerning the content, we need a text that allows a European Union of 30 Member States to deal with the numerous challenges of the future (globalisation, immigration, terrorism, transnational crime, environment...). Few things would be worse now than conveying to the public the impression that a Constitution has been adopted whereas nothing has in fact changed. For us, such an operation would not only be futile, it would be quite frankly counterproductive.

One of our basic assumptions is that the Nice Treaty did not provide an answer to the numerous challenges of enlargement – and by a wide margin.¹ This assumption must be shared at least partly by the European Council. Otherwise, it would not have created the Convention. It is therefore time to draw the conclusions of this strategy to their logical end.

2. THE OBJECTIVES OF A EUROPEAN CONSTITUTION

In drafting this document, we have been guided by three questions : What is the meaning of Europe ? What are the powers of Europe ? What are the institutions of Europe ? For various reasons, the citizens are in need of a clearer answer to these questions.

It must be realised that the different components of the draft are parts of a global picture. Changing one of them very quickly has an impact on the others. Maintaining the coherence of the whole through various modifications is precisely one of the most challenging aspects of such a project.

¹ See: F. Dehousse, W. Coussens, The Enlargement of the European Union. Opportunities and threats. In: *Studia Diplomatica*, N° 4/2001, published in 2002 (forthcoming).

2.1. « Europe : why ? » : THE VALUES

In this Constitution, we

- Establish the basic principles of the European Union : democracy and the European model of society ;
- Integrate expressis verbis the Charter of Fundamental Rights;
- Foresee a global supervision of fundamental rights in the European Union.

2.2. « Europe : what ? » : THE POWERS

In this Constitution, we:

- Repeat that the EU has only attributed powers;
- Enhance the role of the National Parliaments with regard to the principle of subsidiarity and possible future new EU initiatives ;
- List the various competences of the EU.

2.3. « Europe : how ? » : THE INSTITUTIONS

Transparency, democracy and efficiency are three strongly related concepts. They should be the central guidelines for the ongoing institutional reform.

2.3.1. More transparency

In order to render the EU more transparent, we:

- Distinguish the legislative and the executive functions of the Council, and established a clear publicity principle for the former;
- Rationalise the instruments used by the EU institutions ;
- Define objective criteria for the repartition of votes in the Council and of the seats in the European Parliament ;
- Establish a more open procedure for the revision of the Constitution and the annexed treaty ;
- Abolish the distinction between Community and Union and provide for a single institutional framework for the EU;
- Codify the open method of coordination;
- Clarify the distinction between legislation and implementing measures ;
- Simplify the workings of qualified majority voting

2.3.2. More democracy

In order to render the EU more democratic, we:

- Adapt the election of the EP so as to render it more representative;

- Generalise the codecision powers of the EP for both legislative and financial instruments;
- Provide for an election of the Commission President;
- Introduce individual responsibility for Commissioners;
- Enhance the role of the National Parliaments by providing for their participation in some Council meetings;
- Enhance the role of the National Parliaments and the EP, by creating a new institution, composed out of both branches, with several competences.

2.3.3. More efficiency

In order to render the EU more efficient, we:

- Downplay the role of the presidency, without however abolishing it;
- Reform the revision procedure, with a distinction between primary and secondary treaty texts;
- Generalise the use of and simplified the workings of qualified majority voting ;
- Enhance the role of the Commission President;
- Provide for a single external representation;
- Streamline the workings of the Council;
- Reduce in a definite manner the number of members of several institutions, including the European Parliament, the Commission, the European Court of Justice, and the European Central Bank.

3. THE INEVITABLE QUESTIONS

The reading of this draft can provoke many understandable questions. We have tried here to answer the most obvious of them. Naturally, the drafting of such a text implies a permanent compromise between different, and sometimes contradictory, arguments. There are as a matter of fact pros and contras for each question.

3.1. Should the Charter be included in the Constitution ?

YES. Many reasons plead for this. Most Constitutions do enumerate rights. They will become more important in the future, since enlargement will make the adoption of numerous legislations more difficult. In the context of future enlargements, the protection of fundamental rights will become an essential part of the negotiations with the candidate countries. Finally, this seems a good way to connect the citizen with the European integration project.

3.2. Should we detail the powers and areas of competence of the Union ?

NO. A Constitution certainly does not require a detailed outline of all policies it encompasses. Most Constitutions do not follow that line. What needs to be given is a general description of the objectives and the areas of competence.

3.3. Do we need to revise the revision clause ?

YES. The adaptative capability of the European Union is in great danger. The debates of Nice and post-Nice are from this point of view only a forewarning of future problems. The lethal character of the present diplomatic procedures and of the unanimity requirement has been strongly underestimated in the perspective of the next enlargement. Without a correction in depth, an enlarged Europe risks becoming a paralysed Europe.

3.4. Do we need to generalise and simplify qualified majority voting ?

YES. First, in a European Union of 30 Member States, unanimity will become lethal. The definition, implementation and correction of policies which have been promised during the last years will be impossible. Second, the compromise adopted at Nice is a dangerous one. It is inefficient, complex, and difficult to adapt, as is the compromise for the European Parliament. In both cases, it is necessary to adopt simpler solutions. They must also be objective, and thus rely on numbers. This will make them more adaptable.

3.5. Do we need to elect the president of the Commission ?

YES. This is of course a huge change. Nevertheless, the present regime appears unsustainable. The political importance of the European Union has grown so much during the last 15 years that it is indispensable to give some *direct* democratic legitimacy to the Commission. Furthermore, this is required since the European Council has become the central institution of the Union. This reform will also by the way connect the citizen with the Union.

3.6. Do we need a president of the European Council ?

NO. The appointment of such a new organ would only complicate further the functioning of the institutions. It will also create opportunities for conflicts with both the Commission and the High Representative. The only serious justification for this would be the election of such a president. In this case, of course, the Commission and the High Representative would be subordinated to this person.

3.7. Is it necessary to reform in depth the foreign policy area ?

YES. Recent years have indicated that Europeans are strong in the management of globalisation when they gather their strengths (WTO, environment matters and slowly the euro), and weak when they try an individual approach (immigration, fight against terrorism, the Balkan wars). As this is a fundamental reform, we foresee a transitional period of 10 years, where the intergovernmental component of the regime will remain strong.

3.8. Is is necessary to reform the presidency system ?

YES. The expansion of the European Union has slowly eroded the advantages of this system, and increased its inconveniencies. The lack of continuity destabilised the progression of the decisions. The Member States use the presidency more and more for their own ambitions. The administrative costs of the presidency have also increased tremendously, and this will certainly generate new problems after enlargement. We therefore maintain the rotating presidency for the direction of the most important debates (European Council and legislative Council), but with a limited ability to manipulate the agenda.

3.9. Must we reduce the number of commissioners and members of Parliament ?

YES. The representative mechanisms of the Union were conceived in the 1950s. They corresponded to the standards of an international organisation, with limited missions and limited numbers. They can not be maintained in the perspective of 30 Member States. From a managerial point of view, many institutions have become obese, and will be even more so after the enlargement. We have therefore cut all numbers, in the Commission, the European Parliament, the courts and the European Central bank. We do this with the full knowledge that it will not be popular in various circles.

3.10. Do we need a Congress of Parliaments ?

Yes and No. In the present situation, the last thing that the EU needs is a new institution. On theother hand, this could be the price for a powerful rationalisation of the institutions. This is the hypothesis we have contemplated in this project. In this case, the Congress of Parliaments fulfills an information function through a yearly gathering. It also enjoys a decision power in the revision of the Constitution and the annexed Treaty. The control of subsidiarity and new EU initiatives does not require any gathering.

3.11. Do we finally need such a radical reform of the institutions ?

Yes. The European system has grown tremendously and this has progressively created a fundamental contradiction in its core. This remains basically a diplomatic system where the most fundamental political decisions for the continent are taken. We absolutely need now to transform this diplomatic system into a political system. This requires a reform in depth. Keeping on tinkering at the edges will do nothing, except feed further the scepticism of public opinion.