



*European Economic and Social Committee*

Brussels, 28 October 2004

## **OPINION**

of the European Economic and Social Committee

on the

**Treaty establishing a Constitution for Europe**

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On 29 September 2004, the European Parliament decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

*Treaty establishing a Constitution for Europe.*

In view of the urgent nature of the work, the EESC decided, at its 411<sup>th</sup> plenary session held on 15 and 16 September 2004, to appoint Mr Malosse as rapporteur-general. At its 412<sup>th</sup> plenary session on 27 and 28 October 2004 (meeting of 28 October 2004), the EESC adopted the following opinion by 166 votes to 4, with 6 abstentions:

**1. Introduction**

1.1 The EESC expressed its support for the draft Constitutional Treaty in its opinion of 24 September 2003<sup>1</sup>. In this opinion, the EESC pointed out that once agreement had, hopefully, been reached between the Member States, the key task would be to secure the support of the people and civil society bodies in the EU Member States.

1.2 We have now reached this stage as the debate on the ratification of the Treaty has been set in train in each of the EU Member States, irrespective of the method of ratification which has been selected (ratification by Parliament or through a referendum).

1.3 At this crucial time for the future of the European venture, everyone must be encouraged to look beyond their own interests, be they personal, sectorial, professional, local or national interests. The draft Treaty has to be scrutinised from the standpoint of its overall political importance in the context of the process launched over 50 years ago by the founding fathers of the European Communities.

1.4 Against this background, the EESC welcomes the action taken by the European Parliament's Committee on Constitutional Affairs in asking the EESC for an opinion on the Constitutional Treaty. The EESC intends to avail itself to the full of this opportunity to set out:

- *clear messages addressed to civil society organisations in the EU on the content and scope of the Constitutional Treaty and*
- *recommendations on the communication strategy to be adopted with a view to rallying civil society behind the Constitutional Treaty.*

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<sup>1</sup>

Cf. Official Journal No. C10 of 14.1.2004, page 43.

## 2. Clear messages

### 2.1 Use of the instrument of the “Convention”: a step forward in the process of democratising the European venture

2.1.1 The Constitutional Treaty was drafted by a Convention, most of whose members were national MPs or MEPs. This method of drawing up the Constitutional Treaty does, in itself, represent a step forward which deserves to be drawn to public attention. The efforts to involve civil society organisations, by means of hearings and consultations and through the participation of observers selected by the social partners and the EESC, marked a real step forward, also vis-à-vis the constitutional practices pursued in the majority of the Member States. In its abovementioned opinion of 24 September 2003<sup>2</sup>, the EESC also put forward proposals for strengthening the process of involving civil society in the future.

2.1.2 Although there was a number of setbacks, the IGC did not substantially change the text proposed by the Convention. The Constitutional Treaty is based on a consensus between all the political groupings and is the fruit of a genuine democratic debate.

2.1.3 Even though the Convention was not given constituent power, in view of the dual nature of the EU, as a union of states and peoples, the establishment of the Convention represented a genuine break with earlier practices, which completely disregarded the representation of parliaments and civil society.

2.1.4 Abandonment of the Constitutional Treaty would constitute a defeat for the method of drafting which was adopted. It is therefore essential to plead the cause of using this method on a permanent basis (as stipulated in the Constitutional Treaty itself).

2.1.5 For this reason, the EESC, which participated in the work of the Convention, endorses the legitimacy of the Treaty and calls upon all the members of the Convention and observers who signed the draft Treaty to follow its example.

### 2.2 The establishment of a Constitution, a “revolutionary” step in the history of the European venture

2.2.1 The Constitution provides a new framework of operation for the Union. The Constitution comprises three main parts, the first two of which represent complete innovations. Part I defines the principles and values underlying the Union; Part II sets out the fundamental rights of the citizens of the Union; and Part III defines and updates the Community policies set out in the earlier treaties.

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<sup>2</sup> Cf. footnote 1

2.2.2 The Constitution provides a means of replacing the existing treaties by a single, comprehensive document, thereby making the way in which the EU operates more readily understandable and more accessible to all.

2.2.3 The Constitution does not replace national constitutions but coexists alongside these constitutions. It will apply to all of the territory of the European Union.

2.2.4 *Although the substance of the Constitution is not, strictly speaking, “revolutionary”, the fact that the new Treaty takes the form of a constitution is bound to mark a new chapter in the collective awareness of the people of the European Union by focusing on a joint ambition and a common destiny. The EESC is duty bound to promote public awareness of this step forward in the building of Europe.*

### **2.3 A more democratic Union which recognises that the interests of the people are paramount in the building of Europe (Part I of the Treaty)**

2.3.1 The objective of the Constitutional Treaty is abundantly clear: to establish a political union on behalf of *the citizens and States of Europe*.

2.3.2 The Union’s ambitions focus on the principal aspirations of the citizens of the Union. The Constitutional Treaty explicitly mentions “full employment, a highly competitive social market economy and a high level of protection and improvement of the quality of the environment”, when listing the aims of the Union. The Union also seeks to promote “economic, social and territorial cohesion and solidarity among Member States” and to provide “an area of freedom, security and justice” for its citizens.

2.3.3 There has been a distinct improvement in the democratic legitimacy of the decision-making process:

2.3.3.1 The powers of the European Parliament, as the joint legislative body, have been increased. This development could help to strengthen public perception of the importance of the European Parliament.

2.3.3.2 The new role assigned to the national parliaments safeguards against any over-regulation at EU level. The Commission is obliged to inform national parliaments of any new initiatives and the “early warning mechanism” enables them to monitor compliance with the principle of subsidiarity.

2.3.4 In future, citizens can be informed of the positions adopted by their respective governments at the Council, since the latter body will be bound to act in a transparent way in its capacity as a legislative body.

2.3.5 For the first time, participatory democracy has been recognised as a principle underlying the operation of the Union and providing a vital counterpart to representative democracy.

2.3.5.1 By maintaining an open and regular dialogue with representative civil society associations, EU Institutions should act in a more coherent and transparent way. By consulting the parties concerned, it should be possible, for example, to avoid nitpicking rules and rules which cannot be applied in practice. Under the Constitutional Treaty the Commission would also be obliged to carry out a more effective assessment of the economic and social impact of its proposals, including the impact at regional and local level.

2.3.5.2 One of the major innovations of the Constitutional Treaty is the establishment of a right of popular initiative. Provided that each request is supported by at least one million citizens coming from a significant number of Member States, EU citizens may in future invite the European Commission to submit proposals for legislation which meet their aspirations.

2.3.6 The Constitutional Treaty confirms the role played by the social partners as a key component of democratic life in the Union, whilst respecting the autonomy of the social dialogue.

2.3.7 The introduction of this new part (Part I) of the proposed Constitution for Europe should make it possible to reduce the democratic deficit in an expanding Union.

## 2.4 **A Union which affords better protection of the fundamental rights of European citizens (Part II of the Treaty)**

2.4.1 The Charter of Fundamental Rights was drawn up by a Convention whose democratic legitimacy was widely recognised. Contributions from civil society organisations played an important role in the drafting of the Charter.

2.4.2 The Charter of Fundamental Rights is seen as marking a step forward as it incorporates, without breaking them down into separate categories, all types of individual and collective rights (civil and political rights and social and economic rights). It also adopts an innovatory approach by recognising more “contemporary” civil rights (linked to sustainable development, consumer protection, gender equality, bioethics, the protection of personal data, etc.).

2.4.3 The fundamental rights of Union citizens form an integral part of the Constitutional Treaty, rather than taking the form of a preamble.

2.4.4 The incorporation of the European Charter of Fundamental Rights into the Treaty, as demanded by a large number of European civil society organisations, is of significant importance as these rights will henceforth be legally binding.

2.4.5 This progressive measure will, in practice, mean that citizens will benefit from better legal protection. They will, in future, be able to invoke the provisions of the Charter in any national

courts when challenging decisions taken by the European Institutions and by Member States in implementing Community law.

2.4.6 *The EESC, which was involved in the drawing-up of the European Charter of Fundamental Rights, takes the view that its incorporation into the Treaty represents a significant step forward in the protection of the rights of natural and legal persons.*

## 2.5 **A Union which is capable of meeting the aspirations of its citizens by virtue of the Community method and Community policies (Part III of the Treaty)**

2.5.1 The existing Treaties and, in particular, the Community method, have demonstrated their effectiveness to a considerable degree. Part III of the Constitutional Treaty therefore sets out the main provisions of the existing treaties with regard to the EU's common policies, whilst extending qualified majority voting to approximately 20 areas hitherto subject to unanimous voting. Furthermore, it gives official recognition to the co-decision procedure as "ordinary legislative procedure", thereby strengthening the powers of the European Parliament. Most of the decisions taken by the Union relating to the common policies can therefore be adopted more effectively and more democratically.

2.5.2 Part III of the draft Constitution sets out the general principles underlying the fields in which the EU Member States have decided either to pool their resources or to cooperate. The content of the policies in these areas is not, however, cast in stone; it depends on the decisions taken by EU governments and by majority votes in the European Parliament and therefore reflects the will of these bodies.

2.5.3 One example of this is social policy, with the insertion of a general provision ('social clause') stipulating that the Union must take into account, when defining and implementing its policies, 'the requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health'. Further examples include combating all forms of discrimination and exclusion and the recognition of the role of services of general interest in the promotion of the social and territorial cohesion of the Union or, as already enshrined in the Treaty, catering for the environmental dimension and the requirements of consumer protection.

2.5.4 The difficulty encountered in securing popular involvement in the draft Constitutional Treaty may be attributed to the very fact that, whilst the public is used to being consulted on specific actions or proposed policies, it is not used to being consulted on operating frameworks. In order to mobilise public opinion, we have to launch a debate on what course of action the public and the Member States wish to pursue, now that the principles, values, objectives and operating rules have been clearly set out in the draft Constitution.

2.5.5 For this reason, the EESC would, at this stage, like to establish a link between the Constitutional Treaty and the Lisbon Strategy, which will shortly be the subject of a mid-term review.

The subject of the Lisbon Strategy should be introduced into the debate since it maps out a vision of the future for all citizens of the EU marked by: competitiveness, full employment; shared knowledge; investment in human resources; and growth, whilst preserving the living environment and the quality of life through sustainable development. This strategy has now broken down as the implementing instruments are not up to the task and there is a chronic lack of public involvement and involvement of civil society. At this stage, there is therefore a vital need for a fresh impulse and new Community initiatives in order to make the Union's economic and social project credible.

2.5.6 In the opinion which it submitted to the European Council<sup>3</sup>, the EESC called for the mid-term review to place responsibility for implementing the Lisbon Strategy in the hands of public and civil society players. The forthcoming mid-term review must be seen as providing an opportunity, which cannot be missed, to pass on to the public and civil society a clear political message spelling out the content of the EU's project.

2.5.7 *EU citizens need to be made aware of the fact that the democratic progress achieved by the draft Constitution offers them the wherewithal to decide themselves on the content of the policies and actions to be pursued in practice by the Union in order to meet their aspirations. Rejection of the Constitutional Treaty would therefore be tantamount to freezing the Treaties in their present form.*

## 2.6 **Rallying European civil society behind the achievements of the Constitutional Treaty in order to overcome its shortcomings**

2.6.1 This does not mean that we should keep quiet about the shortcomings of the Constitutional Treaty in its current form. A large number of the demands of civil society could not be taken into account by the Convention and still fewer by the IGC. In its opinion of 24 September 2003<sup>4</sup>, the EESC noted a whole series of weaknesses in the Constitutional Treaty, including the following:

2.6.1.1 The lack of adequate operational provisions for implementing the principle of participatory democracy. As a result, the role of the EESC was not strengthened to the extent necessary to ensure effective civil dialogue.

2.6.1.2 The absence of provisions acknowledging the role played by organised civil society in implementing the subsidiarity principle (including functional subsidiarity) in the protocol on the application of this principle.

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<sup>3</sup> Opinion submitted by the European Economic and Social Committee to the European Council on the mid-term review of the Lisbon Strategy (1438/2004).

<sup>4</sup> Cf. footnote 1

2.6.1.3 The weakness of EU governance as regards economic and employment policy and the absence of rules providing for consultation of the European Parliament and the EESC in these areas, which concern civil society players most of all.

2.6.1.4 The lack of any requirement for mandatory consultation of the EESC on application of the non-discrimination principle, the common asylum and immigration policy or culture, despite the Committee's expertise in these fields.

2.6.2 Does this mean then that the Treaty should be rejected? The EESC believes that this would only make things worse and send a negative signal regarding the European venture, both within the Union and outside, where hostile or competing forces would certainly take delight in such a setback. On the contrary, the Committee feels that it is possible to build on the proposed institutional framework and improve it through operational measures:

2.6.2.1 The provisions on participatory democracy should be made the subject of a series of communications defining the consultation procedures and the role of the EESC.

2.6.2.2 Civil society should be consulted on the content of the European law defining the procedures for implementing the right of citizens' initiative. The EESC could be asked to deliver an exploratory opinion on this subject. It could also lend its support to civil society initiatives.

2.6.2.3 The principle of participatory democracy should be applied to the EU's key strategies for promoting growth, employment and sustainable development.

2.6.3 Moreover, and still within the framework of the Constitutional Treaty as it has been adopted, it is also important to inform the public about how flexibility could be introduced and progress could be achieved without the need to revise the Treaty:

2.6.3.1 Member States wishing to advance further down the road of European integration will find it easier to establish enhanced cooperation between themselves.

2.6.3.2 If all the Member States express the political will to do so, it will be possible to deepen integration in sensitive areas where unanimity is still required, such as taxation or social policy, for example. A "bridging clause" allows qualified majority voting to be extended to these areas.

2.6.4 By opting for a committed, critical and constructive approach, organised civil society will help to ensure that citizens are well informed and will keep up the pressure on governments. The worst thing would be if politicians were to be confirmed in the - unfortunately widely held - view that citizens are not interested in the European venture. This view is totally false because people actually expect much from Europe, in particular that it will bring improvements in their everyday life by providing a vision of their future.



2.6.5 *The EESC believes that the adoption of the Constitutional Treaty is not an end in itself. Rather, it opens the way towards a strengthening of participatory democracy. To reject the Treaty would be to give up the progress achieved through the Convention method.*

### **3. Effective communication**

The EESC believes that the quality of the communication strategy will be a determining factor for the adoption of the Constitutional Treaty by the people of Europe. A pragmatic and professional approach is therefore needed to ensure that the strategy is effective. The EESC recommends that the communication strategy be built around action in the following four areas:

#### **3.1 Provision of resources: information tools and funding**

3.1.1 The complexity of the Constitutional Treaty calls for the development of information tools that could be used, upstream of the communication process, to launch campaigns or organise debates.

3.1.2 It would be up to the Member States, with the support of the information offices of the European Parliament and the Commission representations in the Member States, to devise information tools and make them accessible.

3.1.3 These tools could take the form of interpretive guides to the Constitutional Treaty, geared to the concerns of different population groups in each Member State. The more customised these tools are, the easier it would be for them to be used effectively by the media, civil society organisations, political groups and local and regional authorities in disseminating information and rallying public support.

3.1.4 The provision of adequate financial resources is necessary for the implementation of a communication strategy that meets citizens' expectations.

#### **3.2 Launching of public communication campaigns using the media and grassroots communication channels**

3.2.1 Once the requisite resources have been placed at their disposal, the media, local and regional authorities, political groups and civil society organisations will have the means to act as a conduit for information. They will be able to convey clear messages on the implications of the Constitutional Treaty that are attuned to the concerns of their local audience.

3.2.2 Initially, it would be useful to find out, in each Member State, how the Constitutional Treaty is perceived by different population groups in order to reflect on the content of the messages to be conveyed. Drawing on the conclusions reached, the aim of the messages would be to overcome people's fears and respond to their expectations.

3.2.3 In addition, the message-bearers and communication media will have to be chosen carefully. The involvement of a wide variety of players is essential to guarantee the pluralist nature of the campaign. Moreover, their closeness to citizens will be a key factor enhancing the credibility and acceptance of the messages conveyed, hence the importance of action taken at local and regional level.

3.2.4 The EESC recommends to the European Parliament that working parties be set up with institutional communication professionals in each Member State with a view to making practical proposals to governments regarding the measures and resources necessary to embark upon an effective communication campaign in the Member States. The EESC is prepared to make available its expertise in this field and to offer the support of its contacts in the Member States, national ESCs and similar institutions.

### **3.3 Organising debates that are open to all members of the public with a view to fostering the exchange of ideas and convincing people**

3.3.1 The communication campaigns should lead to the opening of genuine dialogue with the public. It is essential that people be offered the opportunity to ask questions and hear different arguments so that they can make and express their own judgements.

3.3.2 Such dialogue will only be possible in the context of decentralised debates. The closer the interface with citizens, the better the information provided will be able to respond to their expectations, answer their questions and guarantee the democratic character of the debates.

3.3.3 National and European institutions must provide logistical support for these initiatives. National economic and social councils and similar institutions could coordinate the debates at national level by establishing a calendar of events and liaising with the EESC, which could provide them with documentation and put them in touch with speakers.

3.3.4 In order to ensure a degree of consistency between the initiatives, the EESC requests the European Parliament and the European Commission to ensure that initiatives by representatives of organised civil society enjoy the same support as those by elected and other representatives of European, national, regional and local bodies under the 1000 debates on Europe initiative. Civil society cannot be kept on the sidelines.

3.3.5 The EESC requests the European Parliament to allocate a significant proportion of the EU communication budget to the debates on the Constitutional Treaty to complement the resources of national and local public authorities and the resources at the disposal of civil society organisations.

### 3.4 Giving the debates and ratification a European dimension

3.4.1 It is essential to make sure that the adoption of the Constitutional Treaty by the people of Europe is not determined solely by domestic policy issues.

3.4.2 Therefore the EESC recommends that the debates and the ratification of the Constitutional Treaty be given a truly transnational dimension:

3.4.2.1 On the one hand, the European Institutions should help to coordinate the communication activities of political groups, local and regional authorities and civil society organisations by encouraging the exchange of good practice in this field and the pooling of efforts. For example, the EESC could promote the exchange of good practice (and know-how) at European level between civil society organisations involved in communication activities. It could also establish feedback arrangements for evaluating, at European level, proposals, criticisms and recommendations put forward by members of the public during debates organised by civil society. Finally, the EESC stands ready to support cross-border or multi-national initiatives.

3.4.2.2 Furthermore, the EESC endorses the proposal by the European Parliament's Committee on Constitutional Affairs to hold the ratifications on or around a symbolic date (such as 8 or 9 May), insofar as is possible.

3.4.3 Therefore the EESC calls for active involvement by the European Institutions in the drawing up and implementation of the communication strategy on the Constitutional Treaty. It is important to work alongside the Member States and to send out a strong and positive signal to citizens about Europe.

3.4.4 For its part, the EESC undertakes to convey clear messages to European civil society about the democratic achievements of the Constitutional Treaty, in terms of, inter alia, citizenship and participation.

Brussels, 28 October 2004.

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