



***European Economic and Social Committee***

**Subcommittee on the  
European Convention**

Brussels, 24 September 2003

**OPINION**

of the

**European Economic and Social Committee  
addressed to the 2003 Intergovernmental Conference**

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At its Plenary Session on 21 February 2002, the European Economic and Social Committee, acting under Rule 29, paragraph 2, of its Rules of Procedure, decided to draw up an own-initiative opinion

*addressed to the 2003 Intergovernmental Conference*

and, under Rule 19, paragraph 1, of its Rules of Procedure, the Committee decided to establish a subcommittee to prepare its work on the matter.

The subcommittee adopted its draft opinion on 15 September 2003. The rapporteur was **Mr Malosse**.

At its 402nd plenary session on 24 and 25 September 2003 (meeting of 24 September), the European Economic and Social Committee adopted the following opinion by 118 votes to 7 with 9 abstentions.

## **1. European Economic and Social Committee's main recommendations to the IGC**

1.1 The draft constitutional Treaty is the fruit of a democratic, transparent and open process which will leave its mark on history. It stipulates that any changes will henceforth be made by a Convention or at the very least, where less fundamental alterations are involved, after consulting the European Parliament. This method has demonstrated its effectiveness: the draft does in fact afford genuine value added for the public in terms of readability, simplification, a higher profile for the Union and democratisation.

1.1.1 What is at stake next is to establish, on a permanent basis, but also with a view to revising the constitutional Treaty, procedures securing more public involvement and more structured dialogue with civil society organisations. This is the only way to confer greater legitimacy on the Union and make civil dialogue work, based on the principle of participatory democracy.

1.2 The European Economic and Social Committee (EESC) asks that the IGC not upset the balance and the broad principles achieved through consensus in the draft Treaty submitted to the Council Presidency on 18 July 2003.

1.3 However, bearing in mind the debates which will be held at European and national level, the EESC recommends that those taking part in the IGC supplement, detail and clarify certain points in such a way as to increase the trust and involvement of the general public and civil society organisations. This includes:

- ◆ introducing stronger provisions for implementing the Union's economic and social policies and improving governance in the Euro zone;

- boosting the democratic legitimacy of economic, social and monetary policies by involving the European Parliament and the EESC more;
- bringing priorities up to date and simplifying the instruments for economic, social and territorial cohesion;
- making common foreign and security policy more democratically accountable and making it more consistent and effective;
- defining more precisely the scope and arrangements for putting into practice the principle of participatory democracy, so as to give tangible expression to civil dialogue and the tasks of the European Economic and Social Committee in this context;
- expanding the mandatory fields of consultation of the EESC to cover the common asylum and immigration policy, application of the principle of non-discrimination, and culture; and
- acknowledging the role of civil society organisations in implementing the principles of subsidiarity and proportionality, granting the EESC the right of appeal to the Court of Justice.

## **2. Overall assessment of the draft constitutional Treaty**

### **2.1 *General comments***

2.1.1 The draft Treaty establishing a Constitution for Europe, submitted to the European Council Presidency on 18 July 2003, represents a milestone in the European venture. It is the outcome of a democratic, transparent and open process inspired by the success of an earlier Convention which drew up the Union's Charter of Fundamental Rights.

2.1.2 The European Convention which prepared the draft constitutional Treaty was a body with a legitimate basis: the vast majority of its members - nearly two thirds - were members of parliament, either from the European Parliament or from Member States' or accession countries' parliaments. Alongside them were representatives of Member States' governments and the Commission, as guardian of the treaties, participating on an equally legitimate basis; thus the unique character of the EU as both a union of States and a union of peoples was respected. The representative nature of the Convention was given a further boost by the presence of the social partners, the European Economic and Social Committee, the regions, through the Committee of the Regions, and the Ombudsman as observers, even though their full participation would have lent even greater legitimacy to the Convention.

2.1.3 The Convention generally operated in a transparent fashion, and steps were taken to ensure that, as far as possible, members of the public who were interested had access to its work and documents, even though its methods could still be improved upon. The Convention's work began with a "listening" phase during which representatives of civil society and youth were asked to give their

views. The way this consultation was organised did not really allow everyone to express their views nor did it allow for in-depth debate, but these beginnings of dialogue could foreshadow genuine participatory democracy which, as is called for in the Laeken declaration, might actually help "*bring citizens(...) closer to the European design and the European institutions*". These efforts to hear people's views and ensure transparency were complemented and taken further by the EESC, in particular through the regular information meetings and dialogue with European civil society organisations and networks which it organised in cooperation with the Convention's praesidium, its joint work with national ESCs and similar bodies and its initiatives to involve civil society organisations in the accession countries.

2.1.4 The Convention was also efficient, since - operating by consensus - it managed to hammer out a complete, balanced draft in the required time, meeting the requests made at the Laeken European Council of 14 and 15 December 2001. It was able to generate its own momentum, which also meant that it could place a broad interpretation on the Laeken Declaration.

2.1.5 The Convention succeeded in involving national parliaments, previously to a great extent left out of the early stages of major European debates. It also allowed accession countries to be involved in the work on an equal footing with Member States, apart from the right to vote which, in any case, was not used by the Convention.

2.1.6 The Intergovernmental Conference (IGC) has a legitimate, credible draft before it. Copies of the draft are now being circulated extensively and brought to the public's notice. This is a unique situation where the democratic process is preceding the diplomatic one. The IGC is in itself only one stage prior to the final, but fundamental, phase of ratifying the Treaty establishing a constitution for Europe in each of the Member States, be it by referendum or parliamentary ratification. In fact this is the first constitutional text which clearly engages the citizens of the EU in a common future.

2.1.7 One of the points at stake in the draft constitutional Treaty is thus to create a more understandable vision of the role and objectives of the Union, which would win the support of the people of Europe. This can only be achieved if the institutions of Europe, including the EESC, gain and maintain the confidence of the general public.

2.1.8 The European Economic and Social Committee supports the draft constitutional Treaty drawn up by the Convention. The EESC set out its priorities to the latter in its September 2002 resolution<sup>1</sup>, and played an active part in the Convention's work through its three observers: **Roger Briesch**, **Göke Frerichs** and **Anne-Marie Sigmund**<sup>2</sup>. For the sake of efficiency and democracy, the Committee recommends that the IGC does not call into question the general balance of the draft

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<sup>1</sup> EESC Resolution of 19.9.2003 addressed to the European Convention, adopted at the plenary session of 18 and 19 September 2002 – OJ C 14.3.2003

<sup>2</sup> Alternates: **Jan Olsson**, **Giacomo Regaldo** (replacing **John M. Little** as of September 2002) and **Mario Sepi** (replacing **Gianni Vinay** as of September 2002)

constitutional Treaty. The EESC also calls for the IGC to be transparent, by establishing a system for informing and consulting civil society organisations at European and national level.

2.1.9 Nevertheless, the EESC feels that it would be legitimate to raise two key questions regarding the draft constitutional Treaty:

- Does the draft Treaty satisfy the public's expectations, as set out in the Laeken Declaration and identified by the EESC through its members - who come from the main national civil society organisations – and at the many conferences, hearings and meetings organised by the EESC on this issue?
- Can the draft constitutional Treaty be improved still further without upsetting its general balance?

## 2.2 *The value added of the new constitutional Treaty for the public at large*

- *The actual constitutional provisions and the Charter of Fundamental Rights (Parts I and II)*

2.2.1 With this draft Treaty, Europe has, for the first time, announced a clear goal: to establish political Union *on behalf of the people and States of Europe*. It is of key importance, and highly positive, that Part I (Articles 2, 3 and 4) includes a clear definition of the Union's objectives and values. The EESC, which contributed to this part via amendments, welcomes the balanced wording of these articles. As regards the social protection objective mentioned in Article I-3, the original wording, calling for *a high level of ... social protection*, should be retained. The inclusion of the Charter of Fundamental Rights in Part II represents an indisputable victory for civil society. Members of the public in Europe will be able to cite the provisions of this charter in any national court in connection with the implementation of European policies.

2.2.2 The draft Treaty not only bears all the hallmarks of a constitution which will find its place in the collective consciousness, but it is also more understandable, more readable and simpler than the current treaties. The amalgamation of the three former pillars and the single name are designed to make it easier for people to identify with the Union, even though the disappearance of the term "Community", with its unifying connotations, is to be regretted. The draft Treaty allows the general public to see which areas of competence are exclusive to the Union, which are shared and which are subject to coordination; hence it will be clear which areas remain matters of national, regional and local responsibility. The new Treaty, at least as far as Parts I and II are concerned, is very readable. Jargon, although there is still a great deal of it, has in many cases been replaced by terms which are more understandable to the general public, and regulations have been replaced by European laws, and directives by European framework laws. Clearer or new references about the suspension of Union membership rights, voluntary withdrawal from the Union, and the political solidarity clause all strengthen the image of a shared and accepted common commitment for the future.

2.2.3 The draft Treaty raises the profile of the Union. Thus, the principle of a stable Council presidency, without upsetting the institutional balance, and the creation of a post of minister

of foreign affairs for the Union may help give European policies a more personal touch. The introduction of a special article on the symbols of the Union in Part IV of the draft Treaty also responds to this concern to help people identify with the Union and its values. The creation of an independent authority to monitor protection of personal data (Part I, Article 50) bespeaks, moreover, a concern to make the Union more transparent to the general public.

2.2.4 The draft Treaty brings some improvements in terms of consolidating the Union's democratic legitimacy and making the decision-making process more efficient. The granting of responsibilities to national parliaments ("early warning", right of appeal) may be understood as both a way of ensuring compliance with the subsidiarity principle and as a means of involving national parliaments in the European process. Election of the European Commission's president by the European Parliament and stronger powers for the president as regards membership of the College of Commissioners are both steps designed to give greater legitimacy to an institution which is the driving force behind the Union and guardian of the Community method. More powers for the Parliament will reinforce the general public's perception of the importance of this institution. Extension of both qualified majority voting and the co-decision procedure should also confer greater legitimacy on the Union's decisions and actions and make them more effective.

2.2.5 The future Treaty contains an entire, completely new title (Part I, Title VI) on the democratic life of the Union. It lays down the principles of representative democracy and participatory democracy and establishes the role of the social partners and autonomous social dialogue, the attributes of the European Ombudsman and the transparency principle. This title also introduces a right of petition, for petitions supported by no fewer than one million citizens; this can be seen as significant progress for civil society as long as the implementation arrangements allow for effective follow-up (Article 46(4)). The dialogue to be established with churches and philosophical and non-confessional organisations is evidence of the fact that the Union wishes to be more tuned in to the views of society (Article 51).

2.2.5.1 The Committee particularly welcomes the fact that the draft Treaty acknowledges that participatory democracy is an integral part of the European social model. For the Union to gain more democratic legitimacy, the institutions' powers and responsibilities must not only be clearly defined, but the active involvement of civil society must also be guaranteed. Support from active, committed members of the public and the organisations which express their views and act on their behalf, is indeed vital in order to put into practice Europe's declared ambition to be an area of freedom, democracy, justice and security.

• *The policies and functioning of the Union (Part III)*

2.2.6 In Part III, which deals with the policies and functioning of the Union, substantial progress has been made in terms of the democratisation (extension of qualified majority voting, involvement of the European Parliament and the Court of Justice) of the area of freedom, security and justice.

2.2.6.1 However, it is to be regretted that, despite the amalgamation of the three pillars, specific provisions have been maintained for implementation of the common foreign and security policy, despite a certain amount of progress and the prospect of a common diplomatic service. Unanimity remains the rule and no involvement of the general public or of civil society representatives has been envisaged at European level. Consequently, the provisions on the common foreign and security policy should include rules on consultation of EU civil society representatives. This is all the more important to ensure the effectiveness and legitimacy of the European Union's actions in these areas. The EESC suggests that this matter be examined thoroughly and reviewed in the course of the Intergovernmental Conference, without upsetting the broad lines of the draft constitutional Treaty.

2.2.7 The EESC welcomes the affirmation of economic, social and territorial cohesion, to which it attaches considerable importance, and endorses the principles underpinning the EU's policies in this sphere. It would stress that this policy must mainly aim to optimise the human, cultural and natural resources of the less developed countries and regions, thus securing equality of opportunity. With a view to enlargement and a knowledge-based economy, what is needed is a reform of priorities and simplification of implementing arrangements. In this connection, the Committee has suggested a single intervention fund for territorial cohesion<sup>3</sup>. It consequently welcomes the fact that Article 119 of Part III provides for the possibility of grouping all the structural funds together.

2.2.8 It also welcomes the introduction of a new provision on the importance of the role of services of general interest for promoting social and territorial cohesion in the Union. However, the promotion of a high standard of services of general interest should have been included among the objectives in Article I-3.

2.2.9 On the other hand, a number of sections in the draft constitutional Treaty do warrant being beefed up. Only modest progress has been made, for example, on economic, social, employment and sustainable development issues. Nevertheless, the Committee welcomes the fact that both full employment and a highly competitive social market economy have been explicitly mentioned in the constitutional Treaty as objectives of the Union, but it would point out however that the corresponding articles in Part III should also be worded in such a way as to reflect this. In addition, the EESC calls for the relevant articles to state more clearly that economic and monetary policy must contribute to attainment of the objective of growth and full employment.

2.2.10 Proposals for the coordination of economic and employment policies do not break much new ground in relation to current provisions and practices, especially as regards Euro-zone governance. The public's expectations mostly focus on the notion of a comprehensive growth-promoting, job-creating blueprint for society. These keen expectations, which are consistent with the ambitions the Union set for itself at the March 2000 Lisbon summit, are largely shared by civil society in the accession countries, as the EESC has been able to gauge through the surveys and meetings it

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<sup>3</sup> See EESC exploratory opinion of 25.9.2003 on "*Economic and social cohesion: regional competitiveness, governance and cooperation*" - CESE 1178/2003

has organised. The EESC has itself formulated concrete proposals on economic and social governance<sup>4</sup>.

2.2.11 Excessive distortions of competition in the single market are damaging to its cohesion and render it less dynamic in pursuit of the Lisbon objectives. It is for this reason that extending the scope of qualified majority voting would open up genuine prospects for convergence in an enlarged Europe. In matters of taxation, and on the question of unanimity, the procedure for strengthening co-operation could be used, which would enable a group of Member States to move forward as pathfinders in accordance with Community rules, without creating any distortions of competition.

### **3. Improving the draft constitutional Treaty so as to generate more public support for it in Europe: the EESC's proposals**

#### **3.1 *Defining more precisely the scope and arrangements for putting participatory democracy into practice (Part I, Article I-46)***

3.1.1 The principle of participatory democracy has assumed key importance in the wake of the Laeken European Council's request that citizens be brought closer to the European design and the European institutions. Through the meetings, conferences and hearings it has organised throughout the Convention's work, the Committee has noted that in the Member States and the accession countries, as well as in the major European civil society networks, there were very high expectations of the draft Treaty, and then a certain disappointment with its lack of content in this domain.

3.1.2 Although Article I-46 of the draft constitutional Treaty represents a fundamental achievement, it does not go as far as the EESC and civil society organisations would have liked and did in fact ask for. Indeed the principle of participatory democracy entails not only the consultation, but also the active participation of all parties representing civil society organisations, both at an early stage in the proceedings, when policies are being shaped and decisions made, and also later on when they are being implemented and followed up.

3.1.3 In this connection, the Committee regrets the lack of adequate operational provisions for implementing this principle and thus for strengthening the confidence of European civil society in the genuinely participatory nature of the Union. By allowing for the participation of those directly concerned, civil dialogue is instrumental in enhancing the democratic legitimacy of the European Union. For this civil dialogue to be effective, it is however necessary to specify the framework and the forum within which it is held. The EESC's natural focus, thanks to its membership and its brief, is to "facilitate" civil dialogue and provide the institutional forum for this. Thus, without compromising the draft constitutional Treaty, the Committee calls for:

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See EESC own-initiative opinion of 12.12.2002 on "Economic governance in the European Union" – OJ C 85 of 8.4.2003



- The European Economic and Social Committee, which should from now on preferably be designated "*European Economic and Social Council*", to be included in the list of institutions and bodies making up the Union's institutional framework (Part I, Article 18 (2)).

The Committee's very nature and brief mean that it is indeed making a full contribution to achieving the Union's objectives and to boosting its democratic legitimacy in the general interest of both the Union and its Member States.

Moreover, including the EESC in the Article 18 list would make Article 46 (2) more effective; this stipulates that "*the Union Institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society*".

This process of dialogue and consultation when framing European policies must nevertheless be extended to all levels of government within Europe.

- A new Article 297-III should be inserted as follows so as to define the Committee's tasks clearly:

*"As part of the advisory function conferred on it by Article I-31 of the Constitution, the European Economic and Social Council shall:*

- *assist the Union's legislative and executive institutions in the process of decision- and policy-making and in their implementation;*
- *assist the European Union in organising the social dialogue, at the joint request of the social partners and while respecting their autonomy;*
- *facilitate dialogue between the Union and the organisations representing civil society in accordance with the principles laid down in Article I-46 (1 and 2);*
- *support the Union's external action by maintaining dialogue with civil society organisations in non-EU countries and blocs."*

3.1.4 Moreover, effective follow-up to EESC opinions (be they consultative, exploratory or own-initiative opinions) provides a fundamental guarantee of its effectiveness in a genuinely participatory democracy. For this reason, the EESC is proposing to supplement Article III-298 as follows:

*"The institutions shall transmit regular reports to the Committee on the follow-up to its opinions."*

### **3.2 Broadening the scope of representative and participatory democracy**

3.2.1 The EESC regrets the fact that in an area of such importance as the coordination of economic and employment policies, there is no provision for rules allowing either the public (through the European Parliament) or civil society (through the European Economic and Social Committee) to be involved or consulted. This anomaly should be rectified by the IGC to allow for consultation of the European Parliament and the EESC on Member States' broad economic policy guidelines (BEPGs) (Article III-71).

3.2.2 The scope of the "open method of coordination" has been expanded to cover new spheres: social policy, industrial competitiveness, research and public health. However, it is regrettable that there are no provisions for effectively involving the European Parliament, national parliaments, the EESC, the social partners and other civil society players in those areas which concern them.

3.2.3 As regards the areas in which the EESC must be consulted, it would be appropriate - given the EESC's membership and areas of expertise - to expand these to include the following:

- Application of the non-discrimination principle (Article III-7)
- The common asylum and immigration policy (Articles III-167 and III-168)
- Culture (Article III-181)<sup>5</sup>.

This would give tangible form to the Union's wish to reinforce the democratic legitimacy of Community policies in areas which are of special importance to the European public and to civil society organisations.

### **3.3 Civil society organisations and the subsidiarity principle**

3.3.1 The application of the subsidiarity principle was one of the most hotly debated issues at the Convention. It was one of the Laeken European Council requests. The draft constitutional Treaty quite rightly recognises the role of national parliaments in monitoring subsidiarity. It also involves the Committee of the Regions which, without however having institutional status, can submit appeals regarding legislative acts where the constitution Treaty requires that it be consulted prior to their adoption.

3.3.2 The Protocol on the application of the principles of subsidiarity and proportionality recognises the need for wide-ranging consultation before proposing and deciding on legislative acts. Nevertheless, this protocol, which gives national parliaments the right to alert the Union to problems

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The Committee would point out that Article I-31 of the draft constitutional Treaty stipulates that the European Economic and Social Committee shall consist of representatives of civil society, inter alia those operating in the area of culture. It is therefore logical to stipulate that the Committee be consulted on culture-related matters.

and Member States the right to appeal (if necessary, on behalf of their national parliaments), totally ignores the role of civil society organisations - as represented inter alia by the EESC - in implementing the subsidiarity principle, without regard for Article I-46 on participatory democracy.

3.3.3 Civil society players are as well placed as regional and local authorities to judge whether certain proposals for legislative or regulatory acts might encroach on their fields of competence; this concerns as much the social partners, in their collective bargaining activities, as the other civil society operators, for all alternative forms of regulation (co-regulation, self-regulation, codes of good conduct, etc.) which can complement or replace legislative action. The European Commission, in its White Paper on European Governance<sup>6</sup>, has itself highlighted the importance of these new ways of organising society in the future, which are part of functional subsidiarity and also guarantee a better response to the public's concerns and demands as well as more effective action by the Union.

3.3.4 For this reason, the EESC is proposing:

- firstly, that the Protocol on the application of the subsidiarity and proportionality principles be supplemented accordingly, and
- secondly, also with a view to respecting the principle of parity with the Committee of the Regions, that the European Economic and Social Committee be granted the right of appeal to the Court of Justice regarding legislative acts about which the constitutional Treaty requires that the EESC be consulted prior to their adoption, and that Article III-270 of this Treaty be amended accordingly.

In any case, if the EESC were included in the institutional framework of the Union, this right of appeal would be conferred on it automatically.

Brussels, 24 September 2003.

The President  
of the  
European Economic and Social Committee

The Secretary-General  
of the  
European Economic and Social Committee

**Roger Briesch**

**Patrick Venturini**

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COM(2001) 428 of 25 July 2001