



MATHIAS JOPP / SASKIA MATL
INSTITUT FÜR EUROPÄISCHE POLITIK

Composite Paper

Second Reading of the Draft Constitution

Essentials and amendments with fall back-positions

1. Values, objectives, competences

- “Ever closer Union” to be included in Art. I-1 or preamble
- EMU must be part of the Union’s objectives for all EU-citizens
- Competences are provided by the constitution and not by the member states in the framework of the constitution
- Clearer definition of competences (exclusive, shared, complementary) whereby the **objective** of a single market with fully implemented four freedoms overlaps exclusive and shared competences.
- Primacy of EU law on the basis of acts and procedures provided for **by the constitution**
- Flexibility clause: QMV or “enhanced” QMV to make this clause more flexible

2. Institutions

- President of the European Commission to be elected by the European Parliament with the majority of its members and approved by the European Council with QMV.
- Commission President sets the guidelines for the Commission’s work, nominates the Commissioners in agreement with the Council and has the power to ask individual Commissioners to step back.
- The Commission should be made up by a limited number of Commissioners in the collegium (e.g. up to fifteen) and a number of delegated Commissioners (probably up to the same number) without voting right. Between the two sorts of Commissioners would exist a clearly defined mechanism of rotation following an unanimous decision of the Council with the assent of the Parliament. This model would underline the “neutrality” of the Commission without ignoring the interests of the smaller member states. The alternative would be one Commissioner per member state as a symbol of equality among the member states but with a nationality imprint on the whole Commission (also: twenty five, thirty or more Commissioners). This would only be acceptable for a transitional period up to 2008/09 when automatically the 15:X-model would be introduced.

- Involvement of the European Parliament in the inauguration procedure of the Commission as a collectivity; motion of censure with regard to the Commission **as a whole** but not linked to the dissolution of the Parliament (which would immunise any possibility for a motion of censure).
- Separation of Council functions in the executive and legislative dimension; the legislative Council shall meet in public and abide fully to the principle of transparency; Parliament and Council being put on an equal footing in law making.
- Council Presidencies: apart from the Foreign Affairs Council which should be chaired by the Foreign Minister, rotation should be exercised in all Council formations with the option of a longer term of office (e.g. two years for the ECOFIN-Council) through election by and from the member states' ministers.
- A President/Chairman of the European Council could be elected for a period of 2,5 years. She/He should have primarily internal management functions and no own bureaucracy; the external representation of the Union on a "presidential" level would be delegated to her/him by a mandate of the European Council. Regular foreign representation of the Union should be, first of all, the task of the European Foreign Minister. The Chairman/President of the European Council should be elected by QMV. The possibility for a representative of the European institutions to be chosen as "President" at the top of the Union, through a special procedure involving the European Parliament, must be included in the Constitution. It would mean that a single personality could fulfil both functions – that of the European Council President and that of the Commission President (double hatting).
- the Foreign Minister should be double hatted with respect to his responsibility for external relations and the CFSP, selected by the Council (QMV) and in accordance with the Commission President and approved by the European Parliament. He should have a right of initiative. His tasks are the initiation and the execution of foreign, security and defence policy. His work should be supported by the development of a European diplomatic service based on the Commission's external relations services, the relevant sections of the Council secretariat, the delegations of the Commission and the Council side.
- No Congress should be established. Instead, a reference should be made in the Constitution to COSAC, and the definition of its role in the protocol in the national parliaments.

3. Procedures

- The ordinary legislative procedure must include co-decision between Council and Parliament as equal partners.
- Exemptions from this general rule should be tied to a transitory period after which the ordinary legislative procedure would be applied or, after which, the European Council should decide by consensus otherwise.
- Qualified majority voting: QMV in the Council should be used as **a general rule** with simple "double majority" (majority of member states and 3/5 of EU-population). As a

compromise this voting system might be introduced after a transitional period, definitely terminating the complex and inefficient triple voting system of Nice.

- Unanimity should only be used in restricted cases which have constitutional implications or would affect fundamental rights or citizenship, language regimes etc.
- Enhanced cooperation needs to be expanded to the Common Security and Defence Policy without affecting the relevant Articles on structured and closer cooperation.
- The minimum number of States required for enhanced cooperation should be 8 or less (and not 1/3 of members) in order not to raise the threshold beyond the one of the Nice Treaty.

4. External actions

- It should still be tried seriously to establish QMV as the general decision-making rule in the CFSP. The risk of blocking QMV by a single country on grounds of vital interests should be reduced. Hence, the Council and the European Council should decide on such an intervention by QMV – after the Foreign Minister and the Chairman of the European Council have tried to mediate between the state in question and other member states.
- Decisions with military or defence implications should be taken by consensus or by unanimity with constructive abstention and qualified opt-outs not exceeding one third of the member states. It should be considered whether constructive abstention could even be expanded to half of the member states. In any case, nothing should be agreed upon meaning less than that established by the Nice treaty on the use of constructive abstention.
- The Foreign Minister needs to be strengthened; he should participate in restricted Council meetings of groups of member states; he would report regularly to the European Parliament;
- The Foreign minister would have the right of initiative:
 - A) In his own capacity
 - B) With the support of the Commission
 - C) Together with the Commission (jointly)
 - D) on request of the European Council.

The joint proposal should not be deleted because it would be against the majority of the plenary and the work (over months) of the two working groups on external action and defence which have discussed in detail the rationality of such an option for enabling to act by QMV (should it not be possible to generalise QMV).

- The Armaments Agency should be strengthened through giving it, at least, a small budget for being able to “assist” member states in the initial phase of a joint procurement project. Otherwise the Agency runs the risk of remaining within the limits of OCCAR or, even worse, becoming WEAG (Western European Armaments Group).
- The possibility of enhanced cooperation should be expanded to the ESDP.
- The role of the European Parliament in CFSP and defence should be strengthened and safeguarded through e.g. regular information by the Council and the Foreign Minister, and

through using, whenever possible, the consultation procedure and respecting the authority of the Parliament in all aspects which have budgetary implications.

- The special defence fund should be supported but its establishment linked to a transitory regime, after which it would be integrated into the EU budget.
- The European Parliament should not be excluded from decisions over financial aid for reasons of urgency. If necessary a fast track procedure could be agreed between Council and Parliament to ensure rapid decision making.

5. Budget/Finances

- Council and EP should be two equal components of the same budgetary authority deciding on the resources of the Union and its expenditures.
- Co-decision should be applied in the first reading of the draft budget. In case of insurmountable differences between the two “chambers” the Council should have the last say on the income and the EP on the expenditures.
- The categories of obligatory and non-obligatory expenditures need be abolished.

6. Membership of the Union

- It should be tried to prevent any establishment of a provision on voluntary withdrawal from the Union for reasons of potential negative implications for the Brussels negotiation system (threatening postures), monetary union and other policies and commitments. Should this not be possible, the fall back-position must focus on: Strengthening the procedure, containing potential risks through a quick and clear procedure for suspending the rights of the member state in question and closing the file in a short period of time. Otherwise the Union would be paralysed for months and years. Also, the re-entry clause must be sharpened, it is not possible that states come and leave the Union as they want depending on election results and respective government policies. Hence, the right to apply again for membership should be granted only after a certain period of time.

7. Final provisions

- The constitution could be amended by 4/5 of the member states or member states representing 4/5 of the EU population, after assent of the EP.
- The Convention method needs to be secured. Hence, the fast track amendment procedure should be deleted since it could lead to circumventing the Convention method. Also, the argument for a “small” IGC does not hold. Up to the present, each IGC developed into a larger package deal, even when it began with a restricted agenda.
- Ratification of the constitution by all member states seems to be required since serious legal problems could result from 1/5 of the member states living under the Treaty of Nice and 4/5 of the member states living under both the Nice Treaty (which they cannot simply quit) and the European Constitution.