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Draft Constitution: citizens' guide*

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* This text was produced as a document for information purposes only. It does not necessarily reflect the views of the European institutions. It is based on the draft Constitution as it was presented to the Thessaloniki European Council on 20 June 2003. The text may be amended at a later stage.

Draft Constitution: citizens' guide¹

“Convinced that, while remaining proud of their own national identities and history, the peoples of Europe are determined to transcend their ancient divisions, and, united ever more closely, to forge a common destiny”

Extract from the preamble to the draft Constitution

1. ORIGIN AND DEVELOPMENT OF THE DRAFT CONSTITUTION

The history of the European Union has over the past 15 years been marked by a series of changes to the European treaties. Each one was prepared by an Intergovernmental Conference (IGC) bringing together over a period of months the representatives of the governments of the Member States. The Commission also took part in the work of the IGCs, and the European Parliament was also involved.

The Single European Act, signed in February 1986, enabled the Union to create the single market and establish on its territory the freedom of movement of people, goods, services and capital, from which the business sector and the people of Europe now benefit.

The **Maastricht Treaty**, signed six years later, enabled the Union to move forward in a number of areas: the introduction of a single currency, a common foreign policy, cooperation in the area of justice and internal affairs.

After Maastricht, however, the further development of the European political union seemed to lose its momentum. The two IGCs which led to the signature of the **Amsterdam (1997) and Nice (2001) Treaties**, even though moderately successful, were characterised by a weaker political resolve and many institutional questions, capitially important though they were on the eve of the Union's enlargement, remained unanswered (how to ensure the smooth running of a Union of 25 or more Member States, how to guarantee the legitimacy of the institutions representing the states and the people of Europe)

*Treaties
regularly revised*

*Need for
institutional
reform to serve
the enlarged
Union*

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When in December 2000, the heads of state and government of the 15 Member States, meeting in Nice, reached an agreement on the revision of the Treaties, they felt the need to pursue the institutional reform which many deemed too timidly expressed in the Treaty of Nice. The European Council accordingly instituted a **broader and more comprehensive debate on the future of the Union** with a view to fresh revision of the Treaties.

The stimulus provided by the Nice European Council

A year after Nice, the European Council met in **Laeken** and on 15 December 2001 adopted the *Declaration on the future of the European Union*, committing the Union to becoming more democratic, more transparent and more effective, and to paving the way for a Constitution in response to the expectations of the people of Europe.

Laeken Declaration

The **method** used so far to review the Treaties has come in for much criticism. European integration is a matter for all our citizens. The major stages in its development can no longer be decided at Intergovernmental Conferences held behind closed doors and involving only the leaders of the governments of the Member States. In order to prepare the next IGC in as transparent and as wide-ranging a way as possible, the European Council therefore decided to convene a **Convention** bringing together the main stakeholders in the debate: representatives of the governments of the 15 Member States and the 13 candidate countries, representatives of their national parliaments, representatives of the European Parliament and of the European Commission, 13 observers from the Committee of the Regions and the Economic and Social Committee, plus representatives of the European social partners and the European Ombudsman. The Convention method has made it possible for the first time for all European and national viewpoints to be expressed in a broad, open and transparent debate.

The Convention: a new more open and more transparent method of revising the Treaties

The **mandate** of the 105 member of the Convention and their alternates, under the chairmanship of Mr Giscard d'Estaing, was established by the Laeken European Council. The aim was to examine the essential questions raised by the future development of the Union, and to seek out responses to be presented in a document which will be used as the starting point for the negotiations of the IGC, which will, as set out in the Treaty on European Union, take the final decisions. Certain issues had been identified by the Laeken European Council. How to ensure better distribution of the Union's powers, how to simplify the instruments whereby the Union takes action, how to provide better guarantees of democracy, transparency and effectiveness in the European Union, how to simplify the current Treaties, and whether this simplification could pave the way for the adoption of a European Constitution.

In order to guide the debates of the Convention a **Praesidium** was set up, composed of twelve leading personalities: the Chairman, Mr Giscard d'Estaing and two Vice-Chairmen, Messrs Amato and Dehaene, representatives of the governments of the three Member States which held the Presidency of the Council during the Convention, two representatives of the national parliaments, two representatives of the European Parliament and two representatives of the Commission (Messrs Barnier and Vitorino). In addition, the representative of the Slovene parliament was invited to take part in the meetings.

The first session of the Convention was held on **28 February 2002**. The Convention met over a period of 15 months in **plenary sessions** lasting two or three days and involving one or two meetings monthly in the premises of the European Parliament in Brussels. In parallel with the Convention's plenary sessions, work was also organised within **working groups** or think tanks, each chaired by a member of the Praesidium and focusing on a series of specific topics.

In the interests of transparency, a Convention **Internet site** (<http://european-convention.eu.int>) published the contributions of the members of the Convention, the proceedings of the debates and the draft texts debated.

Mandate of the Convention: to provide a response to various questions on the future of Europe

Organisation of the work of the Convention: a President, Mr Giscard d'Estaing, a Praesidium to guide its work

Plenary sessions and working groups

An Internet site

In order to further widen the debates and involve all the people of Europe, a plenary session of the Convention was devoted to listening to civil society. Contact groups, along the lines of the working groups, also enabled the organisations of civil society to put forward their points of view.

*Civil society
forum*

A forum was opened for these organisations (social partners, business circles, NGO's, academic world, etc.) which thus had the opportunity to post on a dedicated Internet site (http://europa.eu.int/futurum/forum_convention) their contributions to the debate on the future of the Union.

After over a year of debates, the Convention reached a **consensus** to forward a draft Constitution to the European Council.

*Convention
consensus to
submit a draft
Constitution in
preparation for
the Inter-
governmental
Conference*

Mr Giscard d'Estaing accordingly submitted the results of the work of the Convention to the **Thessaloniki European Council** on 20 June 2003.

The text submitted by the Convention is a draft to serve as the basis for the work of the **Intergovernmental Conference** which will bring together the representatives of the governments and the European Commission and the European Parliament, starting in October 2003, prior to taking the final decisions.

2. WHAT DOES THE DRAFT CONSTITUTION LOOK LIKE?

The draft Constitution puts forward a **single text** to replace all the existing *Treaties* in the interests of readability and clarity.

*A single text: the
European
Constitution*

It consists of four parts.

Four parts:

Part I contains the provisions which define the Union, its **objectives**, its **powers**, its **decision-making procedures** and its **institutions**.

*I. The
Constitution's
fundamental
provisions*

The **Charter of Fundamental Rights**, solemnly proclaimed at the Nice European Council in December 2000, has been incorporated into the draft European Constitution as Part II.

*II. Charter of
Fundamental
Rights*

Part III of the draft Constitution focuses on the Union's **policies** and actions and incorporates many of the provisions of the current *Treaties*.

*III. The Union's
policies*

Part IV contains the final clauses, including the **procedures for adopting and reviewing** this Constitution.

*IV. The final
clauses.*

3. A CONSTITUTION FOR THE CITIZENS OF EUROPE

3.1. The Union's values and objectives

The draft European **Constitution** establishes the European Union, a **union of the peoples and States of Europe**. This Union is open to all European states which respect its values and undertake to promote them jointly.

A Union of peoples and states

The draft Constitution sets out the values on which the Union is based: respect for **human dignity, freedom, democracy, equality, the rule of law**, and respect for **human rights**. These values are common to the Member States in a society characterised by **pluralism, tolerance, justice, solidarity and non-discrimination**.

The Union' values

Freedom of movement for people, goods, services and capital, and the **freedom of establishment**, are guaranteed by the Union throughout its territory. The Constitution prohibits all **discrimination** on grounds of **nationality**.

Fundamental freedoms and non-discrimination

The aim of the Union is to **promote peace, its values and the well-being of its people**. It offers its citizens an area of freedom, security and justice, and a single market in which competition is free and undistorted. It works for a Europe of **sustainable development** based on balanced economic growth, a highly competitive social market economy, a high level of protection and improvement of the quality of the environment. It fosters **scientific and technical progress**. It takes action to stem **exclusion and discrimination** and promotes **justice and social protection, gender equality, inter-generational solidarity** and protection of **children's rights**. The Union promotes **economic, social and territorial cohesion and solidarity** between its Member States.

The Union's objectives

In order to attain these objectives, the Union has certain **powers** which are conferred upon it in the Constitution by the Member States. These powers are exercised using the **Community method** and specific instruments within a **single institutional framework**.

Instruments to serve the Union's objectives

The Union respects the **national identity** of its Member States, including with regard to local and regional autonomy. It respects the **essential functions of the State**, including those for ensuring territorial integrity, maintaining law and order and safeguarding internal security. By virtue of the **principle of sincere cooperation**, the Union and its Member States, in full mutual respect, assist each other in pursuing the tasks stemming from the Constitution. The Member States help the Union to fulfil its mission and refrain from any measures which would jeopardise the attainment of the objectives set out in the Constitution.

The Union and the Member States

The Union has a **legal personality** to assert and uphold its values and interests in the international arena. It contributes to **peace, security, the sustainable development** of our planet, **solidarity and mutual respect** among peoples, **free and fair trade, eradication of poverty** and **protection of human rights**, and in particular **children's rights**, and respect for and consolidation of **international law**.

The Union and the rest of the world

3.2. European citizenship and fundamental rights

3.2.1. European citizenship

Citizenship of the Union complements national citizenship and does not replace it.

Citizenship of the Union to complement national citizenship

The draft Constitution clearly asserts the rights which stem from citizenship: the right to **move and reside freely**, the right to **vote and to stand as candidates in elections to the European Parliament** and in **municipal elections**, the right to **diplomatic and consular protection**, the right to **petition the European Parliament** and the right to **refer matters to the Ombudsman and to write to the institutions in one of the Union's languages** and receive a reply in that same language.

List of rights which the citizens of the Union enjoy

The above list is by no means exhaustive and other rights of citizens of the Union are listed in a specific title of the draft Constitution devoted to the "The democratic life of the Union"; this refers to the right to take part in **democratic life** and the **right of access to documents**.

A part of the Constitution is devoted to democratic life

3.2.2. Fundamental rights

The text of the **Charter of fundamental rights** had been approved by a previous Convention. The Parliament, the Council and the Commission solemnly proclaimed the Charter on 8 December 2000. However, the Charter was not part of the Union's Treaties and had no binding legal force.

The draft Constitution thus achieves a major breakthrough which allows the Union to have its own **catalogue of rights**. The Charter is incorporated into the draft Constitution as Part II; its provisions have binding legal force but this does not mean an extension of the Union's powers.

The institutions, bodies and agencies of the Union must respect the rights written into the Charter. The same obligations are incumbent upon the Member States when they implement the Union's legislation. The Court of Justice will ensure that the Charter is adhered to.

The content of the Charter has undergone no changes in relation to the text drafted by the previous Convention and only amendments of form have been made.

The content of the Charter is broader than that of the **European Convention for the protection of human rights and fundamental freedoms** signed in Rome on 4 November 1950 and ratified by all the Member States of the Union. Indeed, whereas the ECHR is limited to civil and political rights, the Charter of Fundamental Rights covers other areas such as the right to proper administration, the social rights of workers, the protection of personal data and bioethics.

Under the terms of the current *Treaties*, the Union had no competence to adhere to the ECHR, while this competence is explicitly provided for in the draft Constitution, which stipulates that the Union will endeavour to adhere to the ECHR. As for the incorporation of the Charter in the Constitution, adherence to the ECHR does not mean any change to the Union's powers as defined in the Constitution. The full incorporation of the Charter and adherence to the ECHR are complementary rather than alternative steps.

The Charter of Fundamental Rights is an integral part of the European Constitution

Future adherence of the Union to the European Convention on Human Rights

3.3. Who does what in the Union? Clarification of powers

<p>The draft Constitution sets out clearly the matters for which the Member States have transferred powers to act to the Union and introduces a classification of the Union's powers.</p>	<p><i>Classification of powers</i></p>
<p>A first category is made up of certain very specific areas where the Union acts alone on behalf of all the Member States. These are "exclusive" powers. It has been considered that by definition an action at Union level is more effective than disjointed action by each of the Member States. These areas of exclusive power include competition in the internal market or trade with third countries.</p>	<p><i>Exclusive Union powers</i></p>
<p>A second category groups the areas in which the Union acts when its action brings added value to action taken by the Member States, sometimes in a very comprehensive way. These are called "shared powers". They include the major policies, e.g. the internal market, the common agricultural policy, transport, the environment, asylum and immigration, and judicial and police cooperation.</p>	<p><i>Shared powers</i></p>
<p>As for the third category of powers, the Union acts only to support action taken by the Member States who thus retain very substantial freedom of action and the primary responsibility for management in relation to their citizens. In these areas, the Union cannot harmonise national legislation. Culture, education, sport and civil protection are examples of areas of supporting action.</p>	<p><i>Areas of supporting action</i></p>
<p>In certain other areas, e.g. economic and employment policy, the Member States consider that the Union must coordinate their national policies. In these areas, unlike the previous categories of powers, there is no need for laws, but rather the need to ensure that everyone is moving in the same direction in the interests of greater efficiency.</p>	<p><i>Coordination of national policies in the areas of economy and employment</i></p>
<p>Lastly, the Union can pursue a common foreign and security policy based on the solidarity of the Member States.</p>	<p><i>A common foreign and security policy</i></p>
<p>In order to retain some degree of flexibility in the system, there is a clause which allows the Council to plug any gaps in the powers conferred upon the Union whenever action at Union level is called for in order to attain one of the objectives of the Constitution. In such cases, the Council takes a unanimous decision after approval by the European Parliament.</p>	<p><i>A flexibility clause complements the classification of powers</i></p>

3.4. The principle of subsidiarity: ensuring the proper exercise of powers

The principle of **subsidiarity** is designed to ensure that whenever the Union exercises its powers it acts only to the extent that its action is actually required and that it brings added value to action taken by the Member States. The principle of subsidiarity is designed to ensure that decisions are taken as closely as possible to the people, checking constantly that the action to be taken at the Community level is justified in relation to what is possible at the national, regional or local levels. The principle of **proportionality** targets the same objective of ensuring proper exercise of powers, stipulating that the content and form of action taken by the Union must not go further than what is necessary to attain the objectives of the Treaty.

The draft Constitution strengthens the application of the two principles. When the **Commission** makes a proposal, it must **explain** the way in which it has taken these two principles into account. For the first time, every **national parliament** can re-examine the proposals and will be able to issue a reasoned opinion if it considers that the principle of subsidiarity has not been respected. If one third of the parliaments hold the same opinion, the Commission must review its proposal.

A last level of control is triggered upon the adoption of a law: the right of referral to the **Court of Justice**.

The principles of subsidiarity and proportionality

A new mechanism to ensure compliance with the principle of subsidiarity

.....plus a jurisdictional control

3.5. A legitimate and democratic Union

The draft Constitution for the first time defines the **democratic bases** of the Union and consolidates its tangible expression.

The draft Constitution provides for fresh obligations for the institutions with regard to **consultation** of **civil society**, **transparency**, access to documents and respect for personal data. In addition, the role of the **social partners** and of the **churches** is anchored in the draft Constitution. Furthermore, a million citizens' signatures would trigger a call on the Commission to draft a fresh proposal.

Democratic participation as a cornerstone of the Union

How to achieve better democratic participation

Holding the majority within the Convention, the members of the national parliaments prompted the members of the Convention to seek ways of enhancing the role of the **national parliaments** in European integration. The **transparency of the Council's** work will enable the parliaments to better monitor the positions of their governments within the Council, and the “**early warning**” **mechanism concerning the respect of the principle of subsidiarity** will offer them a direct way of influencing the legislative process. Better inter-parliamentary cooperation will also strengthen the role of the parliaments within the Union.

A stronger role for the national parliaments

3.6. Belonging to the Union

In order to join the Union, a European state must **respect the values** of the latter.

Joining the Union: obligation to respect the values of the Union

The accession of a state requires a **unanimous** Council decision, the approval of the European Parliament, and ratification of the accession agreement by all the Member States.

By a decision taken unanimously (not counting the state concerned) and after approval by the European Parliament (voting by two-thirds majority), the Council can indicate **serious and persistent violation** of the **Union's values** by a Member State, after which it may by qualified majority suspend the rights of the Member State in question.

Suspension of rights in the event of violation of the Union's values

Any Member State can decide — and this is an innovation introduced by the draft Constitution — in accordance with its constitutional rules, **to withdraw from the Union**. Its relations will in this event be governed by an agreement between itself and the Union represented by the Council voting by a qualified majority, after approval by the European Parliament.

Introduction in the Constitution of the option for a Member State to withdraw from the Union

4. THE INSTITUTIONS AND THE EUROPEAN PROJECT

In order to carry forward the European project and enable the Union to attain its objectives, an effective and legitimate institutional framework is needed. This dual need is even more important in an enlarged Union of 25 or more Member States. The draft Constitution includes the bulk of the existing institutional provisions and introduces two new institutional figures: a more stable presidency of the European Council and a Foreign Affairs Minister.

4.1.1. *The Union's institutional framework*

Under the terms of the draft Constitution, the institutional framework as such includes the **European Parliament**, the **European Council**, the **Council of Ministers**, the **European Commission** and the **Court of Justice**.

The **European Central Bank** (ECB) plays a major role in the Union's economic and monetary policy, while the **Court of Auditors** ensures auditing of the Union's revenue and expenditure.

Alongside these institutions stand two advisory bodies, the **Committee of the Regions** and the **Economic and Social Committee**.

4.1.2. *The European Parliament*

The European Parliament is the institution in which the people of the Member States are represented. In most areas, the Parliament has a role of **co-legislator**, stands as the **budgetary authority** alongside the Council, and also exercises tasks of **political control** over the Commission.

The draft Constitution strengthens the European Parliament's powers as co-legislator by extending to new areas the scope of the so-called co-decision procedure, henceforth termed **legislative procedure** whereby the Parliament takes joint decisions with the Council.

The number of European Members of Parliament, elected by direct universal suffrage, for a five year term, is established at a maximum of 736.

The European Parliament: legislative, budgetary and political control

Extension of the co-decision-based legislative procedure of the Parliament and the Council

A maximum of 736 members of the European Parliament

4.1.3. The European Council

The European Council has the task of giving the Union the **political impetus** needed for its development. It does not exercise legislative functions. Generally speaking, it takes its stand by **consensus**. The draft Constitution provides for one European Council meeting every quarter.

Role of the European Council.

The draft Constitution stipulates that it be composed of the **Heads of State or government** of the Member States, its **President** (a new figure in the Union's institutional architecture) and the **President of the Commission**. Under the terms of the draft Constitution, the new **Minister for Foreign Affairs** of the Union also takes part in the work of the European Council.

Composition of the European Council

As things currently stand, and like all the bodies of the Council, the European Council is chaired by the Member State holding the six-month Presidency of the Union, according to a pre-established rota. The Convention has proposed that this system be modified by creating a **permanent** post of European Council president elected by the European Council for a period of **two and a half years**, renewable once.

A new figure in the Union's institutional landscape: the President of the European Council

The role of this president would be to chair and push forward the work of the European Council. He would also serve as a high level representative of the Union in the area of the common foreign and security policy.

4.1.4. The Council of Ministers

The Council is the Union institution in which the governments of the Member States are represented. The Council, with the European Parliament, exercises legislative and budgetary tasks. It is also the lead institution for decision making on the common foreign and security policy.

Role of the Council of Ministers

The Council of Ministers is made up of one **representative** appointed by **each Member State** at ministerial level (e.g. the ministers for agriculture for the Council which has to take decisions under the common agricultural policy).

Composition of the Council of Ministers

At present, all the bodies of the Council are chaired for six months by a single Member State in turn. Under the draft Constitution, the **Presidency** of a Council formation (e.g. the Agricultural Council) is held by the minister of a Member State according to an equal rota system for a period of one year. The rules for applying this rota system between the Member States will be established by the European Council, taking due account *inter alia* of the overall geographical balance in Europe. The Council for Foreign Affairs, for its part, would be chaired by the Union's Foreign Affairs Minister.

Presidency of the Council of Ministers

4.1.5. *The European Commission*

The Commission was created as an independent body to represent the **European interest common** to all the Member States of the Union. It is the driving force of the legislative process, proposing the legislation on which the European Parliament and the Council then have to take a decision.

Commission's role

The Commission ensures the **planning and implementation of the common policies** (e.g. the common agricultural policy), administers the budget and manages the Community programmes. For the day-to-day running of Community policies and programmes, the Commission relies heavily on the national administrations.

On the outside, the European Commission **represents** the Union and conducts international negotiations (e.g. in the World Trade Organisation). Under the draft Treaty, the Union's external representation in the area of foreign and security policy will be ensured by the Minister of Foreign Affairs.

Lastly, the Commission **sees that the provisions of the Treaty** and decisions taken by the Community institutions, e.g. in the area of competition, are correctly applied.

The Commission is collectively accountable to the European Parliament which may adopt a motion of censure in its regard. Its decisions are taken by simple majority.

The Commission accountable to the European Parliament

Since its inception, the Commission has always consisted of two nationals of the most heavily-populated Member States and one national of each of the others. The Treaty of Nice limits the composition of the Commission to one commissioner for each Member State. This is therefore how the Commission to be designated next year (1 November 2004) will be composed.

For the next Commission in 2009, the draft Constitution proposes that its composition be modified as follows: the College to be composed of the President of the Commission, the Minister for Foreign Affairs, who would have the title of vice-president, and thirteen “**European Commissioners**” selected on the basis of an equal rotat system between the Member States. Alongside the European Commissioners the President of the Commission would designate from all the other Member States “**commissioners**” who would not have the right to vote within the Commission.

The Convention has brought no fundamental changes to the way the **President** of the Commission is appointed but the draft Constitution indicates clearly that when proposing to the election of the European Parliament the candidate for the Commission Presidency the European Council must take account of the results of the European elections.

The draft Constitution stipulates that the **commissioners** will be appointed by the Commission President from a **list** of three people (including at least one woman) drawn up by each country.

As is already the case, the President and the commissioners, appointed for a five-year term of office, will be collegially put to a **vote of approval by the European Parliament**.

*Composition of
the 2009
Commission: 15
European
Commissioners
and non-voting
commissioners
from the other
Member States*

*Designation of
the President of
the Commission
and the
commissioners*

4.1.6. The Foreign Affairs Minister

The creation of the post of Minister for Foreign Affairs is one of the main **innovations** brought by the Constitution. This person should bring more **consistency** to the Union's external action both at the political and at the economic level. Other countries will be able to **identify more easily the Union's voice for the common foreign and security policy**.

*An innovation:
the Minister for
the Union's
Foreign Affairs:
a voice for the
Union's common
foreign and
security policy*

This Minister, as stated during the Convention's work, will wear **two hats** by being both the Council's representative for the common foreign and security policy and one of the Commission's Vice-Presidents.

The Foreign Affairs Minister would be appointed by qualified majority by the **European Council**, subject to the agreement of the President of the **Commission**.

*Designation of
the Foreign
Affairs Minister*

4.1.7. The Court of Justice

The draft Constitution stipulates that the Court of Justice comprises the European Court of Justice, the High Court (today called the Court of First Instance) and specialised courts.

*Composition of
the Court of
Justice*

This is the institution responsible for enforcing Community law. It has jurisdiction in disputes between Member States, between the Union and its Member States, between institutions and between private individuals and the Union. It can also answer questions about the interpretation of Community law raised by national courts in the course of a dispute being heard in such courts. This power to issue preliminary rulings is essential to ensure a uniform interpretation of Community law throughout the Union.

*Role of the Court
of Justice*

The draft Constitution should allow the public to take action more easily against the Union regulations on which sanctions are based, even if they do not affect them individually (as imposed in the Treaties today).

In addition, it will be possible for infringements by Member States, in certain cases, and at the request of the Commission, to be punished more swiftly by the Court, which can more easily impose penalties/fines in respect of non-transposal of the Union's law or non-implementation of its judgments.

4.1.8. *The European Central Bank (ECB)*

The establishment of monetary union and the creation of a single currency, the euro (adopted by 12 Member States out of 15), led to the setting up of the European Central Bank (ECB). Since 1 January 1999, its task has been to conduct European monetary policy as defined by the European System of Central Banks (ESCB). In concrete terms, the ECB's decision-making bodies (the governing council and the executive board) direct the European System of Central Banks whose tasks are to manage monetary growth, carry out exchange operations, hold and manage the official exchange reserves of the Member States and ensure the smooth running of payments systems. The primary aim of the ECB is to maintain price stability.

The European Central Bank conducts European monetary policy

4.1.9. *The Court of Auditors*

The Court of Auditors monitors the Community's accounts, examining the legality and regularity of the revenue and expenditure in the Community budget and ensuring sound financial management.

The Court of Auditors monitors revenue and expenditure

4.1.10. *The Committee of the Regions*

The Committee of the Regions comprises representatives of **local and regional authorities**. It is consulted by the Council, the Parliament and the Commission in areas affecting regional and local interests, including education, public health, economic and social cohesion.

The Committee of the Regions is an advisory body

The number of members of the COR is established at a maximum of **350**. They are appointed for a five-year period by the Council.

Composition of the Committee of the Regions

4.1.11. The Economic and Social Committee

The Economic and Social Committee (ESC), made up of representatives of the **economic and social organisations and of civil society**, gives **advisory opinions** to the institutions, particularly in the context of legislative procedure. The ESC is consulted ahead of the adoption of many acts concerning the internal market, education, consumer protection, the environment, regional development and the social sphere.

The Economic and Social Committee: an advisory body

The number of members of the Economic and Social Committee has been established at a maximum of **350**. These members are appointed by the Council for a period of five years.

Composition of the Economic and Social Committee

5. THE UNION'S MEANS OF ACTION

5.1.1. Simplification of instruments

Simplification of the instruments at the Union's disposal in its action took up a whole specific chapter of the Laeken Declaration which established the Convention's mandate. The work of the Convention has produced good results in this area. The draft Constitution **simplifies** the existing system.

Simplifying the instruments whereby the Union exercises its powers

The typology of acts is limited to **six instruments** (law, framework law, regulation, decision, recommendation and opinion). In a famous speech before Laeken, the Belgian Prime Minister had noted the existence of 36 types of different act!

Six legal instruments

The hierarchy between the legislative level and the level for implementing laws is established as in all national legal systems.

Legislative level and level of implementation

The **law** will determine the essential elements of a given area, the definition of the more technical aspects which can be delegated to the Commission under the supervision of two co-legislators, which will lighten the workload of the latter and who can then focus on the more important aspects of the life of the people of Europe.

5.1.2. *Legislative procedure*

The **legislative procedure** currently known as the co-decision procedure gives the **European Parliament** power as **co-legislator** on an equal footing with the **Council**. Under the terms of this procedure a text proposed by the Commission, once the interested circles have been consulted, is adopted both by the European Parliament and by the Council.

The European Parliament and the Council co-legislate

The generalisation of the co-decision procedure which the draft Constitution establishes as an ordinary legislative procedure conveys the best image of the dual legitimacy, of the states (Council) and the European general public (European Parliament), which is the hallmark of the Union. However, in certain cases there will be special laws, adopted by the Council alone or, less frequently, by the European Parliament alone.

Today, the Council generally takes its decisions **unanimously** or using a **majority system** calculating the majority using a system of weighting which takes account to some extent of the population of individual Member States.

Voting within the Council

The draft Constitution introduces a **new definition of qualified majority** within the Council: this majority should be simplified and be defined as from 2009 as a decision bringing together the majority of the Member States representing at least 60% of the Union's population.

Definition of qualified majority

The extension of **qualified majority voting** within the Council envisaged by the draft Constitution for some thirty provisions for which unanimity is currently required, will make it easier to take decisions. But this progress is still too little: the Member States will each retain a right of veto on over 50 legal bases and the risk is that this would constitute sources of blockage in the Union's action, particularly for adopting taxation-related measures stemming from the internal market or minimum requirements with regard to social security.

Field of application of the qualified majority

Under the Constitution, it will be up to the Commission alone to adopt delegated regulations to complement and/or amend non-essential elements of the law, under the supervision of the co-legislators.

Amendments of non-essential elements of the law

Specific decision-making arrangements are envisaged with regard to the common foreign and security policy, including the ESDP, on the one hand and the area of freedom, security and justice on the other.

Specific decisions relating to the CFSP and the area of freedom, security and justice

In order to foster closer cooperation between those countries of the Union wishing, in a given context corresponding to the objectives of the Union but which are not part of its exclusive powers, to go beyond the level of integration envisaged in the Treaties, the Amsterdam Treaty introduced the concept of “**enhanced cooperation**”. The aim is to enable a limited number of Member States, capable and eager to do so, to move ahead with European integration, in full respect of the Union’s institutional framework.

Forging ahead without all parties being involved in enhanced cooperation

This enhanced cooperation can be used only as a last resort (when the objectives of such cooperation cannot be attained on the basis of a treaty provision by the Union as a whole); it requires a minimum of Member States (the draft Constitution establishes this number at one third of the Member States) and all the Member States must be free to join in at a later stage.

5.1.3. *The Union’s finances*

The Community **budget** follows traditional budgetary patterns and is therefore founded on certain principles: unity (overall expenditure and revenue in a single document), annuality (budgetary operations are linked to a financial year) and balance (expenditure must not exceed revenue).

The Union’s budget

The Commission has the task of presenting the draft annual budget for the Union. The draft Constitution envisages the adoption of the budget by the **European Parliament** and the **Council** using a much simpler procedure than that currently applied.

Budgetary procedure

<p>The draft Constitution stipulates that a European law of the Council - the “multi-annual financial framework” - establishes the annual ceilings for the Union’s expenditure. The budget must comply with this multi-annual financial framework of the Council, which shares the budgetary authority with the European Parliament.</p>	<p><i>The multi-annual financial framework</i></p>
<p>The Commission implements the budget under the supervision of the European Parliament and the Court of Auditors. In practice, a very high proportion of the budget is implemented on a daily basis by the Member States, particularly as regards those sections of the budget which relate to agriculture.</p>	<p><i>Implementation of the budget</i></p>
<p>The budget is funded by the Union’s own resources which are primarily made up of a proportion of the VAT levied by the Member States and the levying of a certain percentage of the GDP of the Member States. The limits and categories of these resources are established by the Council and must also be ratified by all the Member States.</p>	<p><i>Own resources</i></p>

6. THE UNION’S EXTERNAL ACTION

<p>The provisions relating to the Union’s external action have all been grouped under a single title in the Constitution whereas they featured in the previous <i>Treaties</i> in a number of different places. This has improved the readability of the text. This grouping also permits greater consistency of Union action in relation to third countries, in as much as all actions, be they economic, humanitarian or political, have common objectives.</p>	<p><i>All the Union’s external action presented under a single title: better readability and greater consistency</i></p>
<p>With regard to foreign policy, the Council will continue to decide unanimously in most cases. The Convention has not brought the progress hoped for by some on this point. In a Union of 25 or 30 states, unanimity i.e. the right of veto for every Member States, will not make decision-making any easier!</p>	<p><i>Maintenance of the unanimity requirement</i></p>
<p>The most interesting innovation is the creation of the post of Foreign Affairs Minister. He/she will be the Vice-President of the Commission but will work directly with the Member States on foreign policy issues. The person concerned, who will be in charge of a diplomatic service with delegations in around 125 countries, will ensure that the Union is more effective and has a stronger voice on the international stage. He/she can for instance speak on behalf of the Union in the United Nations Security Council.</p>	<p><i>An innovation: the creation of the post of Minister for Foreign Affairs of the Union</i></p>

The Union's **defence policy** is slowly taking shape, in full respect of the different cultures and political commitments of the Member States (there is no question of ending the neutrality of certain Member States or of vying with NATO).

A European defence policy which respects the political commitments of the Member States

An **Armaments Agency** will be set up so that the taxpayers' money is better used, avoiding, for instance, duplication in the military programmes of the different Member States.

Creation of an Armaments Agency

By joining the Union, the Member States agreed on mutual solidarity. This **solidarity** is not simply economic: in the event of a **terrorist** attack or natural **disaster** the Constitution henceforth provides for action by the Union.

Solidarity between the Member States, e.g. in the event of a terrorist attack

With regard to **external trade**, it is the **Union** which **negotiates with third countries**, particularly the World Trade Organisation, to defend European interests with regard to trading in goods and services, intellectual property and investment.

External trade: the Union negotiates with third countries

In this area, the Constitution enhances the role of the **European Parliament**, which is placed virtually on an equal footing with the Council whereas hitherto the Treaty gave it no role either in monitoring or decision-making. The **Council's** decision-making rules are also made clearer so as to allow the Union to continue to be an indispensable player in the regulation of the world economy.

More power for the European Parliament, clearer decision-making rules within the Council.

The principle aim of the **Union's development policy** is the eradication of poverty. The Union and its Member States account for over 50% of public aid in the world; in the interests of greater effectiveness proper coordination of their action in pursuit of this aim is therefore essential.

A development policy focusing on the eradication of poverty

One Constitution provision is devoted to the Union's **humanitarian aid policy** (managed by ECHO) in order to show its specific nature (it complies with international humanitarian law and is not a means of political pressure).

Humanitarian aid policy

The Constitution specifies how the Union can negotiate **international agreements** and it sets out clearly the procedure to be followed: the Commission (or the Foreign Policy Minister) negotiates, and the Council and the European Parliament decide jointly whether they accept the outcome.

The negotiation of international agreements

7. AN AREA OF FREEDOM, SECURITY AND JUSTICE

The concept of an area of freedom, security and justice already features in the current Treaties. However, the draft Constitution gives the Union **appropriate means** of reaching solutions consonant with the scale of the challenge facing the Union (how to ensure the freedom of movement of people, how to fight against terrorism and serious crime, how to manage migratory flows). The draft Constitution also makes the procedures applicable **more effective, more democratic and more transparent**.

Appropriate means to act together against terrorism and crime

As is already provided for in the current Treaties, the draft Constitution establishes **the absence of controls at the Union's internal borders** and will establish rules for the checks applicable to people crossing its **external borders**. Furthermore, the Union may manage its borders in an integrated way, which means, for instance, setting up a unit which can assist and support national frontier guards in their difficult tasks of controlling and monitoring borders.

Absence of internal border controls. Control of the Union's external borders

The Union must have a genuine **common policy on asylum**, fully respecting the Geneva Convention on refugees and ensuring that any person needing international protection is effectively afforded such protection. Unlike the current Treaties, which provide simply for the establishment of minimum rules, the draft Constitution provides for the establishment of a **common European asylum system** which includes *inter alia* a **uniform status** for refugees and **common procedures**.

Common policy on asylum

The Union will also introduce a **common policy on immigration**. The draft Constitution sets out the guiding principles of this common policy, which the existing Treaties did not do. The point is to manage flows effectively, ensure fair treatment for immigrants who are legally resident and prevent and counter illegal immigration and people trafficking. The Council and the European Parliament will take steps to this effect, for instance with regard to the conditions applicable to immigration into the Member States or with regard to immigrant rights. The Union may also adopt measures to support the Member States' efforts to integrate the nationals of third countries.

Common immigration policy

These policies will all be conducted in full respect of the **principle of solidarity**, including financial solidarity, which is enshrined in the draft Constitution. Democratic legitimacy will be considerably strengthened. Indeed, under the current Treaties, the European Parliament is merely consulted whereas in the draft Constitution all these measures are adopted by the European Parliament and the Council. Another major change concerns the Court of Justice, which will exercise its jurisdictional control on all acts adopted; lastly, the Commission will be the only source of legislative initiative and will also continue its role as guardian of the Treaties.

A solidary Union and democratic procedures

As is already the case, the Union will continue to act in the area of **judicial cooperation in civil affairs**, provided the matters in question are of cross-border relevance. Unlike the existing Treaties, the draft Constitution gives the Council and the European Parliament the power to adopt laws or framework laws to ensure a high level of access to justice.

Judicial cooperation in civil matters

Under the terms of the current Treaties, the Union could already act in the area of **police and judicial cooperation on criminal matters**. However, as in the case of the common foreign and security policy, this was handled in a separate part of the Treaty on European Union, known as the third pillar and subject to the intergovernmental decision-making method. The draft Constitution innovates in this area by doing away with the third pillar, grouping within a single structure all the Union's policies, and introducing procedures which are **more democratic, more effective and more transparent**. One special feature: a group of Member States (a quarter) can submit an initiative in the same way as the Commission. The right of veto is to a very large extent dropped in favour of the qualified majority rule; the Parliament co-legislates with the Council and the rules adopted must be submitted to the scrutiny of the Court of Justice.

Police and judicial cooperation on criminal matters

The European Parliament and the Council can thus establish common definitions and **penalties** in respect of a series of **serious and cross-border offences** which are listed in the draft Constitution. These are very serious crimes e.g. terrorism, drug trafficking, people trafficking, racism and xenophobia, sexual exploitation of children, environmental crime.

Common penalties against cross-border offences

The draft Constitution will also enable the Union to adopt framework laws on criminal procedure, with regard to the rights of victims and personal rights in criminal procedure. The mechanisms for judicial cooperation between Member States which already exist, e.g. Eurojust, will be strengthened and the Council may at some time in the future decide to introduce a **European prosecutor's** department to track down and prosecute the perpetrators of and accomplices in serious cross-border crimes. This decision is to be taken unanimously by the Member States.

A future European prosecutor's department to prosecute those guilty of cross-border crime

In the area of police cooperation, the European Police Office, Europol, offers a structure for developing police cooperation between Member States in the prevention and combating of all serious forms of organised international crime. Under the draft Constitution, Europol will be subject to the scrutiny of the European Parliament and of the national parliaments.

Police cooperation

8. THE UNION'S OTHER POLICIES: WHAT THE CONSTITUTION CONTRIBUTES

The Convention focused particular attention to the **reform of certain policies** (common foreign and security policy; area of freedom, security and justice; economic and monetary union). There were no major changes to the Union's other policies.

Reform of certain Union policies

Special attention was devoted to maintaining **consistency in Union action**, through provisions to ensure that the overall objectives – and more particularly gender equality, the environment, consumers – are taken into account when defining and implementing each specific policy.

Consistency of Union action

The draft Constitution introduces **new legal bases** which will allow the Union to take action if need be in the areas of public health in response to wider concerns affecting the security of the general public (e.g. SARS, bio-terrorism); of **energy**, in order to promote access to public service, its continuity, security of supply, the development of renewable sources of energy and energy saving; of **civil protection**, to assist Member States to deal with natural or man-made disasters; and of **sport**, to develop its educational dimension and coordinate efforts to prevent doping.

New scope for action in certain areas

9. ENTRY INTO FORCE AND REVIEW OF THE CONSTITUTION

Entry into force of the Constitution

The constitutional Treaty is based on the assumption that it will be ratified by all the Member States. If after two years following its signature only four-fifths of the Member States have ratified it, the European Council will review the situation.

Entry into force of the Constitution

Subsequent reviews of the Constitution

Reviews will normally be prepared by a Convention, unless their scope is limited. The Convention must adopt by consensus a recommendation to the Intergovernmental Conference, which will jointly agree on the amendments to be introduced. These amendments will enter into force only when they have been ratified by all the Member States in accordance with their respective constitutional rules.

Review of the Constitution: confirmation of the Convention method

Detailed information on the work of the Convention is available on the Europa server of the European institutions: <http://europa.eu.int/futurum>

10. WHAT WILL HAPPEN AFTER THE CONVENTION?

Mr Giscard d'Estaing presented the Convention's draft Constitution to the **European Council** meeting in Thessaloniki on 19-20 June 2003.

The presentation of this draft marks the end of the mission conferred upon the Convention. However, the European Council deemed that some extent of purely technical work was still needed on part III of the draft Constitution which deals with the Union's policies. This work should be completed no later 15 July.

It is on the basis of the Convention's draft Constitution that the **Intergovernmental Conference (IGC)** will start its work in **October 2003**.

This IGC which will take the final decision will bring together the representatives of the governments of the 15 current Member States of the Union and those of the 10 acceding countries (the three candidate countries, Bulgaria, Romania and Turkey, will have observer status). The Commission will take part in the work of the IGC and the European Parliament will also be closely involved.

The IGC should finish its work as soon as possible; the objective is to complete work **before** the European Parliament elections scheduled for **15 June 2004**. The Constitution should be signed as quickly as possible after 1 May 2004, the date of accession of the 10 new Member States of the Union.

The next IGC will take the final decision on the Constitution