

# EU Constitution Project Newsletter

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In line with the Federal Trust's aim to enlighten the debate on good governance, this Newsletter reviews the current reform process of the EU from the standpoint of the work of the Federal Trust's project on Constitutionalism, Federalism and the Reform of the European Union (the 'EU Constitution Project'). The Newsletter looks at current developments in and outside the Convention and also covers the UK debate. Finally, it provides information about relevant events and publications.

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## 1. Editorial

### Giscard's Convention: the final stretch

It is still unclear whether the Convention on the future of Europe will be a footnote or a major chapter in the history of European integration. Much will depend on what national ministers make of the Convention's recommendations. But if the reception to be accorded to the Convention's work remains unclear, we can already say a certain amount about the likely recommendations coming from the Convention itself. The Convention's conclusions will reflect on many issues a striking degree of consensus among most delegates; the recommendations will be largely federalist in character; and they will be considerably less congenial to the British government than Mr. Blair hoped as recently as last summer.

For all the initial murmurings about his patrician style of chairmanship, Giscard's leadership of the Convention has delivered considerable results. His main, and persuasive argument to delegates has been that the more of them supported an agreed text produced by the Convention, the greater that text's chance of being taken seriously by the IGC. Giscard seems likely to go to the European Council at Salonika in June with a text approved on many important points by the overwhelming majority of the Convention's participants.

It is true that for Giscard sometimes 'le consensus, c'est moi.' But to obtain consensus in the Convention, he has shown undoubted flexibility. In particular, he has been willing to accommodate the federalist side of the argument much more

## EU Constitution Project

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than some hoped, some feared and most expected.

Giscard's willingness to move in a federalist direction has been reinforced by a number of factors. There is within the Convention a substantial federalist block, wishing essentially to reinforce and develop the competences of the central European institutions. Giscard knows that consensus will not be achievable without them. Moreover, the existing structures of the European Union already contain substantial federalist elements, not always acknowledged or designated as such. Any work of constitutional codification, such as that on which the Convention is engaged, will inevitably highlight and, by highlighting, consolidate these already present federalist tendencies.

Giscard draws in his own mind a strong dividing line between foreign, security and defence policy on the one hand, and the remaining, largely legislative activities of the European Union on the other. Like many French politicians, he sees foreign, security and defence policy as a matter best settled between national governments. As long as Europe's institutions play only a small role in these areas, he is content for their legislative functions to be maintained, and even enhanced. It now seems clear that Giscard's Convention will recommend the generalization of majority voting in the Council and the wider application of co-decision between Council and European Parliament. Both these are long-standing federalist demands. But Giscard has gone further, describing in his draft constitution the Union as exercising its shared powers on a "federal" basis. The British government's representative to the Convention, Peter Hain, has been unable ever since to conceal his irritation at this "unhelpful" formulation.

In general, the upshot of the Convention seems likely to be a disappointment for the British government. It may be (although this is controversial with the small countries) that the Convention will recommend the institution of a long-term President of the Council, to act as Europe's "voice in the world." This will be seen as a success

for the British, reflecting the Anglo-French conviction that foreign, defence and security policies should largely remain intergovernmental matters for the foreseeable future.

But nothing Giscard recommends will be plausibly presentable as a fundamental rebalancing of the European Union's decision-making structure. Neither national Parliaments nor national governments will see their role in the workings of the Union significantly enhanced. On the contrary, the Union's central institutions will be strengthened, not weakened, if the Convention's likely proposals are implemented.

It seems probable that the Convention's recommendations will follow hard on the heels of the almost certainly negative assessment by the British Treasury on the UK's entry into the euro. Eighteen months ago, the present British government hoped that the outcome of Giscard's Convention, which it would present as a "victory" for intergovernmentalist ideas, would help win a euro referendum in 2003. But Giscard and his Convention have not so far played the role assigned them by British governmental strategy. Mr. Blair's hope must now be that he can claw back the ground lost during the Convention in the forthcoming negotiations of the Intergovernmental Conference. The omens are far from being propitious.

Brendan Donnelly  
Director of the Federal Trust

## 2. Inside the Convention

### The Athens Summit

The heads of state and government met in mid-April in Athens to sign the accession treaties and to receive Convention President Valéry Giscard d'Estaing who gave an oral presentation about the state of the Convention, the work achieved and the tasks ahead.

### The state of the Convention

During a brief speech to the heads of states/government the former French President drew attention, amongst other matters, to the Convention's agreement

on the inclusion of the Charter of Fundamental Rights, the simplification of legal instruments, and the replacement of the different treaties by a single constitutional treaty. Of course two crucial points remained to be tackled, the Common Foreign and Security Policy (CFSP) and the future institutional design of the European Union. Giscard hinted that he expects a substantial input by the member state governments and their respective representatives in the Convention – even indicating that he expects that CFSP will remain largely within the control of the national governments. As far as the institutional questions were concerned Giscard laid out the issues at hand and asked the European Council to present him with their comments so that they can be taken into consideration during the forthcoming Convention discussion on this important issue. Interestingly, Giscard made a reference to the timetable indicating that he had been refused a further extension but suggesting that the tight deadline might have implications on the output: 'le respect d'un calendrier strict aura des conséquences sur le degré de finition de notre projet.'

[Report by Giscard delivered to Convention](#)

### Draft articles on the institutions for Title IV of Part I of the Constitution

Besides the debate in the Convention on Union Membership (Title X) and the General and Final Provisions dealing inter alia with ratification, perhaps the most important event within the Convention took place during the last week of April when the Convention was presented with the first draft on the future institutional design of the Union.

### Giscard's proposal leaked to the press

With the reduction of media focus on the Iraq conflict, and the Member States at Athens refusing to extend the Convention's deadline for submission, which is now firmly fixed as 20 June 2003 at the Salonika Summit, the Convention has no more excuses and very little time to tackle the last two

remaining (and most controversial) issues, CFSP and the institutional design. On 22 April Giscard's draft on the institutional design of the Union was leaked first to *Le Monde* and eventually a press conference was called to brief the entire Brussels press pack. Giscard's timing meant that just after the Easter break the *Conventionnels* as well as Giscard's Praesidium colleagues and the Commission were caught off-guard. Still, the Commission reacted in an unusually forceful manner with Romano Prodi's spokesperson openly criticising most of Giscard's ideas. Critical voices came also from MEPs sitting in the Convention. Elmar Brok and Johannes Voggenhuber, although from different party backgrounds, were both prominently featured in the German speaking press as openly opposing the idea of a permanent President of the Council. In addition, the European Parliament delegation in the Convention has decided to organise itself into small working groups each dealing with a small number of Articles on the institutions in order to determine the common position of the EP on the Praesidium's proposal by 8 May.

Unsurprisingly the British, French and Spanish governments were supportive of Giscard's proposal whereas the German government refused to comment before the Convention had discussed the issues at hand.

Related press articles

[Le Monde](#)

[EU Observer](#)

[La Libre Belgique](#)

[Der Spiegel](#)

[Die Presse](#)

[Die Welt](#)

[EU Observer](#)

### Vote in the Praesidium

However, the Praesidium came together on 23 April to discuss the proposals and Giscard had to make some considerable concessions. Reportedly the Praesidium was so split on some of the key issues put forward by Giscard, particularly the Congress of the Peoples and the question of a permanent European Council President, that it decided to take

a vote. So far Giscard has insisted that votes should not be taken in either the Convention plenary or the Praesidium, but this new development could potentially set a precedent for further votes in the Convention. Following the voting, the Praesidium was able to water down Giscard's proposals and agree on a common position which was then presented to the Convention during the plenary session on 24 April 2003, see CONV 691/03. The Praesidium dropped the idea of installing a Bureau supporting the President of the European Council. This bureau was supposed to consist of seven people, among whom two current head of states/government. Also, Giscard originally proposed a Commission reduced to 11 Commissioners plus the President. Following the vote in the Praesidium CONV 691/03 states that the Commission should be made up of 13 Commissioners plus the president, plus the Foreign Minister. The Praesidium kept Giscard's idea of giving the Commission the right to install call for Associate Commissioners who would not have voting powers in the College but closely co-operate with the Commissioners. Apparently the Praesidium met for 15 hours and Giscard left before the end, and in particular before they discussed the proposal for the Congress, so that they felt that in his absence they could not take that proposal out.

Related press articles and documents

[EU Observer](#)

[Le Monde](#)

[Daily Telegraph](#)

[Related Convnetion document](#)

### CONV 691/03: an overview

- A new permanent President of the European Council shall be elected by qualified majority for a renewable term of 2 1/2 to five years – the President should be a current member of the European Council or have been a member for at least two years. It can be noted that, when presenting the proposals to the Plenary, Giscard made much of the distinction between a

'President' in the Anglo-Saxon sense and a Chairman – i.e. 'quelqu'un qui preside'. There is no word for Chairman other than President in French.

- The Commission President will be elected by a majority of the European Parliament voting on a single candidate chosen, by the European Council acting by a qualified majority, and taking into account the results of the European Parliamentary elections. A no-vote in the European Parliament would require the European Council to make a further nomination.

- The post of a new Foreign Minister will be created who would be vice-president of the Commission and would also chair the External Relations Council

- The voting rules in the Council are envisaged to be modified simplifying the triple-majority solution agreed on at Nice. A qualified majority is reached if a majority of member states representing 3/5 of the Union's population vote in favour.

- The number of Commissioners shall be reduced to 15 (including the President and the Foreign Minister) but up to 15 'associate commissioners' may be appointed who would support the Commission yet would not have any voting rights in the College of Commissioners.

- The number of members of the European Parliament shall not exceed seven hundred – meaning that the allocations of MEPs agreed on at Nice do not have to be changed before Romania and Bulgaria join the EU.

### Small countries vs. large countries

Forceful reactions have come from the smaller member states, of whom all but Denmark and Sweden oppose the idea of a permanent president of the European Council. Smaller member states outnumber by far the larger ones, albeit not in terms of population. This indicates that the proposal to introduce a permanent president of the European Council is far from home and dry. In fact the smaller states seem to co-operate much more intensely than they have done in the past. During the Athens

summit the representatives of the smaller states, apart from the host Greece, as well as Denmark and Sweden, met for a 'Benelux Breakfast' to agree on common positions later presented by the Luxembourg Prime Minister, Jean-Claude Juncker, to the Council. The meeting included all accession countries, except Poland which is regarded as a 'large' country.

The fact that the smaller states are strongly united on several key institutional issues, such as preserving the rotating system for the Council Presidency, strengthening the Commission and opposing the idea of a Congress of the People, means that their influence during the remaining Convention as well as the forthcoming IGC might be far greater than during previous reform rounds. Also, the new member states consider it very important to keep the rotation system so that they have a fair share over the leadership in the European Council.

Related press articles and documents

[EU Observer](#)

[Small countries' submission to Convention](#)

## Foreign and Security Policy

The issue of Iraq on the agenda of the Athens Summit, which was initially intended only for the signing of the accession treaties, was initiated by the Greek presidency to soften up the differences between the member states with regards to European defence, especially after the continuing divide over the Iraq conflict. The relationship between French President Jacques Chirac and British Prime Minister Tony Blair was, although officially patched-up through a series of telephone conversations, still far from amicable.

In the light of the existing divide and the de facto impossibility of agreeing on a common position on Iraq, Giscard has indirectly suggested slowing down the integration process in the area of Common Foreign and Security Policy. Reportedly Giscard proposed that the position of a new Foreign Minister should be included in the new constitutional treaty but it should come into force only at a later stage when the

member states think it to be appropriate. In other words: more CFSP only when and if the UK, France, Spain and Germany can agree on a common vision and concrete tasks for this new Foreign Minister. For the time being it is more important that the member states try start co-operating again on an intergovernmental basis, further institutionalisation can follow later.

## 3. Comment

Giscard's proposal, or rather the watered-down Praesidium's version, is an important indication where the Convention will lead the European integration process and what contribution the Convention-model might make to the current as well as future treaty reform processes.

So far the Convention has been working purely based on the principle of consensus. Like its predecessor, the Convention on the Charter of Fundamental Rights, the Convention on the Future of Europe has not resorted to voting but claimed that the drafted treaty articles represented the broad consensus achieved during the working group as well as plenary sessions. The voting in the Praesidium, apparently necessary to agree on core questions such as the President of the European Council, the number of Commissioners and the question of a Congress of the Peoples, might indicate that the Convention, after all, is not able to overcome the well-know difficulties during previous IGCs by the secret of consensus politics. The original mission of the Convention was to prepare for the next IGC and to tackle these issues the member states were not able to agree on themselves during previous rounds of treaty reform. Giscard was thought to be the ideal President for the Convention, because he, as a former French President, is not only interested in the European integration process but also in setting himself a political memorial by drafting a constitution that would do the impossible, namely secure the consent of the 15 (or even 25) member states' governments. His

personal ambition and political credibility would ensure that the outcome of the Convention would not be ripped apart by the following IGC but adopted as a whole. It was thought that the secret to his success was his skilful chairing of the Convention and his seeming ability to find a consensus among the 105 members and their alternates.

But on power-related issues Giscard has decided to change his tactics. The proposal he presented to the Praesidium does not reflect what the majority of the members of the Convention think. The idea of a Congress of the Peoples, bringing national MPs and MEPs together on an annual basis to discuss the prospects of the European Union is something most of the Conventionnels object to. Also the majority of members of the Convention oppose the idea of a permanent President of the European Council. These are crucial questions for which it would have been absolutely essential to decide on with a consensus in the Praesidium and to give the Convention, if no consensus could be reached among Giscard's so-called 'inner circle', an optional draft featuring both sides of the argument. The reason why Giscard has pressed for the draft to be put forward, and even resort to a vote in the Praesidium, might be quite simple. He probably wants to make sure that the IGC accepts 'his' Constitutional treaty as a whole. So far it was thought that Giscard could only achieve this by assuring that the final outcome of the Convention was based on a very broad consensus. This would force the member states' governments to accept the proposal because the legitimacy of a document supported by a large number of people, most of whom, not least Giscard himself, chosen by the governments themselves, would be such that they could politically not afford to reject or significantly amend it. Giscard, it seems now, is not following this logic. Rather he is trying to secure the support of the forthcoming IGC by making sure that the Convention's work reflects the opinions and ideas of the member states governments, especially those of the larger states. The draft proposal on the institutional design looks very much like

a combination of the Franco-German and British-Spanish proposals submitted to the Convention earlier this year. Giscard's plan seems to be to produce a document that pleases the large and influential member states' governments in the hope that their support will carry 'his' Convention outcome to become the new European Constitution. If, however, that is indeed his plan, he might have overlooked an important issue. Proposing what is in the interests of only some, even if 'some' refers to the large states, does not lead anywhere in European Union treaty reform processes. The reasons why the past IGCs were unable to conclude without any 'left-overs' and clumsy last-minute compromises is exactly that the member states' governments were unable to find effective solutions acceptable to all. The small states are already ganging up. The eighteen governments that took part in the Benelux Breakfast unanimously opposed the idea of a permanent president of the European Council, they would like to see the continuation of the current rotation system. It is hard to imagine how these would change their mind during a forthcoming IGC. The only way they would, might be if the Convention, by a broad-based consensus would propose an alternative model. However, any outcome of the Convention that is not supported by a large majority will inevitably fail to persuade member states' governments to change their positions especially on any institutional issues.

Lars Hoffmann  
Research Officer

#### 4. Timetable

The 15/16 May Plenary sessions of the Convention will discuss the Praesidium's proposal on the draft articles for Title IV of Part I of the Constitution and on External Action. The Convention will meet for two full days. Also in early May the Presidium has scheduled debates on Finances (Part I, Title VII), Freedom Security and Justice (Part I Art. 31, and Part II), and the outcome of the Legal Experts' Group on Part II of the Draft Constitutional Treaty.

By 20 May the second draft of the Constitutional Treaty is expected to be published taking into consideration the thousands of amendments so far made by the Convention members to the draft articles.

[Indicative Programme of the Convention's work](#)

[Calendar of Convention with links to related documents](#)

### 5. Outside the Convention

#### Franco-Germano-Belgo-Luxembourg Defence Summit

On April 29 2003 on the initiative of the Belgium government, Jacques Chirac, Gerhard Schröder, Guy Verhofstadt and Jean-Claude Juncker met in Brussels for a mini-summit to discuss European defence issues. There were severe criticisms to the meeting even before it had actually happened as it was feared it could deepen the rift between the 'old Europe' and the 'new Europe' USA even further. However, the four Heads of State/Government were at pains to dispel fears that they sought to divide a NATO alliance.

The agreement reached during the summit stressed the importance of the transatlantic alliance and the need to strengthen the European element of it without undermining the important partnership with the United States. The four countries agreed to set up a central military headquarters and they will present their ideas to the European Summit in Salonika. Especially the German government emphasised that they would not go ahead with a European defence policy which left out the United Kingdom. The UK and Spain as well as the US made critical comments about the summit and stressed that they will study the summit's outcome carefully to prevent any undermining of NATO.

Related press articles

[Süddeutsche Zeitung](#)

[Financial Times](#)

[Le Monde](#)

[Washington Post](#)

### Enlargement

The enlargement process is going ahead according to schedule. The European Parliament has endorsed enlargement and the referendum in Hungary was won with a staggering 83.69% in favour of EU membership (albeit on a low turnout). During the Athens Summit the Heads of State/Government signed the Accession Treaties so that, assuming the internal ratification procedures are completed successfully, the enlargement of the EU by ten new member states will take place on 1 May 2004. Lithuania is next to hold a referendum on 10/11 May. The polls suggest a majority in favour of enlargement but it is not certain that the 50% turnout in voters will be achieved which is necessary to validate any referendum in Lithuania. The Polish referendum is scheduled for 7/8 June. In order to boost turnout the Polish government decided to hold the referendum over two days.

It is still not clear in what manner the new members will participate in the Intergovernmental Conference due to follow the Convention. It will probably depend on whether the IGC will be held in the second half of this year under the Italian Presidency conclusion in a second Treaty of Rome, or whether the new members get their way and the conclusion of the IGC will not take place before 1 May 2004 making them *de jure* full members of the treaty reform process. However, it can be expected that even if the IGC is to finish before 1 May 2004 the new member states will *de facto* be full participating members in the IGC. It is politically unimaginable that the IGC could agree on something one or several new member states find unacceptable.

## 6. News from the EU

### Constitution project New Website

The new EU Constitution website is now online. It has been completely overhauled and navigating around the site is improved. The web-site is useful for keeping up-to-date on the debate on the process of Treaty reform. It follows developments at three levels: within the Convention itself, parallel developments outside the Convention, and the UK debate on a Constitutional Treaty for the EU.

The web-site also combines various documentary sources and references to day-to-day events at all three levels.

[EU Constitution Project Website](#)

### UACES/Federal Trust Workshop

Preparation has started for the Second Workshop of the UACES sponsored Federal Trust Study Group on The Debate on the Future of Europe into the second calendar year. The date for the second Workshop will be 10-11 July and it will again be held in London.

Three panels are planned, dealing with the following issues:

1. Theoretical perspectives on the Convention method/ reform process as well as wider implications for EU Constitutionalism and constitutionalisation.

2. European governance and institutional reform

3. Developments in substantive policy areas, e.g. economic governance, CFSP

A call for papers has been sent out via email and if you would like to take part in the workshop, contribute to one of the panels, or would like to act as a chair / discussant for any of them, please contact the Constitution team at the Federal Trust. For further information see

[Workshop Website](#)

### Afternoon Seminar

In the afternoon of 5 June, upon the initiative of and in conjunction with the Kent Centre for Europe, the Constitution Project is holding an informal Seminar to discuss the second draft treaty expected to be published by 20 May. The meeting will take place at the University of Kent's London Centre of International Relations; 11 Kingsway, London WC2.

If you would like to receive further information, please contact the [Constitution Team](#) at the Federal Trust.

### Publications

EU Constitution project is finalising a publication entitled *The Convention on the Future of the Union: Working towards an EU Constitution* (essays by Jo Shaw, Paul Magonette, Lars Hoffmann and Anna Vergés) which will be available by late May 2003. The book explores issues of legitimacy and subsidiarity in the debate about the Future of Europe. It looks at the assumptions behind the Constitutional Convention and its working methods as well as its implications for reform processes in the European Union. It also analyses the concept of subsidiarity both from the perspective of the division of powers and as a factor legitimising the political structures of Europe. Furthermore, the book considers how the Constitutional Convention is linked to the broader constitutionalisation process of the European Union.

To order copies email [publications@fedtrust.co.uk](mailto:publications@fedtrust.co.uk) or see the [Publications Webpage](#)

### Press Database

A database of press material from the UK and across Europe, as well as official documents and reports relating to the Future of Europe debate will be available shortly. It will be accessible via the website of the Jean Monnet Centre of Excellence at the University of Manchester, which is acting in partnership with the Federal Trust.

### Constitutional Online Essays

During the past month the Constitution Team was able to add a large number of publications to its Online Constitutional Essays. All publications are available free of charge and can be accessed via our website. The project welcomes contributions to the Online Constitutionalism Essays from the academic and policy community and other interested parties and commentators.

[Constitutional Online Essays](#)

## 7. Announcements and events

phone 020 78625850

Second Annual European Studies  
Centre Lecture, St Antony's College  
6 May 2003 6.45 pm

George A Papandreou, Greek Minister  
of Foreign Affairs & President of the EU  
Council of Ministers

'The Future of Europe after Iraq'

Contact: [ulli.parkinson@sant.ox.ac.uk](mailto:ulli.parkinson@sant.ox.ac.uk)

Conference: 'Political Futures of Europe?  
A day of discussion'

6 May 2003 10.30 – 4.30

Organised by the Centre for the Study  
of Democracy (University of  
Westminster) & Birkbeck School of Law  
(University of London)

Contact Tracey Cresswell

[csd@wmin.ac.uk](mailto:csd@wmin.ac.uk) or 020 7911 5138

4th Annual Regional Conferences of the  
UACES Student Forum

10 May 2003

Norther Conference: Department of  
Politics at the University of Edinburgh,  
start at 09.45

Contact George Karyotis

[G.Karyotis@sms.ed.ac.uk](mailto:G.Karyotis@sms.ed.ac.uk)

Southern Regional Conference: London  
School of Economics, Rooms A550, start  
09.00

Contact Sebastian Csaki

[smc46@cam.ac.uk](mailto:smc46@cam.ac.uk)

Seminar: What Future is there for the  
European Parliament?

With Nick Clegg MEP, 12 June 1 pm.,  
The Constitution Unit

Info on [Website](#) or phone 020 76794977

EU Law for the 21<sup>st</sup> Century: Rethinking  
the New Legal Order

Institute of advanced Legal Studies,  
London, 25-27 June 2003

Contact [belinda.crothers@sas.ac.uk](mailto:belinda.crothers@sas.ac.uk) or

UACES 33<sup>rd</sup> annual conference  
2 – 4 September, Newcastle  
Info [UACES Website](#)

EU Governance and External Relations  
Mannheim Centre for European Social  
Research, Germany

10-11 October 2003-03-31

Contact

[michele.knodt@mzes.uni-mannheim.de](mailto:michele.knodt@mzes.uni-mannheim.de)  
[frank.schimmelpfennig@mzes.uni-mannheim.de](mailto:frank.schimmelpfennig@mzes.uni-mannheim.de)  
[wolfgang.wagner@soz.uni-frankfurt.de](mailto:wolfgang.wagner@soz.uni-frankfurt.de)

## 8. Web corner

European Policy Institutes Network (EPIN) , a network of dynamic think tanks and policy institutes focusing on current EU and European political and policy debates. It is a comprehensive network with almost 40 member thinktanks in 28 countries, including all the EU member states and accession and candidate countries, has got a wide range of online papers and links to European-focused research insitutes across Europe.

[EPIN Website](#)

The European University Institute has launched a new publication page on the Convention, edited by Bruno de Witte, which is the result of an EUI study group.

[EUI Publications Website](#)

The UACES student forum has also relaunched its website

[UACES Student Forum Website](#)

For further links to site related to the constitutional debate in the European Union see

[Federal Trust Website](#)

If you know of a link that you would like to be included in the next newsletter and our website, please contact

[constitution@fedtrust.co.uk](mailto:constitution@fedtrust.co.uk)

## 9. Become a Friend

If you would like to become a Friend of the Federal Trust or would like to make a donation, please contact

[Friends@fedtrust.co.uk](mailto:Friends@fedtrust.co.uk)