

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 will look at current developments in and outside the Convention and will also cover the UK debate. It will provide information about relevant events and publications.

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1. Editorial

Editorial Standpoint

Constitutionalism and Federalism are not novel ways to think about the European Union and its reform. They have been well represented over the years in both normative and analytical studies from lawyers and political scientists, as well as those with a more pragmatic 'user' orientation towards reform. This is the tradition on which the Federal Trust EU Constitution project seeks to build and the baseline normative assumptions with which the project works.

In fact, both 'constitutionalism' and 'federalism' offer ways of describing a variety of forms and styles of legitimate, responsible and accountable institutions of government, as well as approaches to governance, in the context of multi-level political and legal orders where there are many simultaneously competing and cooperating sites of authority and law-making. In such a plural system, some sort of legitimate constitutional framework is essential for ensuring effective interactions between the various levels of governance, and federalism understood in this way does not demand a priori or rigid conceptions about the division of powers or the future withering away of any level of government or set of institutions.

The Laeken Declaration defined the current round of reform as a 'crossroads' in the development of European co-operation. The grand design of the future of the Union, and also policy and governance aspects, are on the agenda. Constitutionalism and federalism continue to serve as timely reference points.

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2. The 'state of affairs'

In the Convention

The Convention has abandoned the slow phase of large debates and has resolutely entered the drafting phase with detailed discussions on the wording of provisions. Draft articles are available for a good part of the Basic Treaty (Part I) and also the groundwork for the drafting of Part II (policies) has been submitted by the Legal Experts. Part III (the Final Provisions) will see the light by mid April. The shift to detailed has been accompanied by the creation of technical groups (or 'groupes de réflexion') (smaller in membership than the Working Groups) to study in depth the implications of issues and proposals made by the Convention. Following the creation of a first discussion circle on the remit of the European Court of Justice [CONV 636/03], a second circle chaired by Mr Christophersen was agreed to look at the budgetary procedure.

Thus the pace has picked up with work developing not only each of the Parts of the Constitutional Treaty but also with feedback on first drafts being returned to the Presidium. It remains unclear how the Presidium and the Secretariat will take on board the large number of amendments proposed by the Convention members and how consensus will be achieved. The 'listening' capacity of the Presidium will not be revealed until May when the first revised versions are returned to the Convention floor for discussion.

Amidst this hyperactivity, discrepancies remain as to when the Convention ought to finish its work and, related to this point, the duration of the reflection time deliberately provided for by the Laeken European Council. On the one hand, the Convention's Chairman has expressed the wish to have additional time. On the other hand, some member states have argued that there should be respect for a suitable reflection period between the Convention's conclusion and the IGC. The final decision will have to balance out demands by candidate countries to participate in the IGC as full members from 2004, the symbolic character of a

possible new Treaty of Rome under the Italian Presidency in the second semester of 2003, and the need to preparing the electorate in some countries (Ireland, UK), not to mention delays arising from the current prominence of the war in Iraq.

The rule that Convention Chairman would report on the progress of the Convention at each summit was broken at the Spring 2003 European Council, as it was squeezed off the agenda. Giscard has proposed the convening of a specific Council by the end of June (that is, in addition to the scheduled Thessaloniki European Council of 21-22 June) to deal specifically with the Convention output. The call for a specific Summit to deal with the Convention goes certainly beyond a simple purpose of submitting a final draft. A request for a specific summit at the time when the final draft is due rather seems to point to an attempt to strike deals among member state governments before the convening of the IGC.

But even before that date, the Chairman is arguably intending to stage a mock Summit to put to the test before EU leaders the major lines of a final package which he aims to pass by consensus. The historic and symbolic occasion of the gathering of EU leaders on 16 April 2003 in Athens for the signing of the Accession treaties may serve as an opportunity for the Chairman to test the waters on controversial issues (among them the institutions - a Title of the draft Constitutional Treaty which is scheduled to appear at about that time in April).

See Convention:

[European Convention](#)

Press:

[EUobserver](#)

Outside the Convention

Enlargement is on schedule. The first referendums in Malta and Slovenia have endorsed membership positively. Hungary will follow on 12 April. The actual ratification processes, in accordance with respective constitutional requirements, will not start until the Accession Treaties have been

signed, scheduled for 16 April 2003 in Athens. Before that, on 7-10 April the European Parliament will vote on recommendations regarding the procedure of approval of the accession countries. The Council will subsequently have take a final decision concerning the accessions. New members expect to be full members at the IGC, to be convened during the second semester of 2003 or the early part of 2004.

As one dimension of the promotion of new forms of governance (as one of the four Strategic objectives of the Commission for the period 2000-2005), the Governance dossier is under a new consultation phase. Up until 31 May 2003, the Commission is consulting the public on its Communication of 11 February 2003 ([COM \(2003\) 71](#)), with a view to establishing a specific programme of simplification of policies and legislative approaches.

In the UK, the Lords EU Select has continued to examine draft Articles as they emerge from the Convention. In addition, the EU Select Committee has examined conclusions of various of the Convention Working Groups, and also various aspects of the items in the Future of Europe agenda are being followed by subcommittees of the EU Select Committee. The Commons Scrutiny Committee has heard evidence by British representatives at the Convention and also analysed conclusions of WGs and has put strong emphasis in the item of the national parliaments role in EU architecture. The Standing Committee of the Convention has held its third meeting.

[See UK debates](#)

3. Analysis

In an interview with *Le Monde* of 25.2.2003 the Convention Chairman Giscard d'Estaing declared that the Iraq crisis had not upset the work of the Convention -although it could delay it. Yet the effects of the Iraq conflict on the constitutional and institutional debate will probably be substantial. The war in Iraq will certainly give food for thought in the discussions on the reform

of the Council, the Presidency system, and external representation of the Union – not to mention the entirely viability of a Common Foreign and Security Policy. But besides triggering reform of institutional arrangements, the Iraq conflict, and in particular the splits which have emerged between the 15 member states, not to mention between ‘new’ Europe and ‘old’, is likely to fuel advocates of enhanced co-operation in the field of defence. Belgium is reported to be aiming to present proposals to create a ‘core’ of countries to push forward EU defence co-operation. France, Germany and Belgium have pencilled in talks for 29 April on defence co-operation. What about the outer core? Some see in the possibility of some countries being allowed to forge ahead a pressure from reluctant member states not to be left outside the core. To others flexibility will allow smoother ratification processes.

The principle of creating ‘pioneer groups’ of EU members in other policy areas is also gaining ground in the Convention. The Chairman has spoken of foreign and defence policy being a ‘progressive project achieved by stages’ and defended flexibility in a diverse Union. The Commission has specifically spoken in favour of a protocol on mutual defence, and also an arms agency. A solidarity clause in the treaty has also received support in the Working Group. The UK, on the other hand, has clearly indicated that it intends to maintain its options and all its opt outs.

See

ft.com

www.lesoir.be

www.lastampa.it

www.lastampa.it

www.europa.eu.int

www.lemonde.fr

www.euobs.com

Discussion on the first set of articles continues at the Convention. At the extra session of 26 March of the Convention chaired by Vice-President Dehaene, feedback on articles 1-7 Part I of the Draft Constitutional Treaty took place. Draft article 1 paragraph 1 states ‘this

Constitution establishes a Union, within which the policies of the member states shall be co-ordinated, and which shall administer certain common competences on a federal basis’. The reference to ‘ever closer union’ has been removed in the draft text but the narrower reference to federal ‘administration’ is still creating trouble for Britain and Ireland.

The Convention regarded the refusal of the wording proposed by the Presidium as an unreasonable unwillingness to acknowledge what was an established basis of EU governance, and as stemming from a fear of raising domestic hostility through over-charged words. In any case, even if the Convention aims to adopt a draft text by consensus, the capacity of governments to stick to entrenched positions is in large measure guaranteed by the IGC which will follow the Convention - where veto power still applies.

www.euobserver.com

4. Forthcoming

The April Plenary sessions of the Convention will continue discussions of available draft Constitution articles. 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.

The early April Plenary also will see for the first time provisions on the relationship of EU and neighbouring states (Title IX, Part I) the Open Method of Co-ordination and the General and Final Provisions (Part III). These will be discussed at the second plenary session of April (24-25 April).

By mid April the Presidium will distribute the long awaited provisions on Institutions (Title IV Part I) and on the ‘democratic life’ of the Union (Title VI, Part I).

In the longer term, the revised version of the texts debated in Plenary will be presented in May. A draft of Part II will not be available until May.

For calendar see Indicative Programme of work [[CONV 586/03](#)]

[See calendar of Convention sessions with links to documents](#)

On 1 April a group of seven small member states (Benelux, Ireland, Portugal, Austria and Finland) will be meeting to discuss various items on the future of the EU, in particular institutions and the reform of the presidency system.

On 16 April, the Accession Treaties will be signed in Athens by the ten candidate countries, and this will be accompanied by a symbolic Acropolis Declaration, under preparation within the Greek Presidency.

29 April a mini summit on defence called by Belgian government will take place.

5. News from EU Constitution project

The EU Constitution website is currently being revamped and the improved site should be online very soon. The website is useful for keeping up-to-date on the debate on the process of Treaty reform. The web-site follows developments at three levels: within the convention itself, parallel development 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.

[See our website](#)

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 Magnoste, Lars Hoffmann and Anna Vergés) which will be available by 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 provides an analytical analysis of how the Constitutional Convention ties in the broader constitutionalisation process of the European Union.

To order copies:

publications@fedtrust.co.uk

[Publications page](#)

Preparation has also 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 First Workshop on 7th March examined various Constitutional Treaty drafts, and heard papers from Andrew Duff, Michael Dougan, Clive Church, Kalypso Nicolaïdis, Giovanni Grevi, Richard Whitman, Jo Shaw, Brendan Donnelly, Gregory Papanikos, and commentary by Vernon Bodganor, Brigid Laffan, Lynn Dobson and Heather Grabbe.

See:

[Papers](#)

A database of press material from 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 in this initiative.

See:

[Jean Monnet Centre of Excellence](#)

Finally, the project welcomes contributions to the Online Constitutionalism Essays from the academic and policy community and other interested parties and commentators. On the website you will already find a substantial body of work commenting upon the Convention and the associated reform processes.

See:

[Constitutionalism Essays](#)

6. Announcements and events

Conferences

Workshop: Legitimate Federation? Normative political theory and institutional design in the EU

ECPR Joint Sessions of Workshops 2 April 2003

[Information](#)

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andreas.follesdal@filosofi.uio.no

'The Convention on the Future of Europe: Drafting a Constitution for the EU', University of Trier, 10-11 April 2003.

[Information](#)

Telephone: +49 (0)651 937 37 31

'Governing together in the new Europe', Robinson College Cambridge, 12-13 April 2003.

[Information](#)

Contact:

lhamilton@riia.org

The Convention on the Future of Europe – a conference for students in Europe

25 April 2003 Leeds Civic Hall

Contact:

j.e.lodge@leeds.ac.uk

'Whose Europe? National Models and the Constitution of the European Union' University of Oxford, 25-27 April 2003.

Contact:

paul.flather@europaeum.ox.ac.uk

Seminar on 'The role of the regions and sub-national units in the EU', Lincoln College Oxford, 28 April 2003.

Contact:

Euro-lex@listserv.dfn.de

Jean Monnet Seminar on 'The Convention on the Future of the European Union: Working towards a European Constitution', University of Manchester Jean

Monnet Centre of Excellence, 30 April 2003 2-5 p.m.

Contact:

jandormann@man.ac.uk

Seminar: What Future is there for the European Parliament?

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

[Information](#)

Phone: 020 76794977

EU Law for the 21st Century: Rethinking the New Legal Order

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

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belinda.crothers@sas.ac.uk

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SLSA Conference 2003

13-14 April 2003, University of Nottingham

[Information](#)

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Mary.Seneviratne@ntu.ac.uk

EU Governance and External Relations

Mannheim Centre for European Social Research, University of Mannheim, Germany; 10-11 October 2003-03-31

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Web corner

[OpenDemocracy](#) (a non-partisan channel for knowledge, learning, participation and understanding aiming to cover the most pressing global issues of our time and to be a true arena for democratic change) has mapped the bewildering variety of visions for Europe.

[The International Sceptator](#)

[Tiscali Europe](#) website, in partnership with European Policy Centre, reviews the work of the Convention.

[Further links](#)