Light and shade of a quasi-Constitution

An Assessment

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EPC Issue Paper No. 14
23.6.2004

Introduction

The 'Treaty establishing a Constitution for Europe' marks very considerable progress compared to the current Treaty of Nice. The final version of the document, however, includes some setbacks with respect to the draft submitted by the Convention a year ago, notably with respect to decision-making. Decision-making procedures are more complicated and less efficient. The scope for qualified majority voting (QMV) has been cut back in key domains, and the so-called *passerelle* clauses, allowing for lighter procedures to move toward majority voting are severely restricted. Newly introduced 'emergency brakes', whereby one country can delay or prevent the adoption of a decision, are, in part, compensated by the opportunity to establish enhanced cooperation among willing and able Member States, and thus overcome the blockage. Most worrying of all, no amendment to any part of the Treaty can be introduced other than by unanimous agreement followed by unanimous ratification. This amounts to suffocating the growing body of the Union into an anachronistic straitjacket. For this reason in particular, and also bearing in mind the narrow and rigid definition of EU competences under the strict application of the principle of conferral, it would be technically correct to refer to the new text as another international Treaty, rather than as a Constitution.

From a broader political standpoint, however, the alternative, progressive definition of 'Constitutional Treaty' (CT) is highly preferable. Not only does the Treaty include a binding Charter of Fundamental Rights, filling the empty shell of European citizenship with substance, but it brings to the forefront some of the most state-like aspects of the Union. EU law has primacy over national law (the CT confirming existing jurisprudence); the President of the Commission is (theoretically for the time being) 'elected' by the European Parliament, whose powers are enhanced; the Union has a single legal personality with a new Foreign Minister who will conduct its foreign policy. Most importantly, the CT is regarded by many as the essential platform for sound political debate to take place across the Union, at the national and at the European level. If democratic debate is to prevail progressively over sterile diplomatic skirmishes, then the formal Treaty has to take on a new life as the material Constitution of a supra-national polity, albeit with safeguards for Member States.

Inevitably, dilemmas about the best definition of the new text reflect long-running questions about the nature and purpose of the Union. The same, unresolved, questions have undermined the European political debate of the last year, and prevented the achievement of more ambitious goals for institutional reform. Diplomatic wrangling, inconclusive meetings of variable geometry, and popular disregard for European elections, hardly bode well for the future of European integration. On the other hand, there is a sense in many quarters that Europe cannot stop now, and alternative solutions may well be elaborated to allow for further progress. The best that can be said is that the constitutional text reflects the Union of today: a hybrid beast with little sense of direction.

The top ten innovations of the new Constitutional Treaty

1. The system of weighted votes is scrapped. A new system of double majority will apply to calculate qualified majority. The adoption of a decision in the Council of Ministers will require the support of 55% of the Member States, representing 65% of the EU population.

2. The Charter of Fundamental Rights of the EU is introduced in the body of the CT and acquires binding legal force. In the application of EU law, European and national institutions are subject to the provisions of the Charter.

3. The Union acquires a single legal personality under domestic and international law.

4. The system of the rotating presidency of the European Council is abolished. National leaders will appoint a Chairman of the European Council, by qualified majority, for a term of two and a half years, renewable once. The Presidency of the Council of Ministers will be held by one country for six months, under the umbrella of a new 'team presidency' including three countries closely cooperating over 18 months.

5. A Minister for Foreign Affairs is established. He/she will be a Vice-President of the Commission and will chair the Foreign Affairs Council. He/she is granted a formal power of initiative in the domain of Common Foreign and Security Policy. A new European External Action Service will be set up to assist the Foreign Minister.

6. The Commission will include one national per Member State until 2014, when the College will consist of a number of members corresponding to two-thirds of the number of Member States, selected on the basis of equal rotation.

7. The so-called 'pillar system' is dismantled: the same legal instruments and the same procedures will apply across the single institutional framework of the Union. European laws and framework laws are the only legislative instruments that the Union can adopt. Co-decision between the Council of Ministers and the European Parliament becomes the ordinary legislative procedure.

8. A new mechanism of 'permanent structured cooperation' will apply in the domain of defence, enabling a group of Member States fulfilling the operational criteria listed in a Protocol to cooperate more closely and jointly undertake more demanding military tasks. 'Enhanced cooperation' will apply to Common Foreign and Security Policy.

9. Qualified majority voting will apply to key domains, such as asylum, immigration and judicial cooperation in criminal matters, although 'emergency brakes' are provided to prevent the adoption of a decision by referring the matter to the European Council.

10. A *passerelle* procedure is introduced whereby the European Council can decide, by unanimity, to introduce qualified majority voting where the CT envisages the application of unanimity. Member States that take part in an initiative of 'enhanced cooperation' can also use the *passerelle* provision.

Light and Shade

What follows is an initial overview of the amendments introduced by the new Constitutional Treaty to the draft produced by the Convention. Elements of progress and of regression with respect to the Convention text are highlighted separately. Major innovations in relation to the current system, based on the Treaty of Nice, are also indicated, although the Inter-governmental Conference (IGC) did not significantly amend the Convention draft.[1]

Progress

European Parliament - Article I-19

The long dispute over the size of the European Parliament (EP) seems to have been resolved. The size of the assembly is fixed at 750 members, slightly higher than the 736 seats envisaged by the Convention. A minimum and maximum number of seats per country is also identified – respectively six and 96 – which seems appropriate as a way of guaranteeing proper representation for all. Within these limits, a unanimous decision of the European Council will establish before 2009 the actual distribution of seats by country, taking into the countries that will have joined the Union at that point.

Presidency of the Council – Article I-23

The system of team Presidencies envisaged by the Convention for chairing the different configurations of the Council of Ministers has been preserved only nominally. The draft Council decision attached to the CT provides for three Member States holding the Presidency of the Council for 18 months, but makes clear that each country will chair all configurations of the Council (except the Foreign Affairs Council) for a period of six months. In fact, the system of rotation every six months is preserved, although the country holding the Presidency will be assisted by the other two in the team on the basis of a common programme. This decision does away with the confusion that the Convention formula could have potentially entailed, with different countries chairing different configurations at the same time. The European Council has essentially restated the conclusions of the Seville summit in June 2002, which sought better coordination and mutual support over a longer period of time in managing Council proceedings.

Commission – Article I-25

The unrealistic formula provided by the Convention, which introduced a sharp difference between a College of 15 Commissioners and other, non-voting Commissioners, has been scrapped. The first Commission appointed under the provisions of the Constitution (in 2009), will consist of one national per Member State. As of 2014, the Commission will consist of a number of members corresponding to two thirds of the total number of Member States. The European Council, however, can decide to alter this figure by unanimous decision. While it is probably sensible to postpone the reduction of the number of Commissioners to the medium-term, it is a mistake to establish that, once the College shrinks, it will be selected on the basis of a system of equal rotation. This formula does not sufficiently take into account the political realities of a larger Union including very small countries.

A rather redundant Declaration attached to the CT stresses that, once the Commission no longer includes nationals from all Member States, full transparency should be ensured. The Commission should closely liaise with all Member States and take their political, social and economic realities fully into account. Hopefully, these requirements will not burden the Commission with more procedural impediments than those which the CT aims to dismantle.

Minister of Foreign Affairs – Article I-27 and Article III-197

The double-hatted role of the Ministers for Foreign Affairs (FM) of the European Union has been essentially confirmed by the IGC, but it is now much better defined. It is made explicit that the FM will preside over the Foreign Affairs Council. On the other hand, upon the insistence of the UK and a few others, it is stressed that the FM shall be bound by Commission procedures only to the extent that this is compatible with his/her tasks in conducting the Common Foreign and Security Policy (CFSP). The FM is, however, a fully-fledged member of the College and one of its Vice-Presidents. The FM shall resign from the Commission if a motion of censure against the College is passed by the EP, or if personally requested by the President of the Commission to do so, as will be the case for other Commissioners (although in this event the agreement of the European Council will be required).

The creation of a new European External Action Service to assist the FM is formally outlined in part III of the CT. The organisation and functioning of the new Service, which will include seconded national diplomats and officials from the Council and the Commission, will be established by a Council decision on a proposal from the FM and with the consent of the Commission. This wording gives the Council the responsibility for a final decision, while the Convention proposal envisaged an agreement between the Council and the Commission. A Declaration attached to the CT specifies, however, that the High Representative, the Commission and Member States should begin preparatory work to set up the new service as soon as the CT is signed.

Monetary Union – Article III - 91

The IGC has expanded the scope of decisions that are reserved to members of the euro area. Additions with respect to the Convention text include decisions establishing common positions on issues of relevance for the Economic and Monetary Union (EMU) in international financial institutions, and measures to ensure unified representation within these. Likewise, recommendations made to Member States who are part of the euro area in the framework of multilateral surveillance, as well as measures related to excessive deficits, would only be adopted those who are actually part of the Eurozone. This set of provisions enhances the powers of the Euro-Ecofin Council (the specific configuration of the Council of Economic and Financial Affairs where members of the Euro-zone meet) and introduces a neater distinction between members of the Monetary Union and the others, whose influence becomes marginal.

Monetary Union – Article III - 92

Consistent with the rationale for additions under Article III-91, the IGC has provided for the adoption - by qualified majority - of a recommendation to the Council by euro-members, ahead of the entire Council's decision on whether a country satisfies the criteria to join the euro area. Once again, these amendments strengthen the power of the Euro-Ecofin, which is given a first say on the access of new countries to the Monetary Union.

Eurojust – Article III - 174

The final definition of the tasks entrusted to Eurojust is satisfactory, although there is no progress with respect to the Convention draft. The powers conferred to Eurojust by the Convention, which were subsequently curtailed by the IGC, have been reinstated. Eurojust has the authority to initiate criminal investigations and to coordinate investigations and prosecutions by competent national authorities.

Common Foreign and Security Policy – Article III – 201

The provision of the Convention has not been amended. The Italian Presidency attempted to broaden the application of qualified majority voting in CFSP by making it conditional on a simple proposal by the FM. The IGC has, however, reverted to the original formulation of the Convention. According to this, the Council shall act by qualified majority when the FM submits a proposal following a direct European Council request, based on the Council's own or the Minister's initiative. This represents modest progress, when compared to the present system.

Structured Cooperation in Defence –Article III – 213

Following fierce opposition from some Member States to the new provision envisaging 'structured cooperation' in the area of defence, the text of this Article has been substantially amended. The IGC has essentially opened up the possibility of decision-making under structured cooperation, by allowing countries not part of this initiative to take part in relevant deliberations, whilst not, of course, being allowed to vote. Moreover, while, according to the Convention draft, the group of countries undertaking structured cooperation was self-constituted, the new text provides for a request to be submitted to the Council which shall adopt a decision within three months by qualified majority. A Protocol including objective operational criteria for structured cooperation has also been attached to the CT, providing an basis for deciding on who is admitted to the group and who is not.

These innovations are to be welcomed, as they do not detract from the potential for closer cooperation in the field of defence, and make decision-making more transparent and inclusive. In doing so, they counter the concerns of those who feared that the original wording of this provision could lead to more, and not less division within the Union in the conduct of security and defence policy.

Mutual defence – Article III – 214

This provision, outlining the detailed arrangements for setting up closer cooperation on mutual defence envisaged by Article I-40.7, has been abandoned. The latter provision in Part I of the CT has been radically amended by the IGC. Collective defence among Member States is not regarded as a matter of closer cooperation, but as a commitment arising from Article 51 of the UN Charter. Moreover, it is specified that this provision shall not affect the specific character of the security and defence policy of some Member States. Considering the concerns of neutral countries and others towards the original formulation of this provision, the text drafted by the IGC is acceptable. After all, collective defence remains an obvious duty among the members of the Union, in the unlikely case of a military attack on one of them.

Qualified Majority under Enhanced Cooperation – Article III – 328

This important *passerelle* provision, stating that Member States taking part in enhanced cooperation may decide, by unanimity, to apply qualified majority amongst themselves, and/or use the ordinary legislative procedure, where the Treaty provides otherwise. This was scrapped by the Italian Presidency. Its successive re-introduction into the CT should be welcomed, although it does not, strictly speaking, represent real progress compared to the original Convention draft. In fact, the IGC has made clear that this provision does not apply to decisions with military or defence implications. Moreover, a curious Declaration has been attached to the CT suggesting that Member States may indicate - when they request authorisation to establish enhanced cooperation - whether they intend to make use of the option offered by Article III-328.

Treaty revision –Article IV - 7

The Convention has introduced a sort of self-perpetuating clause whereby the President of the European Council shall convene a new Convention to prepare recommendations for the IGC under the procedure for revising the CT. This is a welcome, although limited, step in the direction of making decision-making more transparent and allowing for serious political debate on key elements of the CT. On the other hand, the convening of the IGC, as well as the requirement of unanimous agreement and unanimous ratification, are still necessary. This will make agreement on significant amendments extremely hard, if not impossible, in the future.

Treaty revision – Article IV – 7b

This new provision, introduced by the IGC, marks a very timid opening to the adoption of a lighter procedure for amending the CT. It only applies to the provisions of Title III of Part III on the internal policies of the Union, and includes the possibility for the European Council to introduce amendments by unanimity, with subsequent unanimous national ratification by the Member States. There is no longer an obligation to call an IGC to agree these amendments. This innovation largely falls short of what is required for ensuring some flexibility to the CT over time, but should still be considered as a small step in the right direction.

Regression

Coordination of economic policies – Article I - 11

Compared to the original wording of the Convention draft, the formulation introduced by the IGC to describe the competence of the Union on the coordination of economic policies of Member States is extremely restrictive. According to the new provision, Member States shall coordinate their economic policies within the arrangements determined in Part III of the CT, which the Union shall have competence to provide. The role of the Union is therefore merely subservient to a level of coordination determined by Member States. So much for the ambition of complementing Monetary Union with a deeper economic dimension!

Legislative Council – Article I-23

At the very beginning of the IGC, in October 2003, a number of Member States insisted on abolishing the sound distinction introduced by the Convention between a legislative formation of the Council on the one hand, and executive configurations on the other. The Legislative Council, which would have been an element of transparency and simplification of the institutional

framework, and a visible partner of the EP in carrying out legislative functions, was the first casualty of intergovernmental negotiations, having been eliminated from the text.

Qualified Majority – Article I-24

The formula for calculating qualified majority, introduced by the Convention, has been preserved at the price of more complexity and less efficiency. Although not as decisive for the functioning of the Union as often stated – votes are rarely taken and divisions never run along the large/small divide – the disputes over the principle of double-majority of states and population is a worrying indicator of existing mistrust among Member States. According to the agreed formula, old weighted votes are abolished, but the threshold for adopting a decision in the Council has increased from the Convention text to 55% (from 50%) of Member States representing 65% (from 60%) of the population of the Union. At the same time, it is made clear that a blocking minority shall include at least four countries, so as to prevent Germany, the UK, France or Italy from forming a blocking coalition of three.

The most direct implication of the new formula is to give back to Spain and Poland much of the blocking power that they would have lost under the Convention formula. However, this means that the blocking power of each Member State is enhanced. Higher thresholds, therefore, make decision-making less efficient. Moreover, in the absence of a proposal from the Commission, the thresholds have been raised to require 72% of Member States, representing 65% of EU population, to vote in favour. This is a concession to small countries, whose support will be essential to secure a majority under these provisions.

Moreover, a draft Council decision attached to the CT re-introduces the ten-year old and very rarely, if ever, used Ioannina compromise. When Member States representing three-quarters of the level of population, or of the number of countries required to block a decision, indicate their opposition, the Council shall re-discuss the issue with a view to finding a compromise. This is an additional complicating factor, which seems to counteract the intended efficiency. This decision will enter into force in 2009, together with the new voting system, and will be applied until at least 2014, when the Council may adopt a decision to repeal it.

Selection of Commissioners – Article I-26

The IGC has done away with the new mechanism for the selection of Commissioners proposed by the Convention, whereby each Member State would submit a list of three personalities, one of which would be chosen by the President-elect of the Commission. This procedure would have left the new President more room to manoeuvre in shaping his/her team, and arguably reduced national pressures. The IGC has reverted to the current, less transparent system whereby the Council adopts a list of appointees, by common accord with the President-elect. The authority of the latter is thus undermined, and national governments preserve their prominence at the delicate stage of selection of the European executive.

Own resources – Article I – 53

The Convention had introduced a progressive distinction with respect to decisions on the own resources of the Union. A European law of the Council would establish, by unanimity, the limits of these resources. Such an important decision would also require unanimous national ratification. Further decisions on the 'modalities' relating to the Union's resources would, however, be adopted by qualified majority. The IGC has essentially eliminated this distinction, and reverted to a less efficient decision-making system. Unanimity is now required for all relevant decisions related to

own resources. Majority voting only applies to implementing measures where specifically provided for in earlier unanimous decisions. In a Union of 25, with crucial decisions on financing on the horizon, this is far from satisfactory.

Multi-annual financial framework – Article I – 54

The Convention established that the first 'multi-annual financial framework' adopted after the entry into force of the CT would still be adopted by unanimity. Thereafter, qualified majority would apply. Following intense pressure from net contributors to the budget, such as the Netherlands, and major recipients, such as Spain, the IGC has removed any reference to an automatic shift to majority voting. A unanimous decision of the European Council will be required to introduce unanimity. This is a very serious set-back, not least considering that the current inter-institutional agreement required to adopt the 'financial perspectives' is replaced by a European law of the Council, with the consent of the EP. Moreover, the Netherlands has attached a Declaration to the CT whereby any agreement on the move to majority voting under this provision is made dependent on a satisfactory solution for its excessive negative net payment position. Again, this decision will require unanimity, and unanimous ratification, under Article I-53.

Charter of Fundamental Rights – Article II – 52.7

The Convention has introduced the EU Charter of Fundamental Rights into the body of the CT, and made it binding. This is, in itself, a major achievement. On the other hand, a small number of countries headed by the UK has insisted on introducing a reference to the explanatory statements prepared by the Praesidium of the Convention that drafted the Charter, to guide its interpretation, into the actual text of the Charter. The reason for such sustained pressure is that these statements constrain the interpretative power of national courts and of the European Court of Justice, and prevent the potential expansion of the scope of the rights guaranteed by the Charter under future case-law. Also, the explanatory statements shed more light on the much-questioned distinction between rights (directly enforceable) and principles (requiring implementing acts) within the Charter. This has been achieved however at the price of limiting the courts in their interpretation, and thereby curbing the dynamism of the Charter as a living document. Finally, the IGC has introduced a new, strong reference to the explanatory statements under this provision.

Social security for migrant workers – Article III - 21

The Convention has extended qualified majority voting to decisions in the field of social security for employed and self-employed migrant workers. While maintaining majority voting in this sensitive area, the IGC has introduced an 'emergency brake.' According to the new provision, where a country considers that such measures would infringe upon the principles of its social security system or would affect the financial balance of that system, it can request that the matter be referred to the European Council. The latter is given four months to refer the matter back to the Council of Ministers or to ask the Commission for a new proposal. The indication of a time limit for the decision of the European Council, as opposed to an open-ended referral potentially blocking decision-making, is a welcome compromise, achieved in the final stages of the IGC. On the other hand, the possibility of interrupting the legislative procedure clearly marks a step back with respect to the Convention draft.

Indirect taxation – Article III – 62.2

According to this provision, introduced by the Convention, where the Council finds that legislative measures concerning turnover taxes, excise duties and other forms of indirect taxation relate to

administrative cooperation or to combating tax fraud or tax evasion, qualified majority would apply. Having breached one of the 'red lines' established by the UK and others, such as Ireland and Estonia, this new provision has been scrapped by the IGC. This is a major setback with respect to the Convention draft: the current system thus does not changed, although a number of safety clauses were inserted into the text to prevent the abuse of this timid move toward majority voting.

Company taxation – Article III – 63

This new provision, introduced by the Convention, opened the door for majority voting in the field of company taxation, if the Council found that specific measures relating to administrative cooperation or combating tax fraud or tax evasion were necessary for the functioning of the internal market and to avoid distortion of competition. This innovation has not been accepted by the IGC, as it too breached a 'red line' drawn by a few Member States, and the entire provision has now been abandoned. This means a reversion to the current system. It is, however, likely that the field of company taxation will offer fertile ground for initiatives to establish enhanced cooperation.

Monetary Union – Article III – 76.6

Compared to the current excessive deficit procedure under EMU rules, the Convention text Convention envisaged a considerable strengthening of the role of the Commission. Formal proposals by the Commission were to replace mere recommendations with regard to deciding both whether an excessive deficit exists, and what recommendations should be addressed to the Member States in default.

The IGC has maintained the power of the Commission to submit proposals – which can be amended only by unanimity – as far as the decision on whether the deficit exists is concerned. On the other hand, the final text produced by the IGC only envisages recommendations from the Commission to the Council when it comes to addressing recommendations to Member States on how best to bring the deficit within the Maastricht limits. This is a clear by-product of last November's dispute between the Commission and some small countries on the one hand and the governments of France and Germany on the other hand.

Judicial cooperation in criminal matters – Article III – 171

In the field of judicial cooperation in criminal matters, the Convention took a qualitative step forward by replacing unanimity with qualified majority as the rule for decision-making. This key achievement with respect to the Treaty of Nice has not been unravelled by the IGC. However, the IGC has introduced some restrictive wording with a view to limiting the competence of the Union to adopt minimum common rules of criminal procedure. In particular, following strong pressure from the UK and others, an 'emergency brake' has been introduced whereby a country, when a draft framework law would infringe on the fundamental principles of its legal system, may request that the matter be referred to the European Council.

An early version of this provision did not include any time limit for the European Council to take a decision. This would amount to potentially depriving the EP of its powers by simply interrupting the legislative procedure. In the last stages of the IGC, a compromise mechanism was introduced whereby if, within four months from the referral to the European Council, no action was taken, the authorisation to establish enhanced cooperation would be granted if requested by at least one third of Member States, willing to adopt the measure in question. This is an interesting innovation, which paves the way for more frequent use of enhanced cooperation and reduces the risk of total gridlock of decision-making in this key policy domain. That being said, the final text is a step backwards, in

terms of efficiency and transparency, with respect to the original Convention draft. Last minute damage limitation cannot compensate for the basic disagreement that negotiations on this issue revealed.

Definition of criminal offences – Article III – 172

The same mechanism as under Article III-171 has been introduced for the adoption of minimal rules concerning the definition of criminal offences and sanctions in areas of particularly serious crime with a cross-border dimension. The same considerations as above apply.

European Public Prosecutor – Article III - 175

The Convention has introduced a provision enabling the Council to set up, by unanimous decision, the office of the European Public Prosecutor. This is another important achievement with respect to the Treaty of Nice. The remit of the Prosecutor, mandated by the Convention with combating serious crime with a cross-border dimension, as well as crimes affecting the interests of the Union, has been narrowed down by the IGC. His remit now only extends to combating crimes affecting the financial interests of the Union. It is, however, envisaged that a unanimous decision of the European Council might extend the powers of the Prosecutor to include serious crime with a cross-border dimension. This *passerelle* is an improvement with respect to earlier IGC texts, but it is hardly encouraging, given the requirement for unanimity to set up the new office in the first place, with a very limited remit.

Future extension of majority voting – Article IV – 7a

This new provision, introduced by the IGC, corresponds to Article I – 24.4 of the Convention draft. Despite strong opposition from the UK, the IGC has preserved the so-called *passerelle* mechanism, whereby the European Council can decide, by unanimity, to apply qualified majority where unanimity is provided for by the CT in Part III, and to apply the ordinary legislative procedure where the CT envisages a special procedure in Part III.

Under the new rules agreed by the IGC, however, a national parliament can block the *passerelle* by communicating its opposition within six months from the notification of the proposed decision. Considering the sometimes twisted dynamics of national politics in relation to Europe, this is absurd and seriously undermines the effectiveness of a very important procedure, allowing for a minimal degree of flexibility to overcome unanimity. It remains to be seen whether the unique institutional framework will withstand this setback, or whether a number of enhanced cooperation decisions will, as a consequence, push the Union in different directions.

To be watched!

Chairman of the European Council – Article I-21

The rather vague job description of the permanent Chairman of the European Council, introduced by the Convention to replace the rotating Presidency at the head of the Union, has not been amended by the IGC. The success or failure of this important innovation will largely depend on personalities. Interestingly, however, a new Declaration attached to the CT states that in selecting the future President of the European Council, President of the Commission and Foreign Minister, due acknowledgement should be given to the geographical and demographic diversity of the Union and its Member States.

EU competences – Articles I-11, I-12, I-13, I-14, I-15, and I-16

The Convention introduced a new delimitation of legislative competences between the Union and Member States. Competences are divided into three categories: exclusive competences of the Union, shared competences between the Union and Member States, and policy areas where the Union only takes supporting or complementary actions, but cannot harmonise national laws. New provisions (legal bases) have been introduced by the Convention and by the IGC in Part III of the CT on energy, sport, space policy, civil protection and tourism.

Budgetary procedure – Article III – 310

The IGC has extensively amended the new budgetary procedure introduced by the Convention, which notably envisaged a Conciliatory Committee to be set up in case of disagreement between the Council and the EP, the budgetary authority of the Union. The IGC amendments somewhat weaken the position of the EP relative to that of the Council. Under the new text, the Council can decide to reject parliamentary amendments at the conciliation stage. In case of no agreement at this crucial stage, the Commission shall submit a new draft budget, effectively pre-emptying the final decision of the EP. Under the Treaty of Nice, the EP has the last word on non-compulsory expenditure and on the adoption or rejection of the overall budget. From the EP perspective, however, this potential setback is largely compensated by the extension of its budgetary powers to so-called compulsory expenditure, that is, agricultural spending. The distinction between compulsory and non-compulsory expenditure is therefore abolished.

Conclusion

After 18 months of Convention proceedings and one year of IGC negotiations, the new CT is the maximum that could have been achieved politically, and as such it should be valued and supported. National leaders have passed, by a very tiny margin, their end of the year exams, but these were only first tests ahead of a fierce public debate. The challenge will be to win the hearts and minds of voters, and mobilise them to rally around this renewed political project for the Union, supported by the innovations introduced by the CT. The CT will certainly not outlast the next 50 years in its current form – ten would be an optimistic forecast. But without this Constitution, in ten years time, the very existence of the Union, as we know it today, should not be taken for granted.

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[1] For a comprehensive overview of the innovations introduced by the Convention, see "The Draft Constitutional Treaty – An Assessment", the EPC Convention team, Issue Paper 5, July 2003. To read this paper on-line click here.