

Crucial features of a successful EU constitution

Memorandum from the Bertelsmann Group for Policy Research

The European Convention has been meeting for more than a year, and yet the precise shape of the future EU constitution is still a matter for speculation. Since the beginning of February the members of the Convention and the public have been fed minute or homeopathic doses consisting of single articles. The draft as a whole has still not been presented, and thus the commentators have to confine themselves to editorial work on individual sections. This approach has led to the submission of more than 1,000 amendments for the first 16 articles alone. Although an increasing number of observers has expressed scepticism about the timetable and the methodology, the new EU constitution is due to be published as early as June 2003.

As a result there are now only a few weeks left in which to discuss and finalize central elements such as the division of tasks and power between the institutions, and the specific provisions relating to policy areas. However, there is a danger that the detailed discussion of the fine print of the forthcoming EU constitution makes it impossible to see the wood for trees. It is now the task of the Convention and its Praesidium to highlight the hurdle that has to be overcome. The crucial features of the forthcoming constitution must now be pieced together and filled with substance.

1. Taking into account constitutional traditions

Making the European project more accessible to EU citizens is a central goal of the current reform process. A comprehensible basic document is thus of the greatest importance if citizens are to be able to identify with Europe in a political sense. Thus the forthcoming EU constitution should take its bearings from the principal elements of the European constitutional tradition.

For this reason, basic and civil rights should also have a legally binding character on the European level. Thus the EU Charter of Fundamental Rights compiled under the leadership of Roman Herzog should be incorporated into the constitution unabridged and given due prominence.

Furthermore, the European constitution should incorporate the fundamental principle of the division of powers. The executive and legislative functions of the Council must be clearly distinguished from each other. In future, the Council should perform its legislative function in the form of a Chamber of States. In policy areas which are not (as yet) subject to community legislation, member states should cooperate within the framework of operational Steering Councils.

In keeping with fundamental principles of representative democracy, the European constitution should ensure the participation of citizens under the aegis of the European Parliament in a more effective manner than has hitherto been the case. In order to strengthen the significance of elections, the European Parliament should be endowed with the right to determine the President of the Commission. This would enhance the parliamentary character of the EU's political system and promote the formation of transnational parties.

2. Honing the task profile

The European constitution must clearly state the values and basic principles of the EU, on the basis of which it becomes possible to define common tasks and goals. Thus the arduous debates by the members of the Convention on the introductory basic articles of the constitution are essential for the future success of the European project.

An unambiguous division of labour is part and parcel of a clear-cut task profile. The division of competences between the Union and the member state level should also help to strike a balance between centripetal and centrifugal forces. In order to be able to meet the forthcoming challenges, such a division of competences should not curtail unduly the Union's room for manoeuvre and its ability to develop in a dynamic manner.

It should be possible to assign clearly responsibility for political success and failure. For this reason tasks and instruments must be unambiguously assigned to individual EU institutions. The European Parliament as Chamber of Citizens and the Council as Chamber of States should as a rule be jointly responsible for legislation. Legal initiatives should continue to be devised by the Commission. Executive decisions in policy areas that are still primarily of an intergovernmental character, for example, foreign, security and defence policy, should be made within the framework of the operational Steering Councils jointly chaired by the member states and the Commission.

3. Improving political leadership

The Union's ability to act will to a large extent depend on the ability of the political leadership to define political tasks and promote their implementation in a specific policy. The future power structure of the Union must do justice both to the community

and the intergovernmental strands of legitimacy, since the Union is at one and the same time a union of states and of citizens.

The election of the President of the Commission by the European Parliament would strengthen the legitimacy and power base of the Commission, and thus revive the role of the Brussels authority as a catalyst of integration dedicated to common interests. Parallel to this, the European Council should in future operate under the leadership of a full-time president elected by the heads of state and government.

In order to preempt rivalry and friction, the tasks of each president should be clearly stipulated and visibly distinct. Such a division of tasks will introduce greater clarity into EU leadership structures and make it possible to assign responsibility for success and failure on the highest level of political leadership in Europe. If political responsibility can be clearly assigned and reflects real power relations, the widespread practice of scapegoating others when it seems to be an opportune moment to do so, or of claiming unwarranted credit for European policy successes will be reduced.

4. Maintaining Europe's capacity to act

The Union's ability to act requires not only political leadership, but also clear and comprehensible mechanisms and procedures in order to translate political statements of intent quickly and appropriately into political reality.

For this reason, qualified majority voting should become the standard procedure in the Council's decision-making process. Exceptions from this rule which would continue to require unanimity must be clearly justified, and, if appropriate, they would apply only for a transitional period.

But only if decisions are actually implemented, is the Union really capable to act. In future, member states will continue to be responsible for the implementation of legislation. However, in certain cases a need for uniform execution can justify the transfer of implementation tasks to the Commission. Yet the legislation itself must stipulate who is responsible for implementation, who is in charge of execution and what kind of timetable is envisaged.

Any decision is only as good as the financial resources available for its implementation. Only a solid financial constitution will make it possible for the EU to act effectively and in a sustainable manner. Thus in the case of the budget procedure, the European Parliament and the Council will have to become co-equal budgetary bodies. Moreover, as concerns budgetary questions, it is imperative from the outset to counter the possibility of blockade in an enlarged Union.

5. Preserving Europe's dynamism

Of decisive importance for the continuance of the European constitution will be its ability to reconcile dynamism and stability on a permanent basis. Thus on the one hand the EU must define a clearly comprehensible basic consensus, and on the other facilitate innovation and institutional adaptation to changing circumstances.

In an enlarged Union the development of European integration in central areas runs the risk of coming to a halt as a result of the lack of support by individual member states. Flexible methods of cooperation should thus make it possible to continue to develop the Union. The Convention should incorporate into the forthcoming constitution the differentiation instrument of “enhanced cooperation”, which has been available in the treaties since Amsterdam, and at the same time remove restrictive application provisions. This is the only way in which the creative potential of the instrument can be used effectively, and enhanced cooperation can be utilized as a credible alternative to political deadlock.

The constitution will have to be adapted repeatedly to changing circumstances. However, the current treaty amendment procedure will no longer be practicable in an enlarged Union. High hurdles should still have to be overcome when seeking to reform the constitutional provisions of the first section of a bipartite constitution. Amendments should be prepared within the framework of a Convention and subsequently presented for ratification to the European Parliament and the member states. The implementation provisions in the second section of the constitution should, however, be subject to a simplified revision procedure which does not stipulate unanimity and ratification by the member states.

Provision must be made for the constitution to come into effect after being compiled by the Convention and receiving assent from the heads of state and government. Thus the draft constitution should stipulate that the constitution will not be prevented from coming into effect in states which give it their assent on account of non-ratification by individual member states. The constitution should come into effect as soon as it has been ratified by a predetermined number of states representing a minimum number of EU citizens. If individual states or their citizens reject the constitution on more than one occasion, they would have to consider relinquishing membership of the EU.

Consequences for the work of the Convention

If citizens are once more to be convinced that a successful and forward-looking Europe is a good thing, then the Convention should not simply come up with a consensus package that is bound to make little or no impact. Over and above the basic framework of the future constitution, courageous changes to the substance of the current treaty provisions must be made in order to improve the Union's ability to act and to develop. If the Convention fails to reach agreement about this, then the integration project as a

whole is in danger: The idea of EU states drifting apart will change from being a worst-case scenario to a realistic option. Only an ambitious result can turn the EU into a vital, forward-looking and successful community that can meet the challenges of the future. These alternatives must be spelled out as clearly as possible.

The closure of the work of the Convention by the end of June now seems to be settled. However, this decision on timing must not have a detrimental effect on the quality of the final result. The goal of the Convention must be a final comprehensive text whose stringency will compel the Intergovernmental Conference to give it its assent. For this reason, in the best parliamentary tradition, the plenary assembly should receive the opportunity to discuss the whole draft of the constitutional text in the course of at least two readings. This calls for sufficient time. After the first plenary reading of all the articles proposed for the first and second sections of the constitution, the Praesidium and its Secretariat should go on retreat and then present a revised general concept for which there will again be sufficient time for debate. Something which has grown slowly and with difficulty over a period of fifty years should not now be pressed into an inappropriate framework with unseemly haste. EU citizens would immediately see and reject anything which looks like patchwork.