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## U.S.-EUROPE ANALYSIS SERIES

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### **The Constitutional Enlargement of Europe**

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The European Union is about to enter into the final phase in the long, complex process of creating a European constitution. In this phase, perhaps the most perilous of all, the Constitution will be brought before the parliaments and peoples of Europe for approval—at least eleven member states will have referendums on the issue. In many of those states, we can expect a fierce debate that will inevitably invoke the most basic issues and purposes of the European Union. Maintaining a sense of balance in those debates will require an awareness of the purposes that the Constitution was supposed to serve and the mechanisms through which its framers intended it to achieve those purposes.

I use the word “Constitution” here quite advisedly. From a legal standpoint, the Constitution is a “constitutional treaty” no different from the Rome, Maastricht, Amsterdam, and Nice Treaties that have preceded it. But politically the word “Constitution” is important to demonstrate the determination of European governments to create from the European Union a political entity that embodies more than just intergovernmental agreements. This goal underpinned the original December 2001 decision by the heads of State and Governments to convene a Constitutional Convention, and it forms the basis of the various countries’ desire to see the process through the ratification stage.

The idea for the Constitution began also as a reaction to the impending reality of enlargement of the European Union. The Convention on the Future of Europe that originally drafted the treaty began its work nearly three years ago specifically because the EU was on the threshold of its largest, but probably not its last, enlargement. Since the Convention began, ten new members have entered the Union. But the EU still has, with 25 members, the same basic institutions as it had at the beginning when there were only six members. The recent enlargement also made the Union much more heterogeneous in terms of wealth, geography, and history.

At the same time, the European Union has progressively widened its scope. Beginning with the narrow areas of coal and steel, then moving on to a customs union, a common agricultural policy, and a single market, the European Union has become more active in more areas, including areas that touch close to the heart of national sovereignty such as judicial issues and foreign policy.

Europeans leaders feared, and still fear, that enlargement without reform would result in political stagnation, economic disintegration and, ultimately, social fragmentation in Europe. In order to prevent this, the Constitution proposes basic reforms that go far beyond the institutional adjustments made so far: it focuses on strengthening the factors that unite the member states and improving the European Union's decision-making capacity. The Constitution has three basic objectives, which respond to the new realities of an expanded European Union:

- (1) to clarify the responsibilities of the various European Union institutions;
- (2) to ensure more democracy and transparency in European decision-making;
- (3) to achieve greater efficiency by streamlining European decision processes.

## 1) Clarity

The first goal is to clarify “who” does “what,” “why,” and “how” within the European Union. **What and Why** refer to the objectives and values of the European Union. These objectives and values, as well as the basic policy tools to implement them, are described simply and explicitly in the Constitution. **Who and How** refers to the distribution of functions between the European Union institutions and the member states. The Constitution greatly simplifies the institutional and legal structures of the European Union. In particular, the artificial division of EU policy into three so-called pillars (“Community policies,” “Common Foreign and Security Policy,” and “Justice and Home Affairs”) will disappear. Also the number of different legal instruments that the EU uses (regulations, directives, decisions, etc.) will be reduced from fifteen to six.

## 2) Democracy and Transparency

One of the reasons why the EU member states decided to hold a Constitutional Convention was the widespread perception that European Union institutions had become disconnected from the people, the so-called “democratic deficit.” As a result, the Constitution introduces a raft of proposals to promote greater democracy and transparency both within and beyond the European Union institutions.

Within the EU, the European Parliament will, according to the language of the Constitution, “elect” the President of the European Commission, although there will be only one candidate nominated by the Council. That nomination must further take into account the outcome of the most recent European Parliament elections, implying that the Commission President would normally belong to the largest party grouping in the European Parliament. The procedure of co-decision, in which the European Commission and the European Parliament share the power of legislative initiative, will be extended to new issue areas. Finally, the proceedings of the Council, when exercising its legislative function, will be open to the public.

Beyond the European Union institutions, the Constitution guarantees that a convention similar to that which produced the Constitution will be used for any future revisions of the EU treaties. This ensures that national parliament and civil society actors would have a direct voice. The

Constitution also establishes that national parliaments must be informed about all new initiatives from the Commission, and if more than one-third of them consider that a proposal is not properly within the European Union's purview, the Commission must reconsider the proposal. The Constitution further affirms the importance for European governance of the "social dialogue" between labor and management and the "civil dialogue" between the private and public sectors. Finally, there is a new right to petition. If at least one million European citizens "from a significant number of member states" submit a petition on some political issue, the Commission must consider the proposal.

### **3) Efficiency**

The Constitution will also increase the efficiency of European Union decision-making through several specific institutional changes. First, the European Council will be chaired by a President elected for a term of two and a half years, renewable once, instead of the current Presidency that rotates among the member states every six months. The position will thus be more stable; it will be a full-time job ensuring continuity in policy making.

Second, the Constitution creates a European Union Minister for Foreign Affairs, appointed by the European Council with the agreement of the President of the Commission. This individual will be "dual-hatted," which means that he or she will both chair the Foreign Affairs Council and will be a Vice-President of the Commission, combining the jobs of Javier Solana, the current High Representative for the Common Foreign and Security Policy and Chris Patten, the Commissioner for External Affairs (until a new Commission takes office). The new Minister will therefore ensure the coherence and effectiveness of the Common Foreign and Security Policy, enabling the Union to play a real role on the international scene.

The constitution also hopes to introduce greater efficiency by extending the process of qualified majority voting to new areas, including, for example, Justice and Home Affairs and by simplifying the rules for obtaining a qualified majority. This change reflects the reality that it will be more and more difficult to make unanimous decisions in a Union with such a large and heterogeneous membership.

Finally, the "Euro group"—that is the subgroup of members that have adopted the Euro (currently 12 of the 25 members)—will have decision-making power to ensure coordination of economic policies through the adoption of broad guidelines. That group will also decide how to deal with excessive national deficits.

### **The Ratification Debate**

The debate over ratification comes, as it almost inevitably must, at a time when other events crowd the European calendar and threaten to cloud the issue of the Constitution. The heads of state and government approved the Constitution on June 18, 2004 and provided for a two-year maximum ratification process. On November 1, an entirely new European Commission takes office—the first commission with 25 members (one for each member state including the new members). On December 17, the European Council will decide whether or not to open accession negotiations with Turkey and if so, when. Enlargement to Turkey would be the EU's most

ambitious and controversial enlargement yet, and that controversy will undoubtedly color the ratification debate in many countries, including France.

In this context of rapid flux and momentous decisions for Europe, member states will have to organize national debates to encourage ratification. France has decided to hold a referendum by the end of 2005. In France, as in many other countries, the political debate will be fierce and risks getting tangled up in issues beyond the Constitution. While all of these external factors make the outcome difficult to predict, it is clear that the Constitution itself enjoys widespread public support. A February 2004 *Eurobarometer* poll, for example, showed that 77% of Europeans (and 81% of the French) want a Constitution and 67% (73% of the French) think that without a Constitution the enlarged European Union will not function.<sup>1</sup>

In France, political parties have already begun to debate the issue of ratification. Many political figures have expressed reservations about the Constitution, but I hope that the Constitution will be ratified to enable all of the member states to participate fully in a more democratic and efficient Union, which will play a significant role on the international scene.

If we do not succeed, there is a risk of paralysis in European policy. And those who would want to pursue European integration might be tempted to do so outside of the framework of European treaties and outside of the established European institutions.

It is important to remember that from the beginning of the European project, it was clear that the construction of Europe was an economic project with a political objective. Whatever happens, with or without the Constitution, we must follow the advice of Jean Monnet: “*Au-delà il faudra inventer*”—beyond that, we will have to invent.

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<sup>1</sup> See Eurobarometer, “*The Future of the European Constitution*,” February 2004 at [http://europa.eu.int/comm/public\\_opinion/flash/fl159\\_fut\\_const.pdf](http://europa.eu.int/comm/public_opinion/flash/fl159_fut_const.pdf).