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**THE TREATY ESTABLISHING  
A CONSTITUTION FOR EUROPE**

**ELEMENTS FOR AN EVALUATION**

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## Introduction

The European Union has been marked by two historical events in 2004: the accession of 10 new Member States and the adoption of a Treaty establishing a Constitution for Europe. After reaching a political agreement on 18 June 2004, the Heads of State and Government signed the Constitutional Treaty on 29 October 2004.

Now the European citizens will have the final word. The Constitutional Treaty will only enter into force after ratification in all Member States. The ratification process will take place in accordance with national legislation. In some Member States this will take place by vote in the national Parliament, in others via referenda. It is to be expected that ratification will be accompanied by an intense debate on the content and impact of the Constitutional Treaty.

The Commission of Bishops' Conferences in the European Community (COMECE) followed the constitutional debate from the very beginning. After the Treaty of Nice it fostered the discussion on the future of the European Union in the national Bishops Conferences. It monitored the work of the European Convention and of the Intergovernmental Conference on the Constitutional Treaty. It now offers this document as an aid to discussion and understanding of the Constitutional Treaty with a view to the ratification process.

In his post-synodal apostolic exhortation *Ecclesia in Europa*, John Paul II clearly appealed on behalf of the Church to those drawing up the Constitutional Treaty.<sup>1</sup> He called for a reference to the religious, and in particular the Christian, heritage of Europe, the right of Churches to organise themselves freely, the provision for a structured dialogue between the European Union and religious confessions, and respect for the juridical status of the Churches in the Member States.

During the constitutional debate, COMECE emphatically advocated this appeal of the Church to the members of the European Convention, as well as the Heads of State and Government. As regards the result of the Intergovernmental Conference, it is regrettable that the Constitutional Treaty does not include a reference to Christianity, even though it does mention religious heritage for the first time. Yet religious freedom in its corporative dimension, the dialogue between Churches and the Union, as well as the protection of the status of the Churches in the Member

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<sup>1</sup> "In the light of what I have just emphasised, I wish once more to appeal to those drawing up the future European constitutional treaty, so that it will include a reference to the religious and in particular the Christian heritage of Europe. While fully respecting the secular nature of the institutions, I consider it desirable especially that three complementary elements should be recognised: the right of Churches and religious communities to organise themselves freely in conformity with their statutes and proper convictions; respect for the specific identity of the different religious confessions and provision for a structured dialogue between the European Union and those confessions; and respect for the juridical status already enjoyed by Churches and religious institutions by virtue of the legislation of the member states of the Union." Paragraph 114, POST-SYNODAL APOSTOLIC EXHORTATION ECCLESIA IN EUROPA OF HIS HOLINESS POPE JOHN PAUL II TO THE BISHOPS MEN AND WOMEN IN THE CONSECRATED LIFE AND ALL THE LAY FAITHFUL ON JESUS CHRIST ALIVE IN HIS CHURCH THE SOURCE OF HOPE FOR EUROPE, 28 June 2003,

States has been introduced into the Constitutional Treaty. This novelty represents a break through for church and society.

The text of the Constitutional Treaty is very complex. It contains two preambles, 448 articles and several protocols, annexes and declarations which are supposed to establish the constitutional framework of the European Union for the future. In order to provide for a better understanding of the Treaty, the Secretariat of COMECE has prepared these *Elements for an Evaluation*.

This evaluation assesses the text and addresses the following questions:

- Why was it necessary to launch the constitutional debate?
- How has this debate developed?
- What has been the outcome, in terms of the structure and content of the Constitutional Treaty?
- How are Churches and religion concerned?
- What are the social ethical implications of the Constitutional Treaty?
- And what are the challenges to be expected in the constitutional praxis?

The answer to these questions will provide this first overview of the Constitutional Treaty.

## **I. The Constitutional Debate**

### **1. The necessity**

The accession of ten new Member States necessitated a revision of the EU's institutional structure. Burning questions concerned the method of weighting votes in the Council of Ministers, the transfer of issues to be decided by unanimity voting in the Council of Ministers to that of qualified majority voting, and the composition of the Commission. Compromises were reached in the Treaty of Nice, but it was clear that these were not long-term solutions.

Moreover, other fundamental issues needed to be dealt with. Issues such as the competences between the EU and the Member States, the binding quality of the Charter of Fundamental Rights of the EU, the simplification of the treaties and the role of national parliaments were designated as key issues.

The Declaration of Laeken, adopted in December 2001, highlighted these issues and placed them in the broader context of the “democratic challenge facing Europe”, “Europe's new role in a globalised world”, and “the expectations of the European citizens”; therefore the Declaration raised broader legitimacy issues for the EU. It established the Convention on the Future of Europe to prepare decision-making by the next Intergovernmental Conference (IGC).

The Declaration of Laeken did not speak of a Constitution: it simply raised the question whether simplification and reorganisation “might not lead in the long run to the adoption of a Constitutional text in the Union”.<sup>2</sup>

*The accession of ten new Member States necessitated a revision of the EU’s institutional structure. [...] Moreover, other fundamental issues needed to be dealt with.*

## **2. Development**

### **• Convention**

The Convention, under the chairmanship of the former French President Giscard d’Estaing, was largely based on the model of the previous Convention for the Fundamental Rights of the EU. Apart from a Presidium, which consisted of 13 members and from which the chairman and two vice-chairmen were appointed, the Convention was also made up of a representative from the governments of each of the Member States, two representatives of each national Parliament, sixteen representatives of the European Parliament, and two representatives of the Commission. The candidate countries for accession were equally represented as the Member States. Every member had a substitute who also participated actively in the work of the Convention. A number of observers were attached to the Convention.

The working method of the Convention was open and transparent. All relevant documents were placed on the Internet. A publicly accessible virtual forum was established for input from civil society organisations.

The Convention and its chairman set their ambitions high. The Convention started its work on 28 February 2002. On 20 June 2003, its chairman presented the text of a draft Constitutional Treaty to the European Council in Thessaloniki, the final draft was handed over to the Italian Presidency on 18 July 2003.<sup>3</sup>

*The working method of the Convention was open and transparent. All relevant documents were placed on the Internet. A publicly accessible virtual Forum was established for input from civil society organisations.*

### **• The Intergovernmental Conference**

The Italian Presidency opened the Intergovernmental Conference (IGC) on 4 October 2003. At an early stage of the IGC held in Brussels from 12-13 December 2003, it became clear that no

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<sup>2</sup> The Declaration of Laeken is available on the following website of the European Union: [http://europa.eu.int/futurum/documents/offtext/doc151201\\_en.htm](http://europa.eu.int/futurum/documents/offtext/doc151201_en.htm).

<sup>3</sup> The Draft Constitutional Treaty presented by the European Convention is available on the following website: <http://european-convention.eu.int/DraftTreaty.asp?lang=EN>.

agreement was feasible. It was impossible to find a solution for several important issues such as the weighting of votes in the Council of Ministers, the application of qualified majority voting and the shape of European Commission. A sense of urgency sparked by the terrorist attacks in Madrid in March 2004 produced an increased determination to reach agreement on the text under the Irish Presidency at the meeting held in Brussels from 17-18 June 2004. On the basis of a position paper drawn up under the Italian Presidency, and subsequent preparatory work of the Irish Presidency, agreement was finally reached.

The Constitutional Treaty was signed in Rome on 29 October 2004.<sup>4</sup>

- **Ratification**

In order to enter into force, the Constitutional Treaty must be ratified by the Member States. In some of the Member States, ratification will be conducted through popular referenda, the outcome of which poses the greatest risk to the Treaty's entry into force (see below).

### **3. Outcome**

- **Structure of the Constitutional Treaty**

The Constitutional Treaty consists of four parts, preceded by a Preamble. Part I deals with the institutional framework. It also includes reference to the objectives and values of the Union. Part II contains the Charter of Fundamental Rights, which was adopted as a solemn declaration at the Summit in Nice, December 2000. In a strict sense, together these two parts form the constitutional framework of the EU. Part III spells out in detail the areas of competence of the EU, the available instruments, and makes explicit the decision-making procedures. Part IV contains final provisions.

The Constitutional Treaty has a clear structure. However, it is not easily read. Decision-making procedures differ from subject-matter to subject-matter. As a result, one must consult the Constitutional Treaty in its totality. In other words, Part I and Part III must be read in conjunction with one another, whilst regard must also be made to Part II as well.

- **Main institutional changes and the decision-making process**

The main bodies in political decision-making are the European Council, the Council of Ministers, the Commission, and the European Parliament. The Constitutional Treaty contains significant changes in the inter-institutional relations and in the relations between the EU and the Member States. The Constitutional Treaty bears a stronger mark of compromise than the Convention proposal.

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<sup>4</sup> The consolidated version of the Constitutional Treaty signed by the Heads of State and Government is available on the following website: [http://www.europa.eu.int/constitution/constitution\\_en.htm](http://www.europa.eu.int/constitution/constitution_en.htm)

Important novelties are the establishment of a President of the European Council, the establishment of a Foreign Minister, the composition of the Commission, and the position of the European Parliament. The formula for qualified majority decision-making in the Council of Ministers has been redefined. Most of these issues were highly controversial.

*The Constitutional Treaty contains significant changes in the inter-institutional relations and in the relations between the EU and the Member States.*

### *The President of the European Council*

Currently, the EU (Council) Presidency is an office held for six months, in which the Member States take turns. This system is regarded as unsatisfactory, especially in regard of the extended membership to 25. An initial proposal to establish a President of the European Council (the body composed of the heads of state or government), for a 5-year term and with substantive powers, was not acceptable to many Member States.

Fears of disturbing the inter-institutional balance, notably with regard to the (President of the) Commission, coupled with the fears of smaller Member States in their position vis-à-vis the larger Member States were at stake. The IGC finally reached agreement on a 2.5-year term for the President of the European Council, with the possibility of renewal once. His election will take place on the basis of qualified majority voting. During his mandate, the President will not hold a national office. He is concerned with the preparation of the European Council meetings and – it was added during the IGC - their follow-up. To please the smaller countries, a Protocol states that the election of the President must be seen “in connection with the President of the European Commission and the appointment of the European Foreign Minister”, especially with regard to the “geographical and demographic diversity of the Union”.

### *The Council of Ministers*

The Council of Ministers convenes in many formations, such as the Economic and Financial Affairs Council, the Agricultural and Fisheries Council, and the Environment Council. Despite efforts to change this, the Council of Ministers will continue to meet in different configurations. The Constitutional Treaty provides for a revision of this system which requires a decision of the European Council taken by qualified majority. A new provision demands meetings of the Council of Ministers, convening in their capacity of co-legislature, to be public.

Under the current system, the presidency is determined by the half-year rotating system. No agreement could be reached on an alternative. The Constitutional Treaty now states that this matter will be decided by unanimity. A likely option, proposed by the Italian Presidency in December 2003, is a team presidency of three, who would hold office for a period of 18-months.

The Constitutional Treaty establishes a Foreign Minister, appointed by the European Council, “acting by a qualified majority, with the agreement of the President of the Commission”. He presides over the Foreign Affairs Council and is one of the vice-presidents of the Commission.

### *Decision-making*

Decision-making in the Council of Ministers was a highly controversial issue. It caused the summit to fail in December 2003. In the course of time, the original unanimity rule, which implies veto power of every country, was changed in some areas to a qualified majority system, based on weighted voting. In the Treaty of Nice, a new arrangement on the qualified majority system had been agreed. This agreement over-proportionally favoured Spain and Poland, who, in turn, initially refused to give up their acquired rights.

The new formula, to be effective from 1 November 2009, distinguishes between Council decisions based on proposals from the Commission or from the EU's Minister of Foreign Affairs on the one hand, and other Council decisions on the other. In the former situation, qualified majority requires 55% of the Member States, consisting of at least 15 Member States and representing at least 65% of the population of the Union. In order to block such a qualified majority, it also suffices that four Member States or more oppose. In the latter, less frequent situation, 72% of the Member States are required to be in favour, comprising at least 65% of the Union population.

In order to enable change in decision-making in specific areas without necessitating treaty revision (from unanimity to qualified majority in the Council of Ministers) the Convention proposed a general *passerelle*. By unanimous vote, the European Council would then be able to introduce such change. To meet opposition to this proposal, the Treaty provides for two modifications: security and defence are excluded from this option, and every national parliament can object to any such change. With regard to criminal law and social security law, complicated and specific modifications have been introduced to prevent a light-hearted change from unanimity to qualified majority decision-making in the Council of Ministers. With respect to the multi-annual financial framework, the European Council can decide by unanimous vote to introduce qualified majority voting.

### *The European Commission*

The reduction of the number of Commissioners – generally seen as a necessity – was highly controversial. The Treaty of Nice had fixed the number of Commissioners to one per Member State. Even though the Commission independently serves the European interests and explicitly not those of the Member States, giving up “an own” Commissioner was not something Member States were ready to do. The Convention proposal for a Commission of 15 Commissioners complemented with 10 “non-voting” Commissioners, to be effective in 2009, was not acceptable to the IGC.

The compromise is a Commission with the number of Commissioners of two-thirds of the number of Member States, all with voting power, to take effect in 2014. The required strict equal rotation will enable every Member State to provide a Commissioner twice out of three rotations.

In the future, the President of the Commission will be elected by the European Parliament; the European Council proposes a candidate (with qualified majority). The European Council shall take into account the political composition of the European Parliament and hold “appropriate consultations”. A Protocol attached to the Treaty specifies this in more detail.



A compromise was also reached with regard to the appointment of the other Commissioners. Instead of providing the President of the Commission with the power to appoint a Commissioner on the basis of a candidature of three from the Member State (Convention proposal), the Constitutional Treaty states that the European Council, “by common accord with the President-elect”, establishes the list of proposed persons to be appointed.

### *The European Parliament*

The Chairman of the Convention, Valéry Giscard d’Estaing, declared the European Parliament the “great winner”. In line with the general development, the powers of the European Parliament had been increased, as the co-decision procedure had been extended to a number of policy areas. Part of this extension has been toned down by the IGC, especially in the field of the budget.

At present, the European Parliament can reject the whole budget, but has co-decision powers only with regard to the non-obligatory expenses. In the future, the Constitutional Treaty will grant the same powers to the European Parliament as to the Council over the whole budget by applying a special co-decision procedure. However, room for manoeuvre by the European Parliament is determined by the multi-annual financial framework, which is established by unanimous vote by the Council of Ministers after agreement of the European Parliament. In case of failure to reach agreement, the previous year’s provisions shall be extended until an agreement has been reached.

In a slight moderation to the Convention’s proposal, the Constitutional Treaty establishes 750 as the maximum number of seats in the European Parliament, with a minimum of six seats per Member State. The Treaty provides the basis for a uniform system of European parliamentary elections.

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### *The Citizen*

In Title VI of Part I on “The democratic life of the Union”, the Constitutional Treaty introduces two new features directly relating to the citizen. The first provides that at least one million citizens from a “significant number of Member States” can request the Commission to initiate an “appropriate proposal” in matters where they consider that a legal act of the Union is necessary to implement the Constitutional Treaty (Art I-47 4). Details in this regard shall be further regulated. The second states that, among other things, the institutions maintain an “open, transparent, and regular dialogue with representative associations and civil society” (Art. I-47 2). This chapter also contains a provision on dialogue with the churches (see below).

*In Title VI of Part I on “The democratic life of the Union”, the Constitutional Treaty introduces two new features directly relating to the citizen.*

### *Competences and relation to national constitutions*

Basic principles of the EU, in relation to the exercise of power, are those of conferral, subsidiarity, and proportionality. The institutions can only act in so far as the power to do so has been conferred to them. In the area of non-exclusive competences, the Union acts only if it is better placed to do so than the (sub-)national level, and Union action “shall not exceed what is necessary to achieve the objectives of the Constitution” (Art I-11 4).

A new element is that the Constitutional Treaty contains general lists of policy areas which fall under the *exclusive competences* of the Union, in which the Union and the Member States *share competences*, down to areas where the Union takes *supporting, co-ordinating or complementary action*. For all practical purposes, these lists need to be read in relation with (the more specific) Part III.

Two Protocols specify the position of national Parliaments in the EU. They relate to the provision of information to, and advisory powers of, national Parliaments. In particular, the *Protocol on the Application of the Principles of Subsidiary and Proportionality* involves the national Parliaments in the screening of EU-legislation. In case of infringement, the national Parliaments will be entitled to challenge the law at the European Court of Justice.

*A new element is that the Constitutional Treaty contains general lists of policy areas which fall under the exclusive competences of the Union, in which the Union and the Member States share competences, down to areas where the Union takes supporting, co-ordinating or complementary action.*

### *Legal personality of the EU*

In contrast to the European Community, the European Union did not previously have a legal personality. It is now to receive one (Art. I-7). The Constitutional Treaty eliminates also the different pillars which formerly made up the EU.

### *Primacy of Community law*

For the first time, it is explicitly stipulated that the Constitutional Treaty (primary law) and law adopted by the institutions of the Union in exercising competences conferred on it (secondary law) have primacy over the law of the Member States (Art. I-6).

### *Amendments to the Constitutional Treaty*

For minor changes to part III of the Constitutional Treaty a simplified procedure is required on the basis of a decision of the European Council acting unanimously. In case of major amendments to the Constitutional Treaty, a new Convention shall be convened (Art. IV-443 2).

### *Withdrawal of a Member State from the Union*

In contrast to the previous Treaties, the EU Constitutional Treaty provides for the voluntary withdrawal of a Member State from the Union (Art. I-60).

## **III. Content of the Constitutional Treaty**

### **1. Values of the European Union**

Article I-2 explicitly lists the values on which the Union is founded. They are: respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. This is a new list. A similar list of fundamental values could previously be found - in a less prominent position - in Art. 6 of the EU Treaty. This Article mentioned neither human dignity, nor equality. However, Art. 6 of the EU Treaty did contain a reference to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. There is now no longer any reference to this Convention, but it is now provided in the Constitution that the EU must accede to the Convention.

Previous Treaties did not contain a description of 'society' in the Member States. Art. I-2 of the Constitutional Treaty describes this society as being characterised by pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men.

The values listed in Art. I-2 must also be read as accession pre-conditions for new EU Member States, especially since Art. I-1 (2) states that the Union is open to all European States "which respect its values and are committed to promoting them together".

*Article I-2 explicitly lists the values on which the Union is founded. They are: respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.*

### **2. Objectives of the European Union**

The objectives of the European Union have been re-worded and rearranged in the text of the Constitutional Treaty when compared with the EU and EC Treaties. Whilst in the latter Treaties economic questions were paramount to the formulation of objectives and tasks, the text of the Constitutional Treaty puts "peace" as its first aim. In accordance with Art. I-3 (1), the Union's aim is to promote peace, its values, and the well-being of its peoples. The goals formulated in the EU and EC Treaties related to the development of the Union, but in the text of the Constitutional Treaty they relate to the citizen and to the development of Europe and the rest of the world. For instance, Art. I-3 (2) states that the Union is to offer its citizens an area of freedom, security and justice without internal frontiers, and an internal market where competition is free and undistorted. Here too the order in which these items are mentioned is worthy of note.

Over and above all of this, the following are named in the context of the development of Europe and its relations with the rest of the world: a competitive market economy, full employment and social progress, environmental protection, promotion of scientific and technological advances, combating social exclusion and discrimination, promotion of social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child, solidarity among Member States, respect for the Union's rich cultural and linguistic diversity, and ensuring that Europe's cultural heritage is safeguarded and enhanced, making a contribution to peace, security and the sustainable development of the earth.

*In accordance with Art. I-3 (1), the Union's aim is to promote peace, its values, and the well-being of its peoples.*

### **3. Inclusion of the European Charter of Fundamental Rights**

The Charter of Fundamental Rights of the European Union (including its Preamble) has been fully integrated into the Treaty establishing a Constitution for Europe as Part II (now with consecutive numbering in the consolidated version). From the point of view of the Church, particular relevance is attached to the fact (for the references to religion see below) that the first Articles of the Charter of Fundamental Rights do not distinguish between "human being" and "person". A uniform use of terminology had been a central proposal from the Churches since the Charter of Fundamental Rights was drafted, as it was considered that different designations might lead to sub-ordinate legal protection being granted to different groups of people (such as the unborn).

*The Charter of Fundamental Rights of the European Union (including its Preamble) has been fully integrated into the Treaty establishing a Constitution for Europe as Part II [...].*

### **4. Economic and social issues**

With regard to the fundamental orientation of the economic and monetary system, there are no changes to the Treaty of Nice. Price stability continues to be included in the list of the Union's overall objectives (Art. I-3). The rights of the Euro-States have been strengthened in the institutional field.

In comparison with the Treaty of Nice, there is now a newly added, separate social clause in the Treaty which was not contained in the Draft Convention (Art. III-117). Here it states that the Union should take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.

*In comparison with the Treaty of Nice, there is now a newly added, separate social clause in the Treaty which was not contained in the Draft Convention (Art. III-117).*

## **5. Asylum and migration**

In accordance with Art. III-266, the Union is to develop a common policy on asylum, which will include subsidiary and temporary protection– as already stipulated in the Treaty of Amsterdam – and is to be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees. Furthermore, in accordance with Art. III-267, the Union is to develop a common immigration policy aimed at ensuring, inter alia, the efficient management of migration flows. In accordance with Art. III-265, the Union is to gradually introduce an integrated management system for external borders. The measures connected with migration and asylum policies are to be adopted by a qualified majority. Art. III-267 (5) explicitly specifies that the Member States themselves are to determine the volumes of admission of third-country nationals to their territory in order to seek work, whether employed or self-employed.

*The measures connected with migration and asylum policies are to be adopted by a qualified majority.*

## **6. Common Foreign and Security Policy (CFSP)**

The most noticeable novelty in the area of foreign and security policy is the creation of the office of a "Union Minister for Foreign Affairs" who is to exercise a two-tiered function. On the one hand, he or she is a member of the Commission and one of its Vice-Presidents. In this sense, he or she takes over the tasks of the former EU Commissioner responsible for foreign relations. On the other hand, he or she acts on behalf of the Council and here takes on the tasks of the High Representative for the CFSP. The Union Minister for Foreign Affairs will therefore be responsible for foreign relations and for co-ordinating the other aspects of the Union's foreign activities. At the same time, he or she will lead the Union's Common Foreign and Security Policy, chair the Foreign Affairs Council, submit his or her own proposals and implement them acting under the authority of the Council. Equally, he or she will act in the field of the Common Security and Defence Policy, which is now an integral element of CFSP. Furthermore, he or she is to conduct a political dialogue with third parties on the Union's behalf and express the Union's position in international organisations and at international conferences. The Minister for Foreign Affairs is to attend the deliberations of the European Council. The Minister for Foreign Affairs is to be assisted by a new European External Action Service.

In the area of CFSP, decisions will largely remain unanimous, with decisions taken by qualified majority only being possible within very narrowly-defined boundaries. The European Parliament will continue only to be consulted. The decisions in this area do not fall under the jurisdiction of the European Court of Justice. As this was previously the case, enhanced co-operation is possible in the CFSP, but in contradistinction to the resolutions of Nice and to the Draft Convention, a

qualified majority is no longer sufficient for decisions in this area and unanimity is now necessary.

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#### **IV. Religion in the Constitutional Treaty**

##### **1. Preamble**

- **Inclusion of reference to religious heritage**

The Treaty establishing a Constitution for Europe refers to religion in its very first sentence. At a prominent place, in the centre between the cultural and the humanist inheritance, the religious inheritance of Europe forms a source of inspiration for the entire Constitutional Treaty.

- **Lack of reference to God or to Christianity**

There is no explicit reference to God nor does the term Christianity appear in the Preamble. However, it should be noted that the Churches are designated by their name in the corpus of the text (Art. I-52) which is of great importance for the present and the future.

- **Evaluation**

However, by making reference to the religious inheritance of Europe, the Constitutional Treaty implicitly accepts the predominant contribution made by Christianity to today's Europe. An explicit mentioning of God or Christianity would have been a strong signal supporting the identity of Europe. It is therefore regrettable that neither the European Convention nor the Intergovernmental Conference agreed to the inclusion of such a reference. As a matter of historical fact, it is Christianity and the Christian message that have built the "inheritance of Europe" from which have developed the universal values of the inviolable and inalienable rights of the human person, democracy, equality and the rule of law. The Preamble does state that these values have derived from the religious inheritance. The Constitutional Treaty draws its inspiration from specific traditions that have shaped Europe, thus implicitly referring to the centre of this tradition, which is Christianity.

All this is an important step in defining the European identity and in attributing an adequate place to religion.

Furthermore, the Preamble turns to the future. The "path of civilisation", along which Europe intends to continue, also draws on its religious heritage with Christian values such as solidarity, justice, and peace forming an explicit basis of the Preamble, culminating in "human hope".

*The Constitutional Treaty draws its inspiration from specific traditions that have shaped Europe, thus clearly referring to the centre of this tradition, which is Christianity.*

## **2. Article I-52**

- **Guaranteed status of the Churches under national law**

The European Union respects the various systems of state-church relationships developed under Member State's laws. This secures the respect given to the different histories, cultures, and identities of the Member States. It is further underlined by the Charter of Fundamental Rights which guarantees the respect of religious diversity in Art. II-82. The European Union respects all the various systems such as co-operation, laïcité, neutrality, separation, established churches, predominant or people's churches. These systems remain open to further development according to the democratic will of the peoples of the relevant Member States within the guidance of religious freedom.

- **Recognition of the identity and specific contribution of the Churches**

The European Union recognises the identity of every specific Church. The Union thus acknowledges the special claims of each individual religion to respect from Community law. It acknowledges the special way Churches see themselves and their task.

The European Union recognises the right of the Churches to self-determination if they themselves want to make use of that right. It recognises the difference between Churches and entities of society. The Constitutional Treaty confirms this by dealing with the Churches in Article I-52 and not in Article I-47, where civil society has found its place.

The European Union respects the diversity of Churches and their distinct identities. By explicitly using the Christian term 'church' and respecting their specific contribution, the Union shows consciousness of Europe's Christian heritage. Recognising the specific contribution of the Churches acknowledges their place in public life, their contribution to democracy and human rights, and their distinct, unmistakable, and comprehensive contribution in the world.

*The European Union respects the diversity of churches and their distinct identities. By explicitly using the Christian term 'church' and respecting their specific contribution, the Union shows consciousness of Europe's Christian heritage.*

- **Open, regular and transparent dialogue between the EU and the churches**

The European Union promises to maintain an open, transparent, and regular dialogue with the Churches. It thus acknowledges their position as a partner of the Union. This dialogue will be structured and developed in mutual consent according to the identities of the relevant Churches. It

shows the positive and friendly stance which the Union takes towards the Churches. In this dialogue the entities, institutions and authorities of the European Union are involved. This dialogue will facilitate the Churches to further actively and positively contribute to the positive future development of the European Union.

*The European Union promises to maintain an open, transparent, and regular dialogue with the Churches. It thus acknowledges their position as a partner of the Union*

### **3. Charter of Fundamental Rights**

- **Religious freedom**

The Constitutional Treaty for Europe strengthens religious freedom by giving the Charter of Fundamental Rights legal force. It guarantees freedom of religion in the same words as the European Convention for Protection of Human Rights and Fundamental Freedoms, and with no stricter limits (Art. II-70). This freedom entails individual, collective, and corporative freedom. It lays the ground rules for practice in the European Union that respects and promotes the religious freedom of all individuals, religious groups, and the Churches. The right to self-determination of Churches is recognised. They can organise and administer themselves according to their religious teaching.

- **Anti-discrimination for religious reasons**

The Constitutional Treaty prohibits any discrimination based on religion or belief (Art. II-81). Equality of all is thus guaranteed. Non-discrimination also applies to Churches; they will be treated equally and in respect of their identity. Any difference in treatment needs convincing reasons.

## **V. Social Ethical Evaluation of the Constitutional Treaty**

The European Union will be reformed by the Constitutional Treaty, and these reforms will have a strong impact on the life of European people. Therefore, the Constitutional Treaty should not only be assessed from a political-pragmatic perspective but also from the viewpoint of Christian anthropology. Some core principles of Christian anthropology have been set out by Pope John XXIII in the 1961 Encyclical *Mater et Magistra*: "individual human beings are the foundation, the cause and the end of every social institution". "... for men are by nature social beings ... they are raised in the plan of Providence to an order of reality which is above nature." The Constitutional Treaty, as the basic document of the EU, will only reflect the insights of Christian anthropology to the extent that the criteria expressed by Pope John XXIII are fulfilled.



## **1. The human being and the legitimacy of the Constitutional Treaty**

Whilst there is no doubt that the European Union is an entity created by people, it is subject to change as a result of this, and must be highly flexible. The question however is to ascertain whether people - the citizens of Europe - really form the backbone of the European Union. This has been placed in doubt at various stages in so far as the European Communities, the European Union and its reforms are concerned, by the modus operandi of the closed intergovernmental conferences.

In this respect, the Treaty Establishing a Constitution for Europe certainly constitutes a decisive step forward. The procedure of the Convention achieved an unprecedented breadth of debate on the future of the Union as a whole, and on many specific provisions in the text. Not only Government representatives, but also Parliamentarians from the European and the national Parliaments, publicly drew up texts whose drafts were accessible to the wider public. This process attempted to listen to and involve a wide variety of social groups. The legitimisation of the text, by virtue of this public process, was unfortunately limited. Ultimate legitimisation of the final text version was defined by the national governments at the Intergovernmental Conference, which once again did not take place in public. On the basis of this already very broad, but indirect legitimisation of the Constitutional Treaty's text, its ratification now takes place in accordance with national custom. Joint European ratification, for instance by means of a joint European referendum on the text, would have increased its legitimisation by the citizen, and would have shown people more clearly to be what Pope John XXIII described as the "cause" of the Constitutional Treaty and of the European Union.

## **2. The human being: foundation of the European Union**

The European Communities and the European Union have been repeatedly criticised because of a democratic deficit. The Constitutional Treaty introduces a number of provisions which strengthen the democratic legitimacy and transparency of the Union. The Constitutional Treaty combines the previous Treaties, and hence makes them more manageable and readable. It introduces a systematic distinction between exclusive, shared and merely supportive EU competences. It confers the Union with legal personality and underlines the primacy of Community law. In addition to further personalising European policy by virtue of the enhanced role of the President of the European Council and the introduction of a Union Minister for Foreign Affairs, these provisions make it clearer who holds what responsibilities, and hence enables people to better understand European policy. It will have to be shown in practice to what degree the new provisions themselves lead to a lack of clarity, such as in the relationship between the President of the European Council and the President of the European Commission. Also, the possibility to clearly separate a constitutional text of the EU (for instance Parts I and II) and a sub-ordinate fundamental legal text (Part III), which could be amended more easily than planned, has not been achieved. In addition to strengthening the co-decision powers of the European Parliament, the introduction of the double majority as a general voting rule in the Council of Ministers, (which means that in addition to the need for a majority of States, a majority of citizens of the Union is required,) shows that people are the foundation of the European Union.

*The Constitutional Treaty introduces a number of provisions which strengthen the democratic legitimacy and transparency of the Union*

### **3. The human being: ultimate aim of the European Union**

In the previous Treaties, and even in the Charter of Fundamental Rights, the type of wording used was a measure of how much thought was given to the European Union and the Member States, and how little to the individual citizen and his/her independence and freedom. Although the Constitutional Treaty is a compilation of the previous Treaties, the new approach and composition as well as the careful wording of the texts provides a more direct apprehension of the relationship between human beings and the European Union. Whilst the Preamble of the EC Treaty speaks first of the "peoples of Europe", in the Constitutional Treaty, the "good of all its inhabitants" is the first goal pursuing the path of European integration.

The increased emphasis placed upon putting human beings at the centre of the actions of the European Union is shown in the wording of the objectives of the Union, by defining the values of the Union at a prominent place in the text, starting with human dignity. This is also underlined by the legally-binding inclusion of the Charter of Fundamental Rights in the text. The fundamental statements contained in the Constitutional Treaty make it clear that human beings are understood more than ever to be the actual goal and centre of all activity in the framework of European integration. To what degree this will also be shown in concrete policy will have to be precisely monitored and accompanied from a social ethical perspective.

*The increased emphasis placed upon putting human beings at the centre of the actions of the European Union is shown in the wording of the objectives of the Union, by defining the values of the Union at a prominent place in the text, starting with human dignity.*

### **4. The human being: by nature an individual and social being**

The list of values (Art. I-52) on which the European Union is based starts with human dignity, and goes on to name freedom, democracy, equality, the rule of law and respect for human rights. The first Article of the Charter of Fundamental Rights also starts by stating that human dignity is inviolable. Unfortunately, the Preamble of the Constitutional Treaty omits human dignity from its list of universal values. The description of European society includes pluralism as well as solidarity. The objectives (Art. I-3) of the Union speak of an "internal market where competition is free and undistorted" as well as of a "highly competitive social market economy, aiming at full employment and social progress". The Constitutional Treaty perceives two aspects of the human being: individuality and solidarity. Hence the Treaty establishing a Constitution for Europe corresponds to a Christian image of the human being. In general statements and particular provisions, however, individuality and solidarity seem to be disconnected. The Constitutional Treaty does not link the two sides of human life – personal freedom and social community – which are core elements of the theological understanding of the human being as person. In order to foster such a link it will be important to precisely monitor the development and application of

the Constitutional Treaty and to promote European policies which are based on the Constitutional Treaty and correspond to Christian anthropology. This applies to all policy areas in which the Constitutional Treaty provides for procedure, such as economic and social policy, migration and asylum policy and even security and foreign policy.

*The description of European society includes pluralism as well as solidarity.*

### **5. The human being: transcendence and the Constitutional Treaty**

A Constitution is a legal text; it cannot be a document of belief. However, it must contain an awareness that human beings are more than citizens of a state or of a union, and that in this sense neither human laws nor policy are absolute. The Constitutional Treaty takes account of this by respecting freedom of religion (Art. II-70), ensuring the right to education in conformity with religious convictions (Art. II-74 (3)) as well as the prohibition of discrimination based on religion (Art. II-81), respecting religious diversity (Art. II-82), respecting the status of churches and recognising their identity and their specific contribution (Art. I-52) and declaring in the Preamble that the European Union springs, amongst other things, from a religious inheritance.

Unfortunately, it was not possible due to the resistance of some and a lack of interest on the part of other Member States to include in the Preamble an explicit reference to Christianity as a historically identifying fact and a reference to God which would have made particularly clear the provisional nature of all policy and human beings' higher calling.

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## **VI. From Ratification to Constitutional Praxis**

On 29 October 2004 the Heads of State and Government closed the Intergovernmental Conference in Rome and signed the Treaty establishing a Constitution for Europe. In order for the Constitutional Treaty to enter into force it must be ratified in all Member States.

Ratification will take place according to national legislation. Some Constitutions prescribe for a vote in the national Parliament, whilst others provide for ratification by referendum. Intense debates on the Constitutional Treaty will precede ratification. In some Member States this debate may be misused in order to discuss other European policy issues, for example the decision about accession negotiations with Turkey or the difficulties of the European Parliament in approving the incoming Barroso Commission. Furthermore, there is always the danger that referenda on the

Constitutional Treaty may be used inappropriately to debate and vote on domestic policy issues. It is crucial that the debate be conducted on the basis of precise knowledge about the Constitutional Treaty, concentrating on its content and its impact on the future of Europe.

Only if an informed debate on the Constitutional Treaty takes place will the common good of the European Union be served.

According to Art IV-447 the EU Constitutional Treaty shall enter into force on 1 November 2006 after ratification in all Member states. In case of delay, it will enter into force after ratification by the last Member State. If one or more Member States have encountered difficulties in proceeding with ratification, and four-fifths of the Member States have ratified the Constitutional Treaty, the matter shall be referred to the European Council.

Ultimately, the quality of the Constitutional Treaty will be proven in its application. As described above, the first articles introduce values and objectives consonant with Christian anthropology. These values and objectives should not be regarded as a mere expression of good will without any consequences for pragmatic policy making. They are the basic principles of the European Union. Hence the day to day work of EU institutions, which will operate in accordance with the Constitutional Treaty, will show whether principles such as the dignity of the human being, freedom, justice, solidarity and peace will be taken into account.

The Charter of Fundamental Rights included in the Constitutional Treaty will have to prove whether it provides a sufficient standard for the protection of human dignity and human rights in EU legislation. These common standards should be consistent with the European Convention on Human Rights and Fundamental Freedom, and should not interfere with Fundamental Rights granted by legislation of the Member States. From a Church point of view, the treatment of issues such as a ban on reproductive and therapeutic cloning, or the protection of marriage and family, will be crucial. The Churches will also monitor the protection of religious freedom in its individual, collective and co-operative dimension.

The Constitutional Treaty contains provisions for decision making in different policy areas. It will be important that the application of these provisions should be in line with the values and objectives of the EU, and should not infringe on the fundamental rights of all the people living in the EU. The quality of these provisions will be shown in their capacity to provide for political decisions which serve the common good of Europe. The newly introduced structures for decision making should offer a framework which preserves the EU from power struggles and provides for efficient and democratic decision-making procedures.

The Treaty provides a framework for a dialogue with Churches and religious communities. This framework needs to be fleshed out with mechanisms which allow the Churches to contribute to the debate on fundamental values of the European Union, to the discussion on the common good in particular policy areas (e.g. economic and social affairs, foreign and security policy, asylum and migration, education and culture) and to the protection of religious freedom in its co-operative dimension. The Churches may foster the possibilities of such a dialogue by building upon the capacities of their experts in particular policy areas who may act as interlocutors on behalf of the Church.

*Ultimately, the quality of the Constitutional Treaty will be proven in its application*

## **VII. Conclusion**

The Constitutional Treaty is a milestone in the history of European integration. After several attempts to reform the legal bases of the European Union, the Constitutional Treaty introduces the reforms which are necessary to cope with current challenges inside and outside the European Union. Hence the EU Constitutional Treaty marks significant progress.

Furthermore, the Constitutional Treaty will foster a sense of European citizenship. Due to the simplification of its structure, the Constitutional Treaty will be easier for people to understand. The European Union will have a single legal personality. According to the principle of subsidiarity, the Constitutional Treaty will distinguish more clearly between the European Union's competences and responsibilities and those of the Member States. The institutional reforms introduced by the new text provide for more transparent and efficient decision-making at the European level. The President of the European Council of Ministers and the Foreign Minister will give a face to important policies of the European Union. These changes will make it easier for European citizens to recognise the European Union as an actor and to identify with it.

The Constitutional Treaty acknowledges the religious heritage of Europe and recognises the Churches and their contribution to society. Even though it is to be regretted that the Preamble does not mention God or Christianity in an explicit way, it should be taken into account that religious heritage and Churches have been introduced into EU primary law. The socio-ethical assessment of the Constitutional Treaty has shown that the text also reflects core principles of Christian anthropology. Hence all Christians should assume their responsibility to put the new Constitutional Treaty into practice and to make it work.

The EU Constitutional Treaty will most probably last for decades. But given the dynamics of European integration, it is possible that it will need revision (Art. IV-443 and IV-444). When the occasion arises to introduce constitutional reforms, it will be possible to contribute to further improvements to the text.

The Secretariat of COMECE has prepared this study with the great help of Dr. Sophie van Bijsterveld (University of Tilburg, Netherlands), Prof. Dr. Gerhard Robbers (University of Trier, Germany) and Dr. Frank Ronge (German Bishops' Conference). We wish to express our gratitude for their valuable contributions.

## **Annex: Religion in the EU Constitutional Treaty (CIG 87/2/04 REV 2 of 29/10/2004)**

### **PART I**

**PREAMBLE**, first paragraph:

DRAWING INSPIRATION from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law,

**ARTICLE I-52: Status of churches and non-confessional organisations**

1. The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.
2. The Union equally respects the status under national law of philosophical and non-confessional organisations.
3. Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations.

### **PART II**

**PREAMBLE** of the Charter of Fundamental Rights, second paragraph:

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

**ARTICLE II-70: Freedom of thought, conscience and religion**

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

**ARTICLE II-74: Right to education**

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

**ARTICLE II-81: Non-discrimination**

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

**ARTICLE II-82: Cultural, religious and linguistic diversity**

The Union shall respect cultural, religious and linguistic diversity.