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The European Union's "Constitution"

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Summary

In June 2004, the European Union (EU) concluded work on a constitutional treaty that contains changes to the EU's governing institutions and decision-making processes. This new "constitution" grew out of the 2002-2003 Convention on the Future of Europe and previous EU efforts to institute internal reforms ahead of the Union's expansion from 15 members to 25 in May 2004. The "constitution" aims to enable a larger EU to operate effectively and prevent gridlock, but it must still be ratified by all member states before it enters into force. This report provides background information on the Convention and describes the EU "constitution," its key provisions, next steps, and possible implications for the U.S.-EU relationship. It will be updated as events warrant. For more information, see CRS Report RS21372, *The European Union: Questions and Answers*, and CRS Report RS21344, *European Union Enlargement*.

Background

The European Union (EU) is a treaty-based, institutional framework that defines and manages economic and political cooperation among its 25 member states (Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom). The Union represents the latest stage in a process of European integration begun after World War II to promote peace and economic prosperity in Europe. This European integration project has evolved from encompassing primarily economic sectors to include developing a common foreign policy and closer police and judicial cooperation. With the end of the Cold War, the Union has also sought to extend the political and economic benefits of membership, especially to central and eastern Europe. Ten states — Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia — joined the EU on May 1, 2004. Two other states — Bulgaria and Romania — are expected to join by 2007. Turkey is another candidate for membership and is expected to begin accession negotiations in October 2005, but these will take at least a decade to complete. The western Balkan states also harbor EU aspirations in the longer term. In June 2004, the EU named Croatia as a candidate for membership.

The EU represents a unique form of cooperation among sovereign states that has been built through a series of binding treaties. EU members work together through common institutions that embody the EU's dual supranational and intergovernmental character. Different policy areas have different decision-making procedures; economic, trade, and social policies, for example, are currently decided by a complicated system of majority voting, while decisions relating to foreign and security policy require consensus. Critics have long charged that the EU's decision-making processes are too slow and cumbersome, and that the EU's institutions are overly complex, lack transparency, and are unintelligible to the average European citizen.

Over the years, the EU has made several attempts to overhaul its institutions and decision-making processes. Key institutional reforms in the EU's December 2000 Treaty of Nice were intended to enable an enlarged Union of 25 or more to function effectively. Skeptics argued, however, that Nice set up an even more complex and less efficient decision-making process that would lead to institutional gridlock as the Union expands. Thus, EU leaders in December 2001 announced they would convene a Convention on the Future of Europe to reform EU decision-making further and to review the EU's structures ahead of enlargement in May 2004.

Toward a European "Constitution"

The Convention on the Future of Europe. The Convention began work in March 2002 in Brussels, Belgium. EU member states appointed former French President Valéry Giscard d'Estaing to serve as chairman, and charged the Convention with addressing several key tasks, including examining and better defining the distribution of power between the EU's institutions and the member states; encouraging the development of the EU as a coherent foreign policy actor; and strengthening the Union's democratic legitimacy. In comparison to previous attempts to reform the EU that were mostly backroom deals struck between governments, the Convention sought to conduct its activities in an open and public environment with broad participation. The Convention's 105 members included representatives of national governments and parliaments from both member and candidate states, members of the European Parliament, and two European

EU Institutions

The *European Commission* is essentially the EU's executive and has the exclusive right of legislative initiative. It ensures that the provisions of the Treaties are carried out properly. The 25 Commissioners, including a President, are appointed by agreement among the governments of the member states for five-year terms. Each Commissioner holds a distinct portfolio (e.g., agriculture). The President of the Commission sets its policy priorities, organizes its work, and represents the Commission internationally.

The *Council of the European Union (Council of Ministers)* is comprised of ministers from the national governments. As the main decision-making body, it enacts legislation based on proposals put forward by the Commission. Different ministers participate depending on the subject under consideration (e.g., economics ministers could convene to discuss unemployment policy). The presidency of the Council currently rotates among the member states for a period of six months.

The *European Council* brings together the Heads of State or Government of the member states and the President of the Commission at least twice a year. It acts principally as a guide and driving force for EU policy.

The *European Parliament* consists of 732 members. Since 1979, they have been directly elected in each member state for five-year terms. The Parliament cannot enact laws like national parliaments, but it shares "co-decision" power in some areas with the Council of Ministers and can amend or reject the EU's budget.

The *Court of Justice* interprets EU law and its rulings are binding; a *Court of Auditors* monitors the Union's financial management. Additionally, a number of advisory bodies represent economic, social, and regional interests.

Commissioners. Convention members also consulted with representatives of European civil society organizations and youth groups in an effort to involve European citizens directly, for the first time, in the debate on Europe's future.

In October 2002, the Convention decided to develop a draft "constitution," or new EU treaty, to merge and reorganize the EU's four existing treaties into a single document and lay out new proposals for institutional reform. Most Convention delegates believed that establishing a single constitutional text would be the best way to achieve greater clarity and simplification. By June 2003, the Convention had reached broad consensus on the major elements of a draft "constitution," which Giscard presented to EU leaders at the Thessaloniki summit on June 19-20. In July 2003, the Convention finalized a 240-page "Draft Treaty establishing a Constitution for Europe" and concluded its work. The draft was divided into four parts: Part One set out the definition and objectives of the Union and outlined its competences and institutional framework; Part Two enshrined the EU Charter of Fundamental Rights, completed in 2000, into EU law; Part Three addressed the policies and functioning of the Union, detailing how the EU would reach and implement its decisions; Part Four spelled out "general and final provisions" dealing with procedures for the text's ratification and possible future revisions.¹

The Intergovernmental Conference. In October 2003, EU leaders convened an Intergovernmental Conference (IGC) to work out the definitive text of a new EU treaty, or "constitution," to codify any alterations of the EU's structures and functions. The Convention on the Future of Europe's draft treaty from July 2003 served as the basis for discussions at the IGC. The recommendations put forward by the Convention's draft text, however, were not legally binding, and some controversial measures were modified during the course of the IGC. By December 2003, consensus had reportedly been reached on most issues proposed by the Convention, but EU leaders were unable to conclude the treaty primarily because of a dispute over the proposed voting rule changes. Spain and Poland feared that the simplified voting rules proposed by the Convention would give larger member states an advantage; the current weighted voting system tends to favor smaller and medium-sized states. The change in government following Spain's March 2004 election, however, helped break the deadlock because the new Spanish government dropped its predecessors' outright opposition to altering the voting rules, which apparently forced Poland to be more flexible also. After a number of compromises, EU leaders succeeded in finalizing the "constitution" in June 2004; they officially signed it on October 29, 2004.

Next Steps. The constitutional treaty must now be ratified by all 25 member states. This process will likely take a year or more to complete; thus, the treaty will probably not take effect until 2006 at the earliest. Many members will hold public referenda on ratification, including the UK, France, Denmark, Ireland, Poland, and Spain. Ratification could prove controversial in states with significant Euro-skeptic populations. If voters in one or more of these states reject the treaty, this could cause further delays because parts of the treaty would likely have to be renegotiated.²

¹ For more information, see the website of the European Convention on the Future of Europe [<http://european-convention.eu.int>].

² "EU Leaders Reach Deal on Constitution," *Financial Times*, June 20, 2004.

The EU's "Constitution"

The text of the EU's new "constitution" is 341 pages.³ Major innovations and alterations to the EU's governing institutions, decision-making processes, and policies include:

- *A new President of the European Council.* The "constitution" abolishes the rotating six-month presidency in favor of an individual — elected by member states for a term of two and one-half years, renewable once — to ensure policy continuity and raise the EU's profile on the world stage.
- *A new EU foreign minister.* This new post is also intended to boost the EU's international visibility, and combine into one position the current responsibilities of the Council's High Representative for the EU's Common Foreign and Security Policy (CFSP) and the External Relations Commissioner, who coordinates the European Commission's diplomatic activities and manages the EU's development programs. Many argue that combining these roles will marry the EU's political and economic clout, thereby creating a more cogent diplomatic tool. The EU foreign minister will be an agent of the Council of Ministers (representing the member states), as well as a Vice-President of the Commission.
- *A revamped European Commission.* In the first Commission appointed under the "constitution," each member will retain one Commissioner. After this term (in 2014), to help decrease gridlock, the number of Commissioners will be reduced to correspond to two-thirds of the number of member states. Small states had initially opposed slimming down the Commission, fearing that it would decrease their influence. However, the European Council may alter the number of Commissioners, thus leaving the door open to a larger Commission in the future.
- *Increased parliamentary powers.* The "constitution" extends the European Parliament's right of "co-decision" with the Council of Ministers to many additional policy areas, including agriculture and home affairs issues. It also increases the minimum number of European Parliamentarians for member states from four to six, but caps the Parliament at 750. Other provisions seek to ensure a more systematic exchange of information between EU bodies and national parliaments.
- *Simplified voting procedures.* The "constitution" simplifies the EU's current system of Qualified Majority Voting (QMV), a complex weighted voting formula. Beginning in 2009, decisions made by QMV will pass if supported by 55% of member states (comprising at least 15 of them) representing at least 65% of the EU's population. A blocking minority must consist of at least four countries; Spain and Poland insisted on this provision to prevent France, Germany, and the UK from blocking

³ For the agreed text of the EU's constitutional treaty, see the EU's website [<http://ue.eu.int/igcpdf/en/04/cg00/cg00087-re02.en04.pdf>].

measures on their own. The use of QMV is also expanded to additional policy areas previously subject to unanimity, including asylum and immigration. Member states will retain national vetoes, however, in sensitive areas such as taxation and for most aspects of foreign policy.

- *A new exit clause.* The text sets out for the first time in EU law procedures for a member state to voluntarily withdraw from the Union. It also retains EU provisions that allow certain rights of a member state to be suspended if it is deemed to have breached core EU values.
- *A new solidarity clause.* This provision affirms that the EU “shall act jointly in a spirit of solidarity” if any member is the victim of a terrorist attack or other natural or man-made disaster; it calls on member states to offer assistance, including military resources, to the victimized member.
- *Steps toward building a common defense policy.* The text asserts that the Union shall seek “the progressive framing of a common Union defense policy,” which “will lead to a common defense.” It establishes a “mutual assistance clause” permitting a member state that is the victim of armed aggression to ask for military assistance from the other members. Member states may also engage in “structured cooperation,” which would allow a smaller group of members — especially those with higher-end defense capabilities — to cooperate more closely on military issues. And the text calls for a “European Armaments, Research, and Military Capabilities Agency” to coordinate defense technology research, encourage harmonization of arms procurement procedures, and ensure interoperability of defense equipment throughout the EU.⁴

Almost all of the changes in the new “constitution” represent compromises between member states who favor greater EU integration and possibly a federal “United States of Europe,” and those who prefer to keep the Union on an intergovernmental footing in which member states can better guard their national sovereignty. Also evident in many of the provisions are compromises between big and small states. Larger EU members, such as the UK and France, were the primary drivers of abolishing the rotating presidency, while smaller members worried that doing so would reduce their influence. Smaller states were eventually swayed by guarantees that the principle of rotation would be retained in the chairmanship of various ministerial meetings. Language in the “mutual assistance clause” and on “structured cooperation” in defense was also reportedly modified to satisfy UK concerns that neither provision weaken the transatlantic link, and to guarantee Austria, Ireland, Finland, and Sweden that EU efforts to forge a more common defense would not compromise their neutrality policies.

Critics contend, however, that the “constitution” does little to simplify the EU’s institutions or decision-making processes. They point out that some changes would not take effect until 2009 or 2014 and that the creation essentially of two EU presidents —

⁴ For more information, see Aurore Wanlin, “The EU Constitutional Treaty: The Final Deal,” The Centre for European Reform Briefing Note, June 24, 2004; “What the EU Constitution Says,” BBC News, June 22, 2004.

one for the Council, and one for the Commission — could generate rivalry and greater confusion. EU officials admit privately that whether these two positions, as well as that of the new foreign minister, come into bureaucratic conflict or work together cooperatively will largely depend on the personalities involved. In addition, skeptics assert that the “constitution” does not make the EU more understandable or transparent to its citizens, and that many of the most difficult issues that are often the source of gridlock will remain subject to national vetoes. Some member states wanted to abolish the national veto for sensitive areas such as foreign policy, taxation, and criminal law, and to permit decisions in these areas to be taken by QMV, but the UK and other less integrationist-minded countries were opposed. Members will retain national vetoes for taxation and most foreign policy issues; a compromise allows for harmonizing some aspects of criminal law by majority vote but introduces an “emergency brake” as a way to delay or kill a proposed measure in this area.⁵

Implications for the United States

A key aim of the Convention on the Future of Europe was to devise tools that will help increase the EU’s global influence and enable it to formulate a more coherent role in international affairs. The new president and foreign minister positions in the resulting “constitution” are designed to facilitate these goals. Some analysts suggest that an EU able to “speak with one voice” on foreign policy issues will be a more credible partner for the United States in tackling common challenges such as terrorism, weapons proliferation, and Middle East instability. They also note that the Convention’s efforts to encourage an eventual common EU defense policy and the proposal for “structured cooperation” seek to improve European defense capabilities. A more militarily-capable Europe, they argue, could shoulder a greater degree of the security burden with the United States.

Others worry that a larger and potentially more united and more confident EU may seek to rival the United States and could weaken the transatlantic link. They suggest that greater EU defense coordination could lead to the eventual development of EU military structures that would duplicate those of NATO, be financially costly, and worsen already tense U.S.-European relations. UK officials insist that they have ensured NATO’s role as the cornerstone of European security in the negotiations over the defense provisions of the “constitution.” U.S. skeptics also contend that a more unified EU would likely lessen Washington’s leverage on individual members and could complicate U.S. efforts to rally support for its initiatives in institutions such as the United Nations or NATO.⁶

U.S.-EU trade relations are unlikely to be significantly affected by the “constitution,” which does not alter the roles of the European Commission or Council of Ministers in formulating or approving the EU’s common external trade policy. Although EU rules allow the Council to approve or reject trade agreements negotiated by the Commission with QMV, in practice, the Council tends to employ consensus and will probably continue to do so regardless of the changes in EU voting procedures.

⁵ “A Deal on a New EU Constitution,” *The Economist*, June 26, 2004; Interviews of EU officials, July 2003.

⁶ Steven Everts and Daniel Keohane, “The European Convention and EU Foreign Policy: Learning from Failure,” *Survival*, Autumn 2003; Eli Lake, “The U.S. and a United Europe,” United Press International, June 10, 2003.