Treaties, amendment: draft constitutional Treaty, intergovernemental Conference IGC for October 2003

2003/0902(CNS) - 18/07/2003 - Legislative proposal

PURPOSE : to present the draft Constitution for Europe. CONTENT : The draft Constitution puts forward a single text to replace all the existing Treaties in the interests of readability and clarity. It consists of four parts. Part I contains the provisions which define the EU, its objectives, its powers, its decision-making procedures and its institutions. Part II incorporates the Charter of Fundamental Rights, solemnly proclaimed at the Nice European Council in December 2000. Part III focuses on the EU's policies and actions and incorporates many of the provisions of the current Treaties. Part IV contains the final clauses, including the procedures for adopting and reviewing this Constitution. 1) The EU's objectives : the aim of the Union is to promote peace, and the wellbeing of its people. It offers its citizens an area of freedom, security and justice, and a single market in which competition is free and undistorted. It works for a Europe of sustainable development based on balanced economic growth, a highly competitive social market economy, and a high level of protection and improvement of the quality of the environment. The draft Constitution gives the EU a legal personality to assert its values and interests in the international arena. 2) European citizenship and fundamental rights : The draft Constitution enumerates the rights which stem from citizenship. The text of the Charter of Fundamental Rights has been incorporated in to the Constitution. The draft Constitution thus achieves a major breakthrough which allows the Union to have its own catalogue of rights. The provisions of the Charter have binding legal force but this does not mean an extension of the EU·s powers. The institutions and agencies of the Union must respect the rights written into the Charter. 3) Clarification of powers : The draft Constitution sets out clearly the matters for which the Member States have transferred powers to act to the EU and introduces a classification of the Union's powers: -a first category is made up of 'exclusive' powers. The areas of exclusive power include competition in the internal market or trade with third countries. -a second category groups the areas in which the Union acts when its action brings added value to action taken by the Member States. These are called 'shared powers'. They include the major policies, e.g. the internal market, the common agricultural policy, transport, the environment, asylum and immigration, and judicial and police cooperation. -as for the third category of powers, the EU acts only to support action taken by the Member States who thus retain very substantial freedom of action and the primary responsibility for management in relation to their citizens. In these areas, the Union cannot harmonise national legislation. Culture, education, sport and civil protection are examples of areas of supporting action. -in certain other areas, such as economic and employment policy, the Member States consider that the Union must coordinate their national policies. -finally, there is a clause which allows the Council to plug anygaps in the powers conferred upon the Union whenever action at Union level is required. 4) Subsidiarity and proportionality : the draft Constitution strengthens the application of the two principles. The Commission must explain the way in which it has taken these two principles into account in each of its proposals. For the first time, every national parliament can re-examine the proposals and will be able to issue a reasoned opinion if it considers that the principle of subsidiarity has not been respected. If one third of the parliaments hold the same opinion, the Commission must review its proposal. 5) A legitimate and democratic Union : the draft Constitution provides for fresh obligations for the institutions with regard to consultation of civil society, transparency, access to documents and respect for personal data. Furthermore, a million citizens' signatures would trigger a call on the Commission to draft a fresh proposal. The key points are as follows: -the transparency of the Council's work will enable national parliaments to monitor better the positions of their governments within the Council, and the 'early warning' mechanism concerning the respect of the principle of subsidiarity will offer them a direct way of influencing the legislative process; -Any Member State can decide, in accordance with its constitutional rules, to withdraw from the Union. 6) The institutional framework : the draft Constitution includes a more stable presidency of the European Council and a

Foreign Affairs Minister. The following points must be noted: -the European Parliament·s powers as co-legislator are strengthened by extending to new areas the scope of the co-decision procedure, henceforth termed legislative procedure. The number of Members of the European Parliament, elected by direct universal suffrage, for a five-year term, is established at a maximum of 736. -the Convention has proposed the modification of the current six month rotating presidency of the European Council by creating a permanent post of European Council president elected by the European Council for a period of two and a half years, renewable once. The role of this president would be to chair and push forward the work of the European Council. He would also serve as a high level representative of the Union in the area of the common foreign and security policy. -the Presidency of a Council formation (e.g. the Agricultural Council) will be held by the minister of a Member State according to an equal rota system for a period of one year. The Council for Foreign Affairs, for its part, would be chaired by the Foreign Affairs Minister. -for the next Commission in 2009, the draft Constitution proposes that its composition be modified as follows: the College to be composed of the President of the Commission, the Minister for Foreign Affairs, who would have the title of vice-president, and thirteen 'European Commissioners' selected on the basis of an equal rota system between the Member States. Alongside the European Commissioners the President of the Commission would designate from all the other Member States 'commissioners' who would not have the right to vote within the Commission. The draft Constitutionindicates clearly that when proposing to the election of the European Parliament the candidate for the Commission Presidency the European Council must take account of the results of the European elections. -the commissioners will be appointed by the Commission President from a list of three people (including at least one woman) drawn up by each country. -the Foreign Affairs Minister will wear two hats by being both the Council's representative for the common foreign and security policy and one of the Commission's Vice- Presidents. 7) The Union's means of action : -simplification of instruments - the typology of acts is limited to six instruments (law, framework law, regulation, decision, recommendation and opinion). The co-decision procedure is generalised. -there is a new definition of qualified majority within the Council: this majority should be simplified and be defined as from 2009 as a decision bringing together the majority of the Member States representing at least 60% of the Union·s population. The extension of qualified majority voting within the Council is envisaged for some thirty provisions for which unanimity is currently required. Member States will, however, each retain a right of veto on over 50 legal bases. - the system of enhanced cooperation introduced by the Amsterdam Treaty requires a minimum of Member States. The draft Constitution establishes this number at one third of the Member States and all the Member States must be free to join later. 8) The EU's external action : With regard to foreign policy, the Council will continue to decide unanimously in most cases. The most interesting innovation is the creation of the post of Foreign Affairs Minister. -An Armaments Agency will be set up so that the taxpayers' money is better used, avoiding, for instance, duplication in the military programmes of the different Member States. -in the event of a terrorist attack or natural disaster the Constitution henceforth provides for action by the Union; -with regard to external trade, the Constitution enhances the role of the European Parliament, which is placed almost on an equal footing with the Council whereas hither to the Treaty gave it no role either in monitoring or decision-making. 9) An area of freedom, security and justice: the following points emerge : -the Union may manage its external borders in an integrated way, which means, for instance, setting up a unit which can assist and support national frontier guards in their tasks of controlling and monitoring borders. -unlike the current Treaties, which provide simply for the establishment of minimum rules, the draft Constitution provides for the establishment of a common European asylum system which includes a uniform status for refugees and common procedures. -the guiding principles of a common policy on immigration are set out. Under the current Treaties, the European Parliament is merely consulted whereas in the draft Constitution all measures are adopted by the European Parliament and the Council. - under the terms of the current Treaties, the Union could already act in the area of police and judicial cooperation on criminal matters. However, as in the case of the common foreign and security policy, this was handled in the third pillar and subject to the intergovernmental decision-making method. The draft Constitution does away with the third pillar, grouping within a single structure all the Union's policies; -a quarter of Member States can submit an initiative in the same way as the Commission. Parliament co-legislates with the Council and the rules adopted must be submitted to the scrutiny of the Court of Justice. The European Parliament and the Council can thus establish common definitions and penalties in respect of a series of serious and

crossborder offences which are listed in the draft Constitution. -Europol will be subject to the scrutiny of the European Parliament and of the national parliaments.