

DRAFT FOR THE DECLARATION BY THE ACTION COMMITTEE ON EUROPEAN DEMOCRACY

The following is a draft proposal for a declaration by the Action Committee on European Democracy ensuing from the results the group's first meeting, held at Rome on 29 and 30 September 2006.

The structure proposed by the draft for a new treaty permits to incorporate the content of Part I of the Constitutional Treaty, to give obligatory value to Part II, to incorporate the substantial innovations of Part III, and to take up the innovations of Part IV. It is later to be complemented by a second Adaptive Treaty.

A technical annex, presently being developed by the Robert Schuman Centre for Advanced Studies, will provide a table of correspondence between the dispositions of the Constitutional Treaty, those that will emerge in the new Consolidation Treaty, and those that will be either retained in the Act of Adaptation or abandoned. It will also indicate those articles that shall either be incorporated within the act adapting the existing treaties, or be discarded.

This draft proposal also contains suggestions addressing a number of remaining open questions which require discussion by the Committee's members.

1 TITLE FOR A REFORMULATED TREATY

The title must function across all official languages, and particularly avoid synonyms or terms that too closely resemble the word "Constitution". It should simultaneously remain acceptable for those who above all wish to retain the contents of the Constitutional Treaty as well as for those who wish to present to their electorate or national parliaments something that differs from the "Treaty establishing a Constitution for Europe".

The Danish and Dutch versions of the Constitutional Treaty already employ the terms "gruondlov", and "grondwet", literally meaning "basic treaty / loi fondamentale" (official translations of the German "Grundgesetz"). This leads not only to the rejection of the title "basic law / loi fondamentale" but even that of "basic treaty / traité fondamental".

The alternatively proposed title is Treaty Consolidating the European Union. This title seemingly functions across all the languages, particularly in Dutch, English, French, German, Italian and Spanish. It conveys that the treaty is neither a revolutionary consent for the Union, nor is it a rupture. It concurrently conveys that it is about strengthening the Union, which is the main objective of those who wish to maintain the hitherto acquired benefits. It furthermore allows for the usage of an abbreviated form: "consolidation treaty / traité de consolidation". The titles of the proposal for a new treaty are revised in the same manner. As for the second treaty, more technical in nature, which would capture the essential remaining contents of Part III, the following name is proposed: Act adapting the Treaty establishing the European Community and the Treaty on the European Union (Adaptation Act).

2 PRACTICAL IMPLICATIONS OF THE SEPARATION INTO TWO TREATIES

The draft proposes a special clause regarding its entry into effect in order to:

- separate in time the ratification processes of the Consolidation Treaty and that of the adaptation act; thus to limit solely to the Consolidation Treaty the fundamental debates and if necessary the most pressing solemn procedural issues, exclusively on to the Consolidation Treaty;*
- prevent the reopening of negotiations regarding the issues settled in the Constitutional Treaty and as part of the global compromise of the Intergovernmental Conference 2003-2004.*

3 THE QUESTION OF REFERENDA

It must to be emphasised that the referendum is a legal obligation in only one of the Member States of the Union – Ireland – and only applies in the case arise that the treaty may be considered as leading towards new transfers of sovereignty. On the other hand, the four referenda that have already been held in 2005 and the commitments made by some governments to hold a referendum pose a political problem to which it would be risky to respond by way of a solution that could be denounced as an attempt to deceiving the citizens' vote cast in the referenda.

Nevertheless, the proposed Treaty Consolidating the European Union would not require a new referendum neither in Luxembourg nor in Spain: from a legal point of view, those countries are under no obligation to hold a referendum, and this would furthermore prove unnecessary from a political perspective as long as the new treaty does not contain innovations that do not figure within the Constitutional Treaty, or that would suppress dispositions that may be considered as essential in terms of their entailing obligations for Member States.

The Robert Schuman Centre is currently undertaking a project to evaluate the legal, technical and political feasibility of a pan-European consultative referendum that could precede the start of the national ratification procedures, and the solemn signature of the treaty. Such a solution should allow for added democratic legitimacy to the drafting of a new treaty without simultaneously impeding the process in case a majority of voters should pronounce themselves in favour of the "no" vote in a limited number of Member States.

- DRAFT PROPOSAL -

**DECLARATION BY THE
ACTION COMMITTEE FOR EUROPEAN DEMOCRACY**

1. In order to find a way out of the crisis in which the European Union finds itself, the *Action Committee for European Democracy* proposes to adopt a **Treaty Consolidating the European Union**. This Consolidation Treaty would take into account the obligations subscribed to by the Member States upon the signing of their Heads' of State and Government of the *Treaty establishing a Constitution for Europe* on 29 October 2004; it furthermore address concerns expressed throughout the ratification procedures of the Treaty, which led a significant number of voters to pronounce themselves against the Constitutional Treaty during the referenda, although a net majority of 4 million voters has approved the Treaty in Spain, France, Netherlands and Luxemburg. A solution to Europe's crisis must respect the majoritarian will of Europe's citizens as well as the blocking minority. The Consolidation Treaty would incorporate the main innovations of the Constitutional Treaty of 29 October 2004 which represented, relative to the Treaties establishing the European Community and on the European Union, important progress for both for the European Union and its Member States. It would further include supplemental reforms relative to the progress already achieved by the 2002-2003 European Convention and the 2003-2004 Intergovernmental Conference, allowing to better address voter concerns for democracy.

A. STRUCTURE AND CONTENT OF A CONSOLIDATION TREATY

2. This Consolidation Treaty would be shorter than the 2004 Constitutional Treaty, cutting out provisions that relate to controversial contents of policies and focusing instead on procedural rules for policy-making. It would be edited in such a manner as to render its contents immediately comprehensible for the European populations. It would be accompanied by two protocols:

- a protocol relative to the role of national Parliaments and the control of the principles of subsidiarity and proportionality;

- a protocol relative to the creation of an *Act Adapting the Treaty establishing the European Community and the Treaty on the European Union*. This adaptation would render the Treaty of Rome and the Treaty of Maastricht – as last modified by the Treaty of Nice – conform to the provisions of the Consolidation Treaty, on the basis of work completed by the 2002-2003 the European Convention and the 2003-2004 Intergovernmental Conference. This adaptation act, technical in nature, would carry the necessary consequences of the innovations included in the Consolidation Treaty.

3. The Consolidation Treaty should be signed in due time [so that the ratification process shall have been completed prior to the 2009 European Parliamentary elections and so that it may take effect upon these election].¹

¹ In case that the members of the Committee would agree in principle on a consultative referendum, but also that the most adequate practical solution would be to bind the consultative vote to the electoral vote for the members of the European Parliament, the part of the sentence put in brackets could be

4. The Consolidation Treaty would incorporate the contents of the innovative provisions of Part I of the Constitutional Treaty concerning the efficiency of institutions, their competences and decision-making procedures. It would provide the *Charter of Fundamental Rights of the Union* with legal force, thereby fulfilling the objective of Part II of the Constitutional Treaty (taking up the revised version of Part II). It would furthermore incorporate the innovative provisions of Part III, aside from those which merely draw forth consequences of Part I, and whose content already figures within the framework of the Treaties of Rome and Maastricht, as modified by the Treaty of Nice. It would also incorporate the innovative provisions put forth in Part IV by adapting them along the nature of the Consolidation Treaty. The Consolidation Treaty, however, would neither take up the preamble of the Constitutional Treaty, nor the provisions concerning the values and objectives of the Union. Instead of these elements, the Consolidation Treaty could refer to the *Declaration of Berlin* on the 50th anniversary of the Treaty of Rome. To the extent that the provisions on values and objectives prove necessary to the functioning of the Union from a technical and legal point of view, these may be incorporated within the act adapting the current Treaties.

5. The Consolidating Treaty would be drafted along the following structure:

TITLE I

THE FOUNDATIONS OF THE EUROPEAN UNION: FUNDAMENTAL RIGHTS AND THE RULE OF LAW²

1. Fundamental Rights [*binding legal force to the Charter; adherence to the European Convention of Human Rights; principle of equality and non-discrimination, cf. Art III-118*]
2. Principles to be respected by Member States [*including the procedure for temporary suspension of membership – ART 6 TEU*]
3. Relations between the Union and its Member States [*including the principles of primacy subsidiarity and proportionality*]
4. Solidarity Clause
5. Union Membership

TITLE II

A MORE EFFICIENT AND DEMOCRATIC UNION

CHAPTER 1

REINFORCING THE UNION'S INSTITUTIONS AND BODIES

1. The Institutional framework of the European Union [*list*]
2. The European Council
3. The European Parliament
4. The European Commission

replaced by “the treaty would be subject to a consultation of the citizens of the European Union at the same time as the elections to the European Parliament in 2009, as a prelude to ratification”.

² Les fondements de l'Union européenne : droits fondamentaux et Etat de droit – Die Grundlagen der Europäischen Union : Grundrechte und Rechtsstaatlichkeit – I fondamenti dell'Unione Europea : diritti fondamentali e stato di diritto – Los fundamentos de la Union: derechos fundamentales y Estado de derecho – De grondlagen van de Europese Unie: grondrechten en rechtsstaat, etc.

5. The Council of Ministers
6. The Union Minister of External Affairs
7. The European Court of Justice
8. The European Central Bank
9. The other institutions and bodies

CHAPTER 2

ADVANCING DEMOCRACY IN THE EUROPEAN UNION

1. Union Citizenship
2. The principle of representative democracy
3. The ordinary legislative procedure
4. The principle of participatory democracy and the citizen initiative
5. The participation of national Parliaments
6. The principle of openness
7. The European Ombudsman
8. The relations with the social partners, churches and non-confessional organisations

CHAPTER 3

ENSURING THE EFFICIENCY OF THE EUROPEAN UNION

1. The decision-making procedures of the European Parliament, the Council and the European Council
2. Special procedures [*special legislative procedures, reinforced majorities etc.*]
3. Enhanced cooperation
4. The open method of coordination
5. The budget and the finances of the Union
6. The principle of consistency [*cf. Art. III-115*]
7. Administrative cooperation

CHAPTER 4

CLARIFICATION AND SIMPLIFICATION OF THE UNION'S LEGAL ORDER

1. Legal personality of the Union
2. Union competences [*including the flexibility clause*]
3. The legal acts of the Union
4. Relation with the Treaties establishing the European Community and on the European Union³
5. The revision procedures

³ In case the adaptation act would opt for the revision and merging of the Treaty of Rome and Maastricht into one single text, this provision would change to: The relations between the consolidating treaty and the act of adaptation.

TITLE III

THE EUROPEAN UNION FACING THE CHALLENGES OF THE TWENTY FIRST CENTURY⁴

CHAPTER 1

REINFORCING THE COMMON FOREIGN AND SECURITY POLICY

1. The objectives and instruments of the CFSP
2. The external action service
3. The Union and its neighbours
4. Humanitarian aid

CHAPTER 2

DEVELOPING A COMMON SECURITY AND DEFENCE POLICY

1. The objectives and instruments of the CSDP
2. The European Defence Agency
3. The entrustment of executive tasks to a group of Member States
4. The permanent structured cooperation

CHAPTER 3

STRENGTHENING THE AREA OF FREEDOM, SECURITY AND JUSTICE

1. The objectives of the Area of Freedom, Security and Justice
2. The principle of mutual recognition
3. Police cooperation and judicial cooperation in criminal matters
4. Judicial cooperation in civil matters
5. Civil protection

CHAPTER 4

SECURING THE SOCIAL MARKET ECONOMY

1. The objectives of the economic and monetary policy [*cf. Art III-177- 4 EC Treaty*]
2. Fundamental freedoms and non-discrimination
3. The Eurogroup [*cf. Art. III-194 to 196*]
4. Reinforcing the Union's competitiveness [*open method of coordination and enhanced cooperation linked to the Lisbon Agenda + intellectual property rights, cf. Art. III-176*]
5. The European social model and services of general economic interest [*cf. Art III- 117 and III-122*]
6. Energy, space, and industry

⁴ L'Union européenne face aux défis du vingt-et-unième siècle – Die Europäische Union vor den Herausforderungen des einundzwanzigsten Jahrhunderts – L'Unione europea davanti alle sfide del ventunesimo secolo – La Union europea en frente a los desafíos de siglo veintiuno – De Europese Unie voor de eeurowdenderingen van de twintigste Eeuw.

TITLE IV
FINAL PROVISIONS

1. Scope
2. Duration
3. Act adapting the Treaties establishing the European Community and on the European Union
4. Protocols
5. Ratification and entry into force
6. Authentic texts and translations

*

The article on the ratification and entry into force could be revised along the following:

1. *The present Treaty shall be ratified by the High Contracting Parties according to their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of the Italian Republic.*
2. *This Treaty shall enter into force on the first day of the second month following the deposit of the instrument of ratification by the last signatory State to take this step.*
3. *Those provisions of the present Treaty, which cannot replace corresponding provisions of the Treaties establishing the European Community and on the European Union without further adaptations of these Treaties, will become applicable with the entry into effect of the Act adapting the Treaties establishing the European Community and on the European Union.*
4. *The High Contracting Parties assume without further delay the procedures necessary for ratification of this Treaty.*

The article on the Act of adaptation could be drafted as follows:

With the signing of the present Treaty, an Intergovernmental Conference will assemble on the level of representatives of the foreign affairs ministers, in order to propose the indispensable amendments for the Treaty establishing the European Community and for the Treaty on the European Union, in accordance with protocol number 2 annexed to the present Treaty. Those proposals will be assembled in an Act adapting the Treaties establishing the European Community and on the European Union, which will be adopted and will take effect along the terms of Article 48 of the Treaty on the European Union.

Protocol number 2 regarding the adaptation of the Treaty establishing the European Community and the Treaty on the European Union would be revised so as to ensure that the Intergovernmental Conference would complete its work within a brief time span and that it would employ as the basis for its work the Final Act of 29 October 2004 which includes the Treaty establishing a Constitution for Europe, along with its annexed the protocols and declarations. The protocol would specify the provisions of the Consolidation Treaty which would immediately replace the corresponding provisions in the Treaties of Rome and Maastricht, as revised by the Treaty of Nice, and which provisions would come to apply only once the Act of adaptation comes into effect.

B. PROPOSALS FOR REFLECTION ON SUPPLEMENTARY REFORMS BEYOND THE INNOVATIONS OF THE EUROPEAN CONVENTION OF 2002-2003 AND THE INTERGOVERNMENTAL CONFERENCE OF 2003-2004

- i* *Ratification related to a pan-European consultative referendum*
Expecting the work by Robert Schuman Centre; could be helpful to overcome resistance from veto players
- ii* *Reform of the Commission; Election of the European Commission's President?*
Reform by 2009 is inscribed into the Nice Treaty; Sarkozy proposal
- iii* *Social Protocol?*
Is it helpful to enlist support or alienating others? Should we focus on procedural rules or open the debate on content?
- iv* *EU Tax to strengthen own resources of the Union and overcome the net-contribution debate*
Reforming the present system of EU finances is paramount for the Union's efficiency.
- v* *Provisions for the procedures for a future Constitutional Treaty ?* The idea is in the public domain (Sarkozy; DGB).
Without fixed date? The article on duration could be drafted in this spirit:
This Treaty is concluded for an unlimited period. It will remain in effect unless it will be replaced by a European Union Constitution, approved by the States and citizens of the European Union
- vi* *The role of the European Parliament in enhanced cooperation*

etc.: Please contribute your thoughts!