

# DISCUSSION PAPER SERIES

Centre for New European Research

21st Century COE Programme, Hitotsubashi University

**002**

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**March 2005**



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# **The EU Constitution has been signed!**

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## **Introduction**

As was reported in the newspapers, on 29 October 2004, leaders of 25 EU nations gathered in Rome and signed the *Treaty establishing a Constitution for Europe*. The Constitution in its initial form was drafted over a period of 16 months beginning on 28 February 2002 at a European Convention chaired by former French President Giscard d'Estaing. There were proposals for revisions in 80 places made at the Intergovernmental Conference, and after negotiations, the content was agreed upon on 18 June 2004. Since it is a treaty, it must go through the ratification procedures within each member state, after which an instrument of ratification is to be deposited with the Italian government.

In this paper I would like to briefly summarize the final version of the new constitution, with particular focus on those points that may be of interest to those persons doing business with Europe.

## **Why was the EU constitution enacted?**

First, since the mere six-nation EEC, the precursor to the EU, was first

established in 1958, the EU has grown to 25 countries<sup>1</sup> (in May of 2004), with a population of around 450 million people; and even though the EU has plans to enlarge even further, the strong influence of the EEC era can still be seen in the basic structure of the current EU. It is therefore necessary to re-examine the EU in its enlarged form.

Second, the current EU structure is complex and quite difficult for the average citizen to understand due to the piecemeal and unorganized group of treaties on which it was built, from the Treaty of Rome in 1957 through the Single European Act (1986), Maastricht (1992), Amsterdam (1997), and Nice (2001) treaties. As a result, it is necessary to review and simplify this group of treaties in order to make the EU a presence closer to its citizens.

Third, it is necessary to change the various institutions of the EU into efficiently functioning bodies, as they have not yet developed with the same pace as the enlargement and development of the community as a whole.

## **The structure of the EU Constitution<sup>2</sup>**

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<sup>1</sup> Member nations include the UK, Ireland, and Denmark (1973), Greece (1981), Portugal and Spain (1986), Austria, Finland and Sweden (1995), and 10 new states entering in May of 2004, for a total of 25 members. In addition, according a Nihon Keizai Shimbun article (18 Dec 2004), Bulgaria and Romania are scheduled to become members of the community in January of 2007. Croatia and Turkey are currently going through application procedures.

<sup>2</sup> Official Journal containing the full text of the final version of the EU Constitution (in English) can be viewed on the following website:  
<http://europa.eu.int/eur-lex/lex/JOhtml.do?uri=OJ:C:2004:310:SOM:EN:HTML>

The Constitution consists of the following four parts:

Part I: Objectives, powers, decision-making procedures, definitions of institutions and bodies

Part II: Charter of fundamental rights

Part III: EU policies, actions and provisions of the current treaties

Part IV: Final provisions for adoption and amendments of the Constitution

There are a total of 448 articles, and when the Protocols and Declarations are included, its massive length makes even a cursory read a matter of some effort. What is surprising is that this is said to be the significantly simplified version. Though fundamental human rights, the rights of citizens to petition and the authority of the national parliaments of the Member States are new, as those are mainly non-business issues, I will not go into details here.

### **The objectives and values of the EU constitution**

The Constitution states that the objectives of the Union are to promote peace, the values of the EU, and the well being of its citizens. The EU's values include respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, among others.

### **The EU's symbols**

- The motto of the EU is “United in diversity”, which was chosen through a competition organised by a group of European citizens.
- The flag of the EU consists of a circle of twelve gold-coloured stars on a blue background.<sup>3</sup>
- The anthem of the EU is “Ode to Joy” from Beethoven’s Ninth Symphony.
- The currency of the EU is the euro.<sup>4</sup>
- European Day will be the 9<sup>th</sup> of May.<sup>5</sup>

## **Bodies of the EU**

### **I. The European Parliament**

The European Parliament has legislative and budgetary functions together with the Council of Ministers. Members of the European Parliament are elected by direct universal suffrage by the member states’ citizens, and the maximum number of the Members of the European Parliament (MEP) has been increased to 750 (per-Member State minimum: 6; maximum: 96).

The number of policy areas subject to co-decision procedure (agreement

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<sup>3</sup> The number 12 is said to represent “completion” and “unification” in Christianity. It was adopted at a European Summit in 1985 and is still in use. Apparently it has no relationship with the number of the Member States.

<sup>4</sup> UK and other Member States which are not the members of Monetary Union will not be forced to adopt the single currency (euro).

<sup>5</sup> The 9<sup>th</sup> of May (1950) is the day that French Foreign Minister Robert Schuman announced the establishment of the European Coal and Steel Community. Europe Day was decided upon at a 1985 Summit.

between the European Parliament and the Council of Ministers) has increased, and the European Parliament has strengthened its role. Ordinary European legislation procedure is, as a rule, to be based on co- decision. Since the European Parliament will increase its influence on the policy and legislation of the EU, it will become necessary for Japanese companies to pay more careful attention to the trends of the Parliament. Japanese subsidiaries in Europe will have petitions rights in respect of the Union's power, and in the future it may be necessary for such entities to exercise them for issues relating to the implementation of the competition laws and safeguards.

## **II. The European Council**

The summits, the statuses of which until now have not been clear, have now been given the official EU role as the European Council. The European Council will meet once every three months, and decisions must be generally made by unanimous vote. It has no legislative functions.

One of the key features of the Council is the creation of its standing Presidency. The President will chair the European Council, and will be selected by a qualified majority vote of the European Council. The selection is not subject to the approval of the European Parliament. The term of office is two and a half years. There have been media reports that a Presidency of Europe has been established, but these are inaccurate. The President of the European Council will not have near the power that the President of the United States does, and his/her duties will mainly be related to the affairs of the European Council, but it

is expected that the President of the European Council will become the external “face” of Europe. The heads of the European Commission and various commissions will also be titled “President”, which may lead to some confusion.

Furthermore, in order to consolidate diplomatic functions, a Union Minister for Foreign Affairs will be appointed. Christopher Patten, the External Relations Commissioner for the European Commission and Javier Solana, the High Representative for EU Common Foreign and Security Policy, have so far been in charge of common foreign relations matters, but the offices are to be merged, and Solana is expected to be appointed.

### **III. The Council of Ministers**

The Council of Ministers is a decision-making body made up of representatives at the ministerial level of each Member State. This has conventionally been called the “Council”. The number of matters to be decided by qualified majority vote has increased. The system of qualified majority voting (QMV) has in the past put different weight on the voting power of each Member State. Under the new Constitution, however, based on the principle of equality of member states, a more objective standard based on population ratios has been adopted whereby the qualified majority must be at least 55% of the members of the Council and represent member states comprising at least 65% of the total population of the EU. (However vetoes by four states result in the defeat of a proposal. Foreign relations, defence, and tax matters must be decided unanimously). Germany has the largest population, with 83 million people. If

Turkey joins, it will be number two, with a population of almost 70 million people, and may possibly have very influential power on EU decisions.

#### **IV. The European Commission**

The European Commission is a large multi-purpose organization with around 18 thousand staff members at present. There was a time when the Commission was regarded as a kind of Community government, but as the balance of power has shifted to the Council of Ministers or the elected Parliament, the Commission has gradually changed into an organization providing mostly administrative services. It does hold the power to make and enforce policy concerning the European competition laws, so for businesses it will surely be the most important of the various European organizations. It has played an extremely important role in the unification of the common market, and will most likely continue to do so in the future.

The President of the European Commission will be appointed as in the past, i.e. the European Council will select a candidate by a QMV, who is then subject to the approval by simple majority of the European Parliament. The Presidency changed in November 2004 from Romano Prodi (Italy) to José Manuel Durão Barroso (Portugal).

For the time being, each Member of State can appoint one national as a Commissioner with a term of five years, but there are plans to decrease this number to two thirds of the number of Member of State. With recent personnel changes, the proposal for the new appointments has not passed the Parliament



and has run into difficulties.

## **V. The Court of Justice of the European Union**

Under the current system the European Court of Justice is serving as the upper court and the Court of First Instance the lower. The new system will divide the judicial branch into the Court of Justice (upper), the General Court and special courts (lower). On the business side, attention is now focused on whether a commercial court will be established as a special court for dealing with the trading issues such as competition, merger regulations, anti-dumping and so on.

### **What are EU laws?**

The previous complicated legislative acts will be consolidated into six categories. The familiar “directives” will disappear, and the content of “regulations” will change, so care must be taken not to confuse the new with the old.

Of the list below, the first two fall under legislation, which is put forth by the European Commission and adopted by the European Parliament and Council of Ministers. Legislation had previously been passed behind closed doors, but with the new system things are decided more transparently.

### **I. Laws**

“Laws” will be legally binding and will apply directly to Member of States.

Legislation of this form will determine the basic elements of certain fields. It will be possible to delegate more technical aspects to the European Commission. "Laws" correspond to the old "regulations".

## **II. Framework laws**

"Framework laws" are legally binding on each Member State as to the result to be achieved. The choice how to apply this form and methods of legislation is left to the authorities of each Member State. "Framework laws" approximate the old "directives".

## **III. European regulations**

"European regulations" are non-legislative acts implementing legislation or certain Constitutional Articles, and are applied in all Member States. They can take one of two forms 1) they may be legally binding and apply directly to Member States or 2) they may be legally binding but the choice of form and methods may be left to the authorities of each Member State.

## **IV. European decisions**

"Decisions" are legally binding, non-legislative, and apply to the Member States to which they are addressed, i.e. they are the same as the old "decisions".

## **V. Recommendations, opinions**

"Recommendations" and "opinions" remain unchanged and are not legally binding.

## **EU policies**

### **I. The internal market**

The basic principle is to strive for a common market for Member States and to prohibit the setting up of barriers for the free movement of goods, persons, services or money in the common market. In this sense, there are no major changes to the original principle. Safeguard measures will be decided after consultation with the European Central Bank. Measures to prohibit transfers of funds to terrorists are an exception.

### **II. The European competition laws**

Competition issues are essentially within the exclusive jurisdiction of the EU. Aside from the article numbers, Articles 81 and 82 of the current EC Treaty have been adopted word for word. The articles that form the foundation of the European competition laws first appeared as Articles 85 and 86 in the Treaty of Rome, changing in the Treaty of Amsterdam to Articles 81 and 82, and will be cited in the future as Articles III-161 and III-162.

### **III. Energy**

It is the first time that energy policy has been laid out at the EU level. Its purposes are securing market functionality, a stable supply within the Community, the promotion of efficiency and conservation and the development of new sources of energy. However, leaving aside the environmental problem, it does

not affect Member States' sovereign rights to control exploitation of their natural resources. In addition, an issue of a financial nature at the EU level requires a unanimous decision.

#### **IV. Research and development**

The importance of the promotion of research and development has been recognized, and in order to increase the competitiveness of the EU, the European Research Area has been established. The aim is to cooperate with Member States to eliminate barriers as much as possible and to focus cooperative efforts toward research and technological development there. The EU will share competence with the Member States in these fields. An enormous amount is allocated to R&D and its annual budget currently stands at the third largest.

#### **V. Taxes**

In accordance with established policy, common indirect taxation will be legislated if necessary, but no mention has been made of direct taxation. Matters of taxation require the unanimous agreement of the Council of Ministers.

#### **How will competence be divided between the EU and its Member States?**

There is a principle that the laws of the EU will have precedence over those of its Member States. The legal basis for this, however, is that the Member States have voluntarily conferred competence to the EU, and it is clearly mentioned in

the Constitution that competence in all other matters will be retained by the Member States. The Constitution divides legal competence of the EU into three areas: 1) areas in which the EU has exclusive competence, 2) areas of shared competence, and 3) areas of coordinating, supplementary, or supporting action. With these provisions and principles, the legal relationship between the EU and its Member States, which has been a source of problems in the past, has been defined in a fairly clear manner. As the new EU Constitution covers the matters of legal jurisdiction and competence of the EU, the constitutions of each Member State will not be affected by the introduction of the EU Constitution because it covers the different areas.

## **Conclusion**

The EU Constitution significantly differs from those of Japan, the US, etc., in that policies, judicial procedures and such are laid out in considerable detail, resulting in a large number of articles and an impression that it is far from ordinary constitutions. In addition, the Constitution takes the form of a treaty, as stated in the introduction, and all 25 nations must ratify it. Even if one country fails to ratify, it does not enter into force. If the EU Constitution succeeds, Europe will make a giant advance, but if it fails, Europe will most likely be gripped by a serious political crisis. In that sense, the Constitution is somewhat of a wager.

But in contrast to past EU treaties, which have been decided upon at the Inter-governmental Conference after negotiations held in a veil of secrecy, the new Constitution was debated and drafted in an open forum and with the

participation and cooperation of civic groups, the governments of Europe, Parliament representatives and EU organizations. It is doubtful that a constitution born in this manner would so easily be abandoned. However, if, in two years time after its signature, only four fifths of the Member States have ratified it and there are still difficulties in one or more states, the matter will be referred to the European Council. It will decide the best course of remedial action.