

***A PROPOSAL FOR A EUROPEAN
CONSTITUTION***

***Report by the
EUROPEAN CONSTITUTIONAL GROUP***

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European Constitutional Group

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PART I INTRODUCTION AND SUMMARY

Tab 1a Introduction

Tab 1b Summary of Main Points

PART II PRINCIPLES AND THEIR APPLICATION

Tab 2a Statement of Constitutional Principles

Tab 2b Institutional Choices

Tab 2c Consolidated Statement of Proposals

PART III LEGAL TEXT

Tab 3a The Constitution

Tab 3b Table Relating Existing Treaties to the Constitution

SUMMARY OF MAIN POINTS

This paper summarises the main constitutional proposals of the European Constitutional Group. It also outlines the key considerations underlying the Group's discussions of selected points of importance.

I Principles (Tab 2a)

A durable constitutional structure for the Union must be founded on solid constitutional values. The Group puts forward ten principles that should underpin constitutional arrangements for the European Union. (Subsequent page reference numbers are to pages in Tab 2a).

(a) The Proposals: Particularly important among the ten constitutional principles proposed by the Group are the following:

- : The starting point of the constitution must be a clear recognition of the fundamental importance of the value of individual liberty. Liberty is not conferred by government. The legitimacy of Union structures rests on powers flowing up from the people (page 2).
- : There must be a better definition of Union purposes (page 3) together with a clear demarcation of jurisdictions (page 9).
- : The rules that govern the exercise of Union powers should differ according to the different areas for collective action (page 4).
- : Constitutional defences must be incorporated against the growth of central bodies. It must also allow for shifting perceptions of what is best done collectively by the Union so that powers can be adjusted (page 8).
- : The constitution should provide for a strong system of institutional checks and balances (page 10).

These principles are intended to ensure that Europe's constitutional arrangements are based on popular support. A structure imposed from above will not last.

(b) Key Considerations - The Choice of Values:

The Group considered alternative values to individual liberty as the founding principle of the constitution. Alternatives include expressions of social harmony in Europe (such as 'cohesion') and the value of European unity itself.

The tragedies experienced by Europe in this century owe much to philosophies that have emphasised the collective over the individual. The Group concluded that the constitution could not afford to repeat this mistake. European unity is a strongly desirable objective but only insofar as it provides for a Europe where individual freedoms can flourish. An emphasis on the individual is fully compatible with recognising the value of those voluntary associations in society based on community, locality, region and nation on which social harmony in Europe can be built.

II Institutional Arrangements (Tab 2b)

The institutional proposals of the Group are based, first, on achieving a clear separation of powers between the Union institutions and, second, on a recognition that the separation of powers will not by itself achieve the decentralisation and diffusion of power in the European Union that is an essential requirement for a free society. The proposed arrangements for the distribution of powers and the attribution of responsibilities in the Union address both aspects. (Tab 2b outlines the reasons for these choices and Tab 2c gives further detail in certain areas).

(a) The Proposals Institutional highlights of the report include:

- : provisions to strengthen the role of the Council of Ministers vis à vis the Commission. New voting arrangements are proposed to make sure that the Council of Ministers can function effectively with larger membership (Tab 2b pages 2-6).
- : a two chamber parliamentary review process with delegates of national parliaments introduced as a formal element into Union procedures for legislative review. The purpose is to strengthen the legitimacy of collective action in the Union. The Chamber of National Parliamentarians would have a constitutional role so as to better preserve the balance stipulated in the Union constitution between collective action by the Union and individual measures by the Member States. The directly elected Chamber of the Union would also gain extra responsibilities (Tab 2b pages 7-9). (See also Tab 2c pages 7-8).
- : a new judicial body (the Union Court of Review) which will help guarantee the maintenance of a diversified system of law applicable within the Union. The aim is to improve the quality of constitutional adjudication in the Union. Union law under the existing Court of Justice would be applied as superior law within a defined and limited area between international law, national law and other applicable jurisdiction such as that provided by the European Convention on Human Rights. A system of diversified law is much more likely to offer protection to individuals and to a decentralised system of Union government than according a dominant role to a single Court such as the Court of Justice that has a vested interest in the extension of a single superior law (Tab 2b pages 11-14).
- : a new independent Competition Authority for the Union. The intent is to achieve a more transparent and impartial system in the Union and the Member States against the abuse of market power and against distortions to the market provided by State and Union regulation and aids (Tab 2c page 8).

(b) Key Considerations

The Separation of Powers:

In discussing institutional arrangements in the Union the Group considered how best to achieve a clear separation of powers. It has long been considered desirable that constitutions should provide for a clear separation of powers between those that exercise the executive function in the sense of giving political direction, those in the legislative branch that subject legislation to scrutiny and review, those that exercise judicial powers, and those that administer. The purpose is first to ensure good government - for example that justice is not politicised and that administrators remain impartial. Secondly separation helps ensure that each branch will act to keep the other in check and acting within its powers. Thirdly it enables responsibility to be sharply defined.

Such a separation is not achieved under present arrangements. In particular the Commission exercises a mix of judicial, political, administrative and legislative functions. The arrangements proposed by the Group in order to achieve a separation of powers are illustrated in Chart A. Their purpose is to achieve a clear attribution of responsibility.

The Diffusion of Powers:

The Group also considered the related issue of how the distribution of powers could best be made compatible with a system of decentralised powers in the Union. The separation of powers does not by itself achieve a diffusion of powers. This is because the different branches of a Union structure can work together to accumulate powers at the centre. For example under present arrangements the Court of Justice, the European Parliament and the Commission can all act together to extend the powers of the Union.

In order to achieve a diffusion of powers the Group's proposals envisage a more prominent role for the regions within Member States and through the Committee of the Regions. But the key issue is the role of the institutions of the nation state (governments, parliaments and judiciaries).

The Group considered that the way in which the role of the institutions of the Member State is articulated has an intimate connection with the preservation of individual liberties in Europe. The Member State is and will remain an important focus of voluntary association within Europe; in most cases the institutions of the Member State have an inherited legitimacy that can in turn help legitimise collective action by the Union; they provide a natural building block for a system where powers are delegated from the bottom up rather than conferred down from the top; and by maintaining alternative approaches to issues of public policy they can contribute to the evolution of best practice in Europe and to the preservation of minorities that may be right. In each of these roles the Member State can help maintain a system of diffused power in Europe essential for individual liberty. It would, in addition, be foolish not to take advantage of those constitutional arrangements that they possess to protect the freedoms of their citizens.

The institutional proposals of the Group thus build in the role of the governments of the Member State to provide political direction in the Union, national parliaments (together with the Committee of the Regions) to help ensure that the Union legislates in accord with the provisions of the constitution and members of national judiciaries in the Union Court of Review who will see that Union competencies are not exceeded. The proposals are illustrated in Chart B.

III Processes and Powers (Tab 2c)

A constitution that is based on proposed outcomes is inherently fragile since no system of government can guarantee outcomes. The emphasis has to be on process. This includes clearer definitions of what can be best done by the Member States acting collectively together in the Union, those policies that are better framed in a broader international framework and those that are best left to individual Member States.

(a) Proposals

Among the proposals in the report on the powers and procedures of the Union are the following: (page references are to Tab 2c unless otherwise stated).

- : the powers and procedures proposed in relation to the external commercial policy of the Union, foreign, security and defence policy are framed in the context of the international rule of law. (pages 11-12)
- : On social policy the report proposes that the Union will benefit more by learning from a diversity of national approaches. Social aims and aspirations can then be framed close to those who are the intended beneficiaries and in the light of the different social traditions of the Member States and varying individual preferences at different income levels. The aim should be to learn from best practice. (page 13)
- : it is proposed that the "subsidiarity" procedures agreed at the 1992 Edinburgh Council become entrenched within the constitution. While the procedures will have a general applicability, the Chamber of Parliamentarians supported by the Committee of Regions would have a special responsibility in seeing that they are observed. This will help ensure that powers within the Union are exercised in a manner that reflects the distinctions in the constitution between what is best done by Union members acting together and what is best left to the Member States.(pages 6-7).
- : the proposals provide for a strong fiscal constitution as well as a clear monetary constitution. The objective is to prevent abuse by the Union of its powers to spend and to help ensure that fiscal transfers do not become a source of friction in the Union and an obstacle to enlargement. It would be deception for the richer Member States to hold out the prospect to the poorer that they will finance a comparable level of social welfare across the Union. Improved standards of living must be earned through productivity gains. (Tab 2c pages 12-13; see also Tab 2b pages 15-17).
- : more flexible arrangements to accommodate new Member States are envisaged. In this way the opportunities in Europe presented by the end of the Cold War will not be squandered by the appearance of new types of barrier in Europe. (page 5).

(b) Key Consideration - Effectiveness of the Union

The Group considered the proposed powers and procedures in conjunction with its proposed institutional arrangements in order to assess whether the total sum of its proposals would enable the Union to act effectively in necessary areas.

The key components in the improved system of checks and balances are the Chamber of Parliamentarians, the Union Court of Review and the entrenchment of the subsidiarity procedures.

At the same time, the proposals facilitate action in the Union

- : by containing clearer definitions of when Union action is necessary;
- : through the role of the Chamber of Parliamentarians in sorting out unnecessary legislative proposals;
- : by improving decision-taking procedures in the Council (particularly in the context of removing market barriers);
- : by a clearer delineation of the separate responsibilities of the different institutions of the Union.

The new decision-taking procedures proposed for the Council and Parliament provide for a better articulation of the views of the smaller as well as large Member States of the Union. They enable action to be taken while protecting the rights of minorities.

The progress of the Union is not a matter of facilitating the promulgation of laws by some far-seeing elite. The more the Union can be tied together by the institutions and experience of voluntary association the less it will need the bonds of central law and regulation. The greater the scope in Europe for best practices to evolve through the discovery process of the market and through the vitality of competing jurisdictions the less the Union will be prone to the failures of even the best orchestrated system of central government. No Union will last, however imposing its central authority may appear, unless its powers and institutional arrangements flow upwards from the consent of individuals.

IV Structure of the Union Constitution (Tab 3a)

A final recommendation of the report is that the main contents of the Union constitution should be accessible to any interested reader. The existing Treaties are impenetrable. The next round of institutional and other changes cannot take the shape of a further set of amendments to an already twice amended Treaty of Rome. Therefore the final part of the Group's report puts its constitutional proposals into legal form.

The legal structure of the Union presented in this report will be seen in some Member States as 'Federal' and in others as 'Confederal' since the terms are used in different senses within Europe. Implicit in the report is the view that collective action in the European Union has unique features. Mere transplants from other systems are not possible or desirable. What is proposed has been guided by what is thought to be the best form of Union most suited to Europe's special character.