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**The European Constitution:  
parliamentary follow-up and public opinion**

**REPORT**

submitted on behalf of the Committee for Parliamentary and Public Relations  
by Lord Russell-Johnston, Rapporteur (United Kingdom, Liberal Group)  
and Mr Gawlowski, co-Rapporteur (Poland)

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*The European Constitution: parliamentary follow-up and public opinion*

**REPORT<sup>1</sup>**

*submitted on behalf of the Committee for Parliamentary and Public Relations<sup>2</sup>  
by Lord Russell-Johnston, Rapporteur (United Kingdom, Liberal Group)  
and Mr Gawlowski, co-Rapporteur (Poland)*

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<sup>1</sup> Adopted unanimously by the Committee on 8 November 2004.

<sup>2</sup> *Members of the Committee:* Mr Budin (Chairman); Mr Adam, Lord Russell-Johnston (Vice-Chairmen); MM Agramunt (Alternate: *Fernández Aguilar*), Banks (Alternate: *Mrs McCafferty*), Mrs Becerril Bustamante, Baroness Billingham (Alternate: *Foulkes*), Mr Bockel, Mrs Bousakla, Mrs Brasseur, Mr Duivesteijn (Alternate: *Dees*), Mrs Eymers, Mrs Fernández Soriano (Alternate: *Mrs Cortajarena Iturrioz*), Mr Geveaux, Ms Jäger, Mrs Katseli (Alternate: *Mrs Papadimitriou*), MM Legendre, Loncle, Martins, Naro, Occhetto, Selva (Alternate: *Iannuzzi*), Mrs Smith (Alternate: *Vis*), MM Stathakis, Vieira, van Winsen, Wodarg, N...

*Affiliate members:* MM Gawlowski, Kaminski (Alternate: *Szczygło*), Kelemen, Mrs Kosa Kovacs, Mr Lorenz, Mrs Maripuu, MM Murgas, Potrata, Turlais, Mrs Novakova, Mrs Roithova, Mr Vazbys.

*Associate members:* MM Gülçiçek, Gündüz İrfan, Gündüz Süleyman, Mrs Hlödversdottir, Mr Reikvam, N...

*Affiliate associate members:* Mr Chakarov, Mrs Lepadatu, Mr Vasilescu, N...

N.B. *The names of those taking part in the vote are printed in italics.*

## RESOLUTION 123<sup>1</sup>

### *on the European Constitution: parliamentary follow-up and public opinion*

The Assembly,

- (i) Stressing that the national parliaments of those EU member states which have decided that the Treaty establishing a Constitution for Europe is to be ratified by Parliament bear a huge responsibility as regards the consequences of their vote;
- (ii) Considering also that the parliaments of member states which are to hold a referendum on the Treaty should engage in intensive dialogue on the latter with the citizens of those countries;
- (iii) Recalling Resolution 119 of 2 June 2004 in which the Assembly invited the national parliaments to continue their efforts to organise foreign policy, security and defence debates before European intergovernmental summits;
- (iv) Recalling also the many contributions it made to the work of the Convention and the Intergovernmental Conference with a view to the text of the Constitutional Treaty making provision for the continuity of interparliamentary oversight of the European Security and Defence Policy;
- (v) Concerned that there is a risk that the substance of the Treaty establishing a Constitution for Europe will be denigrated as a result of public opinion being influenced by media coverage which often places too much emphasis on domestic policy issues;
- (vi) Aware that citizens are ill-informed about the exact content of decisive parts of the Constitutional Treaty,

INVITES THE NATIONAL PARLIAMENTS OF THE WEU COUNTRIES TO:

1. Make more effort to inform the electorate about the main features of the Constitutional Treaty so that people are able to weigh up the issues before carrying out their civic duty of voting in a referendum;
2. Take part in debates on ratification of the Treaty without deviating from its real object or introducing separate issues that concern domestic policy;
3. Establish together efficient and effective procedures for improved collective participation by the national parliaments in the task of scrutinising the way in which the European authorities apply the principles of subsidiarity and proportionality;
4. Support any action in the European Union that will ensure continuity of the work which has until now been done by the Assembly of WEU, with a view to giving national parliamentarians a European forum in which they can be informed and consulted about all intergovernmental activities in the field of European security and defence policy.

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<sup>1</sup> Adopted by the Assembly on 29 November 2004 at the 6<sup>th</sup> sitting.

## EXPLANATORY MEMORANDUM

*submitted by Lord Russell-Johnston, Rapporteur (United Kingdom, Liberal Group)  
and Mr Gawłowski, co-Rapporteur (Poland)*

### *I. Introduction*

1. On 18 June 2004, the heads of state and government of the 25 EU member states unanimously adopted a draft Treaty establishing a Constitution for Europe. The final text was signed by the heads of state and government at an official ceremony in Rome on 29 October 2004. The last stage in the process consists in the text as signed being ratified by each of the signatory states in accordance with their own constitutional procedures. The member states can ratify the Treaty either by holding a referendum or by submitting it to parliament. Once the Treaty has been ratified and the instruments of ratification deposited by all the signatory states, it can enter into force and be applied. Going on the experience of earlier treaties, it is generally estimated that the period between the end of an Intergovernmental Conference and the entry into force of a treaty can last between one and two years.

2. In this report the Rapporteurs will therefore endeavour to recapitulate the main considerations and problems that have emerged from parliamentary debates. Parliamentary follow-up apart, is it really possible to talk about citizens monitoring developments concerning the European Constitution? And what type of ratification procedure will each of the signatory states choose? Given that ratification is likely to occur at different times in the different member states and that there is some discord about certain aspects of the Treaty, will this jeopardise the whole process?

3. The Committee for Parliamentary and Public Relations is therefore continuing to give thought to how parliamentary work ties in with trends in public opinion. This report follows the one on “Parliamentary follow-up to the Convention on the Future of Europe and scrutiny of the work of the Intergovernmental Conference” submitted by Mr Budin on 2 December 2003 and the one your Rapporteur submitted to the Assembly on 2 June 2004 on “Parliamentary scrutiny of the ESDP and CFSP” which looked more particularly at European defence issues as reflected in the debates leading up to the draft European Constitution.

### *II. Parliamentary follow-up to the signing of the Constitutional Treaty*

4. It is difficult to talk about parliamentary “follow-up” since the adoption of the draft Treaty establishing a Constitution for Europe on 18 June 2004 because there has been virtually no parliamentary debate for a number of reasons.

5. In the first place, the text adopted by the IGC was a compromise following the end of lengthy negotiations. As we have now reached the stage where it has to be ratified by each country, it would be difficult to call specific principles or points into question. As a result, parliamentarians – aware that any contribution at this stage would be untimely – have probably had to resign themselves to accepting the compromise text as it stands.

6. Besides this, Europe has been at the centre of debate in recent months because of events such as elections to the European Parliament and EU enlargement. In addition, the summer recess and the period during which parliaments examined budgets when work resumed in autumn 2004 explain why there has been no parliamentary follow-up to the European Constitution since the draft text was adopted last June.

7. Notwithstanding, the Italian Government had recourse to an admirable procedure whereby it tabled a parliamentary debate prior to signing the draft Constitutional Treaty. On 15 June 2004, in the Senate, the Minister for Foreign Affairs, Franco Frattini, outlined the main features of the text and proposed guidelines for Italy. Still reeling from the shock of the massive rate of abstention in the European Parliament elections earlier that month, a majority of parliamentarians agreed that the governments ought to give a strong signal of support for Europe and, consequently, sign the text in spite of its shortcomings and limitations. They also expressed the opinion that it was necessary to work for better cooperation and exchanges of view between the European Parliament and national

parliaments. Our colleague Mr Provera stressed the importance of making progress towards a common defence and hoped among other things that an agreement would be reached on industrial policy in the armaments sector. Senator Basile, who had been a member of the Convention on the Future of Europe, pointed to the lack of democratic scrutiny of the common security and defence policy. He said it was urgent to give the European Parliament a right of oversight regarding intergovernmental decisions so as to ensure that the process of legitimising decisions democratically was complete. Mr Manzella took the opportunity to remind participants in the debate that if the European Union was to have a common foreign policy, it had to have a seat on the UN Security Council. Only one participant, the representative of an extreme left wing party, spoke out against the draft Constitutional Treaty and expressed the view that the new EU was being hatched as an intergovernmental project, to the detriment of parliamentary democracy. There was no vote at the end of the debate.

8. On 22 June 2004, Claudie Haigneré, the French European Affairs Minister, reported to the French Delegation for the European Union on the conclusions reached by the Brussels European Council. To begin with, she reminded members of the historic milestone that had been reached with the adoption of a draft Treaty establishing a Constitution for Europe and then went on to draw three positive conclusions: “First of all, it will enable the enlarged EU to avert the paralysis that threatened to engulf it in the absence of reform; secondly, the EU will be able to make a fresh start and show that it has healed the rift between the two halves of Europe caused by the conflict in Iraq and the failure of the Brussels European Council to adopt the Constitution in December 2003; thirdly, success this time round means that Europe’s citizens will have been given a strong signal by their governments, all of which were well aware that they could not afford to fail a second time in view of the high rate of abstention in the European Parliament elections on 13 June.” Mrs Haigneré then expressed regret about some aspects of the draft text. There had been disagreement about the nomination of the President of the new Commission and no solution had been found for lack of time. It had taken some intense discussions in order to solve the remaining constitutional problems. Furthermore, the Minister regretted that, because of opposition from some member states, the practical arrangements for revising the Constitution were fairly rigid. She went on to say: “However, it will not be necessary to convene a new Intergovernmental Conference to amend the Treaty and provision has been made for a “passerelle” or bridging clause to move from the rule of unanimity to qualified majority voting, in which case the national parliaments will have a right of veto”. Finally, she pointed to another major shortcoming in the text: “this concerns maintaining the unanimity rule for social affairs (with the exception of social protection for migrant workers, the only progress made by the Convention in this respect) and for fiscal provisions. On the other hand, for judicial cooperation there is a ‘brake/accelerator’ clause authorising automatic enhanced cooperation after a certain period and therefore preventing one member state from blocking a change which all the others want. Similarly, in the framework of enhanced cooperation, a clause will make it possible to move from unanimity to a qualified majority.”

9. Other problems arising from the draft Constitutional Treaty were raised later on in the debate. Mr Jean-Pierre Abelin also had reservations about the procedure for amending the Constitution. He expressed regret about the “complexity of decision-making procedures and preserving the unanimity rule for fiscal and social matters”. In the view of Mr Jérôme Lambert, the EU and its policies were unfortunately far removed from the day-to-day concerns of the ordinary citizen. The rules that had been set appeared to promote the development of a market whose human dimension had not really been taken into account. On the subject of the absence of a proper ESDP, Mr Lambert made the following comment: “Turning to the institutions, appointing a President of the European Council for a specific period and a Minister for Foreign Affairs definitely has its merits but these posts are no more than symbolic in the absence of a common policy, as the Iraq question showed in respect of foreign policy.” Winding up the debate, Mrs Haigneré said she shared members’ dissatisfaction with the provisions governing European fiscal and social matters, but stressed that resort could perhaps be had to enhanced cooperation in order to harmonise the basis for a Europe-wide company tax. In the field of the Common Foreign and Security Policy, the EU could show it was united by taking a common stance on Iraq. The Minister then provided the following explanations: “The European Defence Agency, the principle of which was decided by the Thessaloniki European Council, is to be operational well before the entry into force of the Constitutional Treaty. Agreement to set up the

agency was given on 14 June by the EU Council of Foreign Ministers. The Agency's purpose is to develop the EU's defence capability, among other things by harmonising and creating a single market, promoting cooperation among defence industries, and stimulating research. The Agency will be answerable to the Council and in particular to the Secretary-General/High Representative for the CFSP. It is in the interest of all the EU member states to be part of it, even though some, like Denmark, refuse to be members for the time being. It is envisaged that there will be enhanced cooperation within the Agency. Decisions in the Agency will be taken by a qualified majority. On 14 June, the Council of Ministers arrived at a satisfactory agreement on the different concepts of the Agency's role, with France initially being more ambitious than the United Kingdom." To conclude, it is interesting to note that all the speakers referred to the need to inform citizens and encourage them to participate in the debate on the draft Treaty establishing a Constitution for Europe. Indeed, the Chairman, Mr Lequillier, spoke of a "duty to educate" and considered it essential for the government to involve the public television channels in a comprehensive information campaign. Similarly, the Minister, recalling the European initiative on a "permanent dialogue" with Europe's citizens, said a substantial communications budget was required both in France and at the European level.

10. On 21 July 2004, the President of the European Commission (until 1 November) Romano Prodi, addressed the European Parliament in Strasbourg on the achievements of the Irish Presidency. He used the opportunity to give his views on the European Constitution. Having described the enormous headway the Constitution had made, Mr Prodi expressed one regret: "The Commission would have liked to see the Union be given greater powers in certain areas such as economic governance". On the subject of ratification of the Constitutional Treaty, he started by expressing his fears, saying that "national concerns disguise the real issues, and short-term partisan interests take priority over the long-term benefits of a Constitution for our Union". He therefore considered it necessary to encourage a proper in-depth debate, which would provide European citizens with all the information they needed. The President of the European Commission then went on to explain that the Constitution would not be a setback for social relations in Europe: "In fact, the Constitution creates a framework which the institutions will be able to use in everyone's interest. However, it is also true to say that it will bring about some improvements:

- it makes full employment and social progress the Union's objectives;
- it recognises that men and women are equal and also that the rights of minorities are values shared by all the member states;
- it makes it a Union obligation to promote economic, social and territorial cohesion and solidarity among the member states;
- the Union formally recognises and supports the role of both sides of industry at the level of the Union, and facilitates dialogue between the partners while respecting their autonomy;
- the Constitution stipulates that the Union's commercial policy must not seriously disturb the organisation of social, education and health services;
- it recognises the value of services of general economic interest and their role in promoting social and territorial cohesion."

11. On 7 September 2004, Jack Straw, Secretary of State for Foreign and Commonwealth Affairs, submitted another White Paper to Parliament on Prospects for the EU. It followed the version published in April on Prospects for the EU in 2004. In the preface Mr Straw wrote that the April paper "aimed to sketch out, briefly but intelligibly, the main elements of our business in the EU this year, enabling Parliament to take an early view on them and so influence the UK approach". The September White Paper covers all the activities of the European Union ranging from enlargement to the Lisbon Agenda for economic and social reform, which includes developing the single market, simplifying new and outdated regulations, and increasing employment. Part I describes the main features of the Treaty establishing a Constitution for Europe.

12. The British House of Commons was given an opportunity to have a full debate on the European Constitution on 9 September. It was the first time it had done so since the treaty was adopted by the European Council on 18 June.

13. Mr Straw began by saying that the Constitution was a “necessary counterpart to the enlargement of the European Union”. He reminded the House that the draft Treaty establishing a Constitution for Europe was the result of a joint effort and said it was the joint responsibility of Parliament and the Government: “Throughout the IGC, just as during the discussions in the Convention, the Government benefited from an unprecedented level of parliamentary and public debate and discussion. Altogether, we have had 24 debates and statements in both Houses and in Westminster Hall since the beginning of the IGC last October, and Ministers have attended 15 Committee sittings in both Houses. Britain’s negotiating position was greatly strengthened by that parliamentary discussion and involvement”.

14. The Secretary of State went on to say that the Treaty made the EU more accountable and ensured it respected the principle of subsidiarity in practice: “It establishes, for the first time, a practical mechanism for involving national Parliaments in EU decision-making.... national Parliaments will gain the power to send legislative proposals back for review...”.

15. Furthermore, he claimed the Treaty would make the EU more flexible: “In some areas, such as the euro or the development of a European crisis management capacity, it makes sense to allow member states that want to cooperate more closely to do so”. Mr Straw welcomed the fact that enhanced cooperation would require the participation of at least a third of member states and also pointed out that in foreign policy and defence such cooperation could begin only if all the member states agreed.

16. Finally, the Foreign Secretary said that on common security and defence policy the Constitution fulfilled Britain’s objectives “by ensuring that cooperation is flexible, inclusive and complementary to NATO, and is focused on the development of military capabilities. It keeps unanimity as the rule for launching operations and determining policy and .... states that NATO is ‘the foundation for collective defence’ of its members”.

17. Michael Ancram, the Conservative Party spokesman on foreign affairs, contested some the arguments the Foreign Secretary had put forward. First of all, he took him to task for not having read the Conservative Party’s pamphlet on the European Constitution carefully enough, pointing out that the Charter of Fundamental Rights, which was an integral part of the Treaty, would “inevitably influence the European Court of Justice’s adjudications on employment law” and would “mark a significant transfer of power from elected national politicians to unelected judges, who will sit in the ECJ in Luxembourg”. Later on in the debate he pursued this line of criticism on the basis of written evidence submitted by Professor Arnall to the Lords Constitution Committee in October 2003, in which the author claims that the Treaty “may lead the Court to be called upon to consider whether action by a Member State complies with an act adopted by the Union in this area or is contrary to the Union’s interests or likely to impair its effectiveness”.

18. However, the Foreign Secretary rejected this claim as “palpable nonsense”, asserting that “the right of the ECJ to have any power over operations and policies determined under the European foreign and security policy is specifically excluded by the draft treaty”. The issue was not settled as each party maintained its position throughout the debate.

19. Mr Ancram then asked Mr Straw what would happen if the Treaty was not ratified: “will he clarify what his Government’s policy will be if the British people do, as we expect, vote no?” The Foreign Secretary, having said he strongly believed that the Government would gain a yes vote, replied that in the event it did not, the existing treaties would apply. But Mr Ancram reminded Mr Straw what he had written in his own White Paper, namely that in those circumstances: “the Union would obviously be faced with a considerable political crisis. The member states have agreed that ... there would need to be further European Council discussion”.

20. Finally, Mr Ancram criticised the Constitutional Treaty for its lack of flexibility. He hoped that if there were a no vote, the leaders of Europe would “return to the sidelined principles of the Laeken declaration of 2001”, which had recognised that the EU “was too far from its peoples”. It had rightly said that “the EU should not intervene too much in the details of national lives” and that “the EU was too bureaucratic”. In Mr Ancram’s view, what was needed was a “more decentralising Europe” in which each member state was at liberty to go its own way or to follow the direction taken by the EU.

He pointed out that “Schengen and the euro are good examples of how this can be achieved without breaking the European Union”.

21. Gisela Stuart, a Labour member who had chaired the Working Group on National Parliaments in the Convention on the Future of Europe, asked some questions about the role of national parliaments in the Constitutional Treaty and the objectives the House should be pursuing: was it simply seeking to “receive more information so that it can then play a part in explaining to the public what other institutions in the European Union are doing on our behalf”? Or was it seeking to “find a way of having a voice that may at times be independent of Government”?

22. She then drew the House’s attention to Article I-47 of the draft Constitutional Treaty, claiming that it would be bad for national parliaments: “If more than one million citizens across a significant number of member states request the Commission to initiate legislation, it will do so. In itself, that provision is innocuous, but the principle means that we will concede a right of initiative that circumvents national Parliaments and Governments. We were not prepared to give that right to national Parliaments, and that troubles me. People need to know the totality of the provisions in relation to the role of national Parliaments”.

### *III. The European Constitution and public opinion*

23. Is it appropriate to talk about citizens monitoring the European Constitution? Is public opinion in favour of this Treaty establishing a Constitution for Europe?

24. To answer these questions, your Rapporteurs have had to take account of the findings published by opinion poll institutes such as Gallup and Ipsos, and by Eurobarometer for the year 2003-04. Although the accuracy of the information they provide is not wholly reliable and their methods are sometimes open to criticism, it is necessary to look at their findings to try to ascertain the main trends of thought in “public opinion”. Consequently, the analysis made in this report gives only a rough idea of the opinions of European citizens on certain questions. Furthermore, the very different nature of these opinion polls, taken over a considerable period of time and across a wide geographical area, have obliged us to select a number of points of view among many. That is why the results of these findings tend to vary depending on their source. Finally, in our search for answers, we have also scrutinised the French and English-speaking press, daily bulletins issued in Europe and the ideas emanating from debates in the national parliaments of the 25 EU member states.

25. A public opinion poll conducted in June 2004 shows that the majority of European citizens (79%) think the EU should adopt a Constitution. 69% of respondents felt the European Constitution was essential for the European institutions to function properly. A comparison of the answers given by respondents from countries belonging to “old Europe” and those belonging to “new Europe” showed that more people in the older member states were in favour of a Constitution (a 9 point difference).

26. An analysis of the results by country brings to light a clear difference between the citizens of the 25 EU member states. While only 44% of Slovaks appeared to think a Constitution was useful, the rate was 82% in Italy, 85% in Cyprus and 88% in Hungary. In countries where fewer people favoured a Constitution, the number of those who were undecided was relatively high. This could imply that a well organised information campaign could persuade such people to join those in favour of a Constitution.

27. In January 2004, 67% of respondents said they agreed that their country should make concessions so that the Treaty could be adopted. A two-speed Europe was an idea the majority of European citizens could live with, especially those in the ten new member states.

28. The Constitution apart, European citizens’ support for the main EU institutions remains stable with no differences between nationals of the older 15 and the new 10 member states. In spring 2004, over half the respondents said they trusted the European Parliament and almost half had confidence in the European Commission. However, the rating for the EU Council was not very good (less than 40% of citizens in the 25 member states). Furthermore, it appeared that citizens in the 10 new member states knew little about the Council as almost half of those polled (47%) did not wish to or could not reply to the question.

29. While it is clear that the public would like to see a harmonised foreign policy in the EU, the idea of a European defence is even more popular. In February/March 2004, there was definite support for the ESDP, both from the citizens of the older 15 EU member states (72%) and even more so from the citizens of the 10 new member states (79%). Finally, there was clear support for the creation of a post of Minister for Foreign Affairs in the 15 pre-enlargement EU member states.

30. As far as the content of the Constitution is concerned, the poll revealed that in January 2004 the citizens of all 25 member states were not very well informed about some of the most important features of the draft Constitutional Treaty. Nevertheless, most respondents appeared to know that the Constitution made provision for the post of a Minister for Foreign Affairs. Moreover, 53% of Europeans were aware that there was no provision in the Treaty for the creation of a European tax. In contrast, only a minority of those polled seemed to be aware that if citizens number at least one million, they will have the right to request the European Commission to submit a legislative proposal they consider necessary. The level of knowledge about the content of the Constitution is considerably lower in the new EU member states. It also varies greatly from one member state to another. Finally, it should be said that it has not changed much since the January 2004 poll.

31. In June 2003, only 45% of those polled had heard of the Convention on the Future of Europe. It also emerged that knowledge about the written form a Constitution can take (treaty, declaration, directive or charter) was very sketchy – 52% of EU citizens and citizens of the acceding states were unable or refused to reply to this question.

32. Despite the level of ignorance revealed by the opinion polls on the EU, there is no doubt that, for whatever reason, the public is not particularly interested in European issues. Among the respondents 42% of citizens of the EU (at 15) said they had no intention of reading the draft Constitutional Treaty. Although a majority of them (51%) said they would look at a synopsis of the treaty, citizens from the ten new member states who said they would do likewise were in a minority (42%) despite the fact that, in the June 2004 opinion polls, EU citizens claimed they were not very well informed about the European Constitution (less than one third thought they were well informed).

33. In June 2004, citizens of the EU (at 25) said they relied overwhelmingly on television for information about the European Constitution. Radio came next (for 63%) and the written press third (41%). 23% of European citizens said they used the Internet as a source of information. Conversely, information meetings organised in towns were not very popular with only 14% of those polled in favour of them. This would suggest that people have a preference for a passive approach and are less willing to play an active part in seeking information.

34. Respondents also expressed a preference for locally organised activities. In the EU as a whole a very large majority of them (80%) agreed with the statement that public debates on the European Constitution should be organised at the regional or local level. This rate varied from 72% for citizens in the new member states to 81% in the 15 pre-enlargement EU member states.

35. It is therefore difficult to talk of any follow-up to the European Constitution on the part of European citizens. It is quite clear that in all the member states the public knows little about European issues whether as a result of a lack of information or a lack of interest. The record low turnout in the recent elections to the European Parliament (only 44.2%) is proof of that. In a survey carried out in May 2004, 57% of those polled explained their abstention by claiming that their vote “would not change anything” and 54% said they did not have enough information. With an electorate of 450 million across the democratic expanse of the EU, it is not surprising that the result of action taken by citizens themselves is less visible. Involving the public on a large and small scale could be one way of increasing civic commitment.

36. Many governments have said they intend to do something about improving their citizens’ knowledge of European issues. One initiative in particular deserves mention. When in office, Pat Cox, President of the European Parliament, Alego Vidal-Quadras, Vice-President of the European Parliament, Romano Prodi, President of the European Commission, Antonio Vitorino, Commissioner for Justice and Home Affairs, and Peter Straub, Chairman of the Committee of the Regions, invited European and national political leaders and regional and local elected representatives to take an active

part in presenting and explaining the European Constitution to the general public. In support of this initiative, the European institutions have organised an operation called “1000 debates on Europe”.

37. So far, it has been planned to hold 130 of these debates in France, Germany, Italy and the United Kingdom, 90 in Spain and Poland and fewer than 40 in each of the 19 other member states. But this initiative may not come to anything much because only 24 debates have been announced so far and of those only 10 have taken place<sup>2</sup>. On 5 October, the Netherlands Minister for European Affairs, Atzo Nicolaï, invited his counterparts, the European Commissioners and the President of the European Parliament, Josep Borrell, to Amsterdam for an informal discussion on how to improve the dissemination of information about Europe, and especially the European Constitution, in order to bring Europe closer to its citizens. On that occasion, Roger Briesch, President of the European Economic and Social Committee (EESC) presented a document produced by the Committee on the subject “the draft Constitutional Treaty: the EESC as a vector of communications”. He said that as a major player in the EU’s new communications strategy and as a result of the various economic and social components of the organised civil society it represented, the Committee could improve citizens’ understanding of Europe, help bring about more democratic expression and contribute to the decision-making process. To that end the EESC planned to organise on 9 November a hearing of representatives of organised civil society as a whole on the draft Constitutional Treaty. Speaking at the *Maison de l’Europe* in Paris on 7 October, the French Prime Minister, Jean-Pierre Raffarin, launched what he called a “debate of substance”, which the French Government intended should improve people’s knowledge about the European Constitution.

#### ***IV. The various procedures for ratifying the Constitutional Treaty***

38. Your Rapporteurs have endeavoured to make a provisional assessment of the different options open to each member state for the purpose of ratifying the Constitutional Treaty and of the consequences as far as public opinion is concerned. This information is based on what has been said in the written press over the last few months, the work done in some national parliaments and on articles published in July 2004 in the *Europe* daily bulletin.

39. According to opinion polls conducted in January and June 2004, European citizens would appear to be very much in favour of a referendum on the Constitution. In June 2003, over 80% of citizens in the 25 member or acceding states already viewed the idea of a referendum as a good thing. 41% of citizens in the 15 pre-enlargement EU member states and 40% of citizens in the 10 new member states considered it essential to hold a referendum on the Constitution.

40. There was considerable confusion among citizens of the 25 member states. In June 2003, 41% of those polled thought a referendum on the draft Constitutional Treaty would be held in each of the member states. Notwithstanding the ringing endorsement of a referendum, 14 member states will probably ratify the Treaty by a parliamentary decision.

41. So far, Cyprus, Finland, Greece, Hungary, Italy, Malta, Slovenia and Sweden have decided to use the parliamentary procedure for ratification. Discussions are under way in Austria, Germany, Latvia, Lithuania and the Slovak Republic about having recourse to that option.

42. There is no provision in the Constitution of Cyprus for a referendum. And yet 79% of Cypriots would like a referendum on the Treaty to be held in each member state. Moreover, 83% of Cypriots consider the EU should have a Constitution.

43. The option of a referendum has been ruled out by the governments of Finland, Greece, Malta, Slovenia and Sweden. The Swedish Prime Minister, Goran Persson, considers it would be too dangerous. However, early in 2005 he plans to find out what the public thinks before the ratification process starts in Parliament. In Finland too there will be a public debate on the European Constitution in autumn 2004, followed by ratification of the Treaty, probably early in 2006. However, in June 2003, a large majority of Finns were in favour of a referendum. In Greece no fewer than 72%

<sup>2</sup> See <http://europa.eu.int/futurum/1000debates>

considered a referendum essential. Moreover, of those Greeks, Slovenes and Finns who took part in the poll, over 80% were in favour of a Constitution for Europe.

44. In Hungary, as the Government has not announced any new proposals, it is the parliamentary ratification procedure that should be followed given that it is the job of the single chamber Parliament to ratify treaties. Leaving it to Parliament to ratify the Treaty may appear to be denigrating public opinion given that 87% of Hungarians were in favour of a referendum. In addition, a large majority of Hungarians (90%) and Austrians (78%) said in June 2004 that they were in favour of a Constitution for Europe.

45. In Italy, the Minister for Foreign Affairs, Franco Frattini, wants his country to be the first to ratify the European Constitution, which was signed in Rome on 29 October. To that end the government will put the text to parliament, which should ratify it early in 2005. It would have been difficult to hold a referendum because there is no provision in the Italian Constitution for international treaties to be approved by referendum. Nevertheless, Italians are among the most enthusiastic supporters of a Constitution for Europe with 94% in favour. 77% of those polled said they would prefer ratification by referendum.

46. As far as Austria, Germany, Latvia, Lithuania and the Slovak Republic are concerned, the situation at present is that the parliamentary process is likely to be the chosen option.

47. Germany's Basic Law does not allow referendums to be held. Yet, on 29 August, Franz Münterfering, Chairman of the Social Democratic Party (SPD), declared that a referendum might be possible following the submission to the Bundestag in October or November of a draft amendment to the German Constitution. Such an amendment requires a two-thirds majority in each of the two chambers and, therefore, the support of the main opposition party, the Christian Democrats (CDU).

48. The Austrian Government would go along with a European decision to hold referendums. However, Chancellor Wolfgang Schüssel has on several occasions said he is against holding a referendum for the purpose of ratifying the European Constitution. The parliamentary procedure involves both chambers (the Nationalrat and the Bundesrat).

49. In Latvia, it is the single chamber parliament (the Saeima) which ratifies all international agreements. However, the Latvian Constitution stipulates that if accession to the EU entails a large number of constitutional changes, half the total number of parliamentarians may request a referendum. In the case of the Constitutional Treaty, a majority of parliamentarians do want a referendum. Furthermore, 73% of Latvians have said they are in favour of adopting the Treaty by this means and 63% believe that the EU should have a Constitution.

50. No decision has yet been taken in Lithuania. However, for the moment the government does not intend to hold a referendum on the European Constitution. Ratification will probably follow the parliamentary process.

51. In the Slovak Republic the Constitutional Treaty will definitely be submitted to Parliament for approval and then to the President of the Republic. Holding a referendum is an option only. Also, the Prime Minister, Mikulas Dzurinda, and the President, Ivan Gasparovic, are opposed to the idea. According to opinion poll findings, Slovak citizens will accept their decision given that it is in Slovakia that the number of those opposed to holding a referendum is highest (at 32%). Furthermore, the rate of abstention in the European Parliament elections was 83%.

52. A good number of countries are preparing to hold a referendum on the Constitutional Treaty. In some, a referendum is an obligation in keeping with constitutional requirements. In others, holding a referendum is an option and is usually the result of popular demand. The countries which have opted for this solution so far fall into two categories: some are obliged to hold a binding referendum while others can hold a consultative referendum. In the first case, the people take the place of Parliament and their decision is irrevocable. In the second case, the referendum is no more than an exercise in which the electorate is consulted and the outcome does not prejudice Parliament's final decision even though it may have an impact in political terms.

53. Belgium, Luxembourg and the Netherlands have decided to hold consultative referendums. On 2 June 2004, the Belgian Prime Minister, Guy Verhofstadt, announced that there would be a consultative, non-binding referendum and suggested it should be held within 50 days of the signing of the Treaty on 29 October. In the Netherlands a consultative referendum is to be held in autumn 2005. Finally, the Luxembourg Government decided on 27 June that a consultative referendum would be held in the Grand Duchy, the first of its kind since 1936. Only 37% to 38% of respondents in these three countries considered that a referendum was necessary, against 40% for the member states taken together. Most citizens in the three countries are in favour of a Constitution for Europe (72% in the Netherlands, 86% in Belgium and 88% in Luxembourg).

54. Countries in which the Treaty will definitely be ratified on the basis of a binding referendum are: Denmark, France, Ireland, Poland, Portugal, Spain and the United Kingdom. The Czech Republic will probably join this group.

55. According to the findings of polls conducted in January 2004, it can be assumed that the decision to hold a referendum in France, Ireland, Portugal and Spain reflects the wishes of respondents given that over 80% of them approved of the option of a referendum. There was a clear difference between the rate of approval in countries clearly in favour of a Constitution for Europe – i.e. between 81% and 93% in France, Ireland, Portugal and Spain – and the rate of approval in countries where the Constitution is not as popular – i.e. in Denmark, Poland, the Slovak Republic and the United Kingdom (between 51% and 71%). On average over 83% of respondents thought a referendum on the Constitution would serve a useful purpose, except in Poland where only 74% approved of the referendum procedure.

56. In Estonia the option of parliamentary approval for the purpose of ratifying the Constitutional Treaty is a possibility. The government will not be taking its decision until early 2005.

57. It looks as though it will be difficult to hold national referendums over the same period. Among the countries which have chosen the option of a binding referendum, six have already announced dates which are very different. Nevertheless, this may still be a possibility as a result of a proposal tabled by the French deputy Thierry Cornillet, a member of the UDF party, in which he suggests the period 5 to 8 May 2005 for a vote on the Constitution. And indeed, this proposal was adopted in October by the European Parliament's Constitutional Affairs Committee at a meeting in Strasbourg.

58. Spain and Portugal were probably the first to embark on the procedure for a referendum. The Spanish Prime Minister, José Luis Rodríguez Zapatero, announced on 23 June that a referendum would be held "as soon as possible". Spain will be holding its referendum on the European Constitution on 20 February 2005 and will be the first country to do so. The question put to citizens is very likely to be: "Do you approve the draft Treaty establishing a Constitution for Europe?" The former Portuguese Prime Minister, José Manuel Durão Barroso, now the incoming President of the European Commission, also announced on 23 June that a referendum could "be held in 2005, probably early in the year".

59. France and Poland will very likely be holding their referendums soon after. On 14 July, the French President, Jacques Chirac, decided that there would be a referendum in France and said it would take place "in the second half of 2005". The French Minister for Foreign Affairs, Michel Barnier, said he hoped to launch a national information campaign on the European Constitution in October this year and wanted every household to receive a copy of the text. In late March, the Polish Prime Minister, Leszek Miller, and the President, Aleksander Kwasniewski, announced they were in favour of a binding referendum, which could take place in autumn 2005. The Minister for Foreign Affairs, Włodzimierz Cimoszewicz, has proposed combining the plebiscite with the presidential elections that are due to be held around then. This would ensure that the necessary 50% turnout is reached.

60. The United Kingdom and Denmark could be the last to ratify the Constitutional Treaty by referendum. Tony Blair, who has said he would like to see European unity on this issue, has declared that there will be one. However, it is highly likely that the British electorate will vote "no". According to the findings of the January 2004 opinion poll, the British came top of those European citizens opposed to the Constitution with 30% declaring they would vote "no" as compared with 15% for the

25 EU member states as a whole. One of the main reasons for rejection could be the scepticism of the British media about Europe.

61. It is planned to hold the UK referendum in the second half of 2005 or in 2006. It will certainly be preceded by a general election, possibly in spring 2005. The date of the Danish referendum will depend on the outcome of parliamentary discussions due to start this autumn, but prior to the conclusion of the Intergovernmental Conference the Danish Prime Minister said he thought the referendum in his country could take place after that in the United Kingdom. The June 2004 opinion poll in Denmark showed that a considerable number of citizens were opposed to the Constitution (34%). However, the outcome is by no means certain given that 51% of respondents were in favour of it.

62. In view of high rate of abstention in the recent elections to the European Parliament, what is likely to be the result of the referendums in those countries which have decided to hold them? Provision has in fact been made for the possibility of a member state rejecting the Constitutional Treaty. Three “remedial options” are possible should that happen. The first would consist in holding a second referendum, as was done in Ireland following the electorate’s rejection of the Nice Treaty. The second would entail renegotiating the Treaty with the “rebel” country and rendering optional the clauses causing the most problems. Finally, there is the option as originally envisaged by the Convention on the Future of Europe: “If, two years after the signature of the Treaty establishing a Constitution for Europe, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter will be referred to the European Council”<sup>3</sup>.

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<sup>3</sup> Declaration 30 on the ratification of the Treaty establishing a Constitution for Europe (Document CIG 87/04 ADD 2 of 6 August 2004).

## APPENDIX

### *The case of Poland* (Contribution by Mr Gawlowski, co-Rapporteur, Poland)

1. The European Constitution and its ratification by individual EU member states are of crucial importance for the future functioning and further enlargement processes of the EU. During the June EU summit held in Brussels, representatives of 25 EU states succeeded in reaching agreement on the wording of the draft Constitutional Treaty. Poland abandoned its efforts to secure the arrangements defined in Nice for decision-taking in the EU Council and based on a system of weighted votes. Instead, Poland agreed to the double majority voting pattern. However, at Poland's insistence the minimum threshold required for a decision was raised: any decision will require the consent of 55% +1 of the countries inhabited by 65% of the EU's population. The mechanism of a blocking minority was set out in the form of a separate declaration. Poland's request for the draft Constitutional Treaty to include a reference to Christianity was turned down. The provisions of the European Constitution gave rise to contrasting opinions in political circles. The Prime Minister perceived them as a success for Poland and the Foreign Affairs Minister considered them the best compromise possible. The compromise was most fiercely criticised by the Opposition.

2. The position the Polish Government adopted at the Brussels summit on 16 June 2004 was the subject of a highly critical assessment by Poles<sup>1</sup>. 58% of those polled were of the opinion that the government had not achieved much and had been too ready to abandon the fight for provisions that were to Poland's advantage. That opinion was shared by all the social and demographic groups included in the survey. However, their impression derives on the one hand from a knowledge of the Constitutional Treaty that is no more than superficial, and on the other hand from the fact that public opinion tends to concentrate on the issues most avidly discussed by local politicians. While those issues are important, they are not the only ones. Only 16% of respondents thought the government had achieved something in agreeing to the best possible of compromises with regard to the Constitutional Treaty.

3. The issue of the role and position of individual states within the Union has also aroused great controversy and uncertainty, particularly among the new member states. Public opinion surveys conducted in Poland show that a significant number of citizens fear that the European Constitution will compound the EU's strongest countries' domination over their weaker partners. 53% of those polled feared that the European Constitution would weaken Poland's position and make the more vulnerable states even more dependent on the EU's more powerful members. The fact that the provision allowing EU Council decisions to be taken by a majority diminishes Poland's potential compared to that guaranteed by the Nice Treaty is one of the main arguments used by those who oppose the Constitution in its current shape, and has frequently been mentioned in debates on the issue. Constitution opponents claim *inter alia* that the new distribution of power will strengthen the position of the EU's largest members – France and Germany – raising concerns about their dominant role within the EU. On the other hand, however, Constitution enthusiasts have reasoned that its adoption is essential in order to make the enlarged European Union function properly. 43% of respondents agreed with this. From this it can be inferred that adoption of the Constitution will enhance the EU's functioning, but at the cost of the organisation being dominated by its strongest members.

4. The Eurobarometer survey shows, in turn, that 62% of respondents in the new EU member states are convinced that without the Constitution the European Union is likely to experience difficulties in the way its institutions function. The survey also reveals that this view is shared by the majority of participants in 24 out of the 25 EU states.

5. Polish citizens' views on the impact the European Constitution will have on the organisation's functioning vary significantly. Opinions expressed in relation to that issue are closely linked with the level of education – the higher it is, the greater the support for the Constitution. It is clear that the more educated respondents are, the more often they expect the EU to function more efficiently once

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<sup>1</sup> CBOS survey of July 2004; BS/123/2004.

the Constitution enters into force. This presumption is made by 27% with a level of primary education and 55% of university graduates. A low level of education is synonymous with a lack of opinion in this respect. The political views and sympathies of those polled are also a diversifying factor.

6. It is worth mentioning here that the Eurobarometer survey results published in July 2004 indicate that on average 73% of respondents in the EU's new member states were convinced about the need to adopt the European Constitution while, according to the same survey, the degree of familiarity with the draft Constitutional Treaty among citizens in those countries decreased, within a year, from 31% to 28% (at the same time an increase from 24% to 30% was recorded among citizens of the older EU member states).

7. In Poland the decision to ratify the Constitutional Treaty may be taken either by a two-thirds majority in Parliament, or may be made with the help of a national referendum.

8. The majority of Poles think that the fate of the European Constitution should be decided by referendum. This view is shared by 57% of respondents compared to 52% in October 2003. According to 22% (7 per cent fewer than in 2003) the issue should be decided by Parliament. The conviction that a referendum should be held on the European Constitution prevails in all social and demographic groups which took part in the survey.

9. When asked whether they would be willing to participate in a referendum on the European Constitution, 64% of Polish respondents said they would and 42% said they would definitely go and vote. When broken down into age groups, 77% of adults aged 35 to 44 said they would vote, followed by university graduates (76%), high school graduates (75%), and the youngest group aged under 24 (71%). Those most willing to participate in the referendum included members of managerial staff and intellectuals (83%), as well as pupils and students (78%).

10. More than half of potential participants (56%) intend to vote in favour of the Constitution while slightly more than one fifth (22%) say they will vote against it. The attitude towards the Constitution is to a large extent linked with the level of education – the higher it is, the greater the support for the Constitution.

11. Those citizens opposed to the European Constitution and who would vote against it in a referendum are afraid of hegemony on the part of the strongest states (75%), and doubt that the Constitutional Treaty would facilitate the way the EU functions (63%). Constitution enthusiasts are also worried about the domination of the EU's most powerful countries (62%), but unlike the opponents, they hope that once the Constitution enters into force, the EU really will function better (71%).

12. Discussions about European issues take on increasing importance whenever major events such as an Intergovernmental Conference, Presidency changeover or EU enlargement take place. That is when the debate becomes heated and positions begin to polarise. It is patently clear that many local politicians exploit European issues unscrupulously where it serves their own political campaigns. To that end, they often take advantage of what is common to a certain part of society, i.e. insufficient knowledge of the complex workings of European politics, unfamiliarity with the wording of the Constitutional Treaty, a fear of Poland's losing its sovereignty, concern about the domination of stronger European partners (particularly Germany and France).

13. Such attitudes are reflected both in the public debate which takes place in the media and in parliamentary debates. On such occasions, the Sejm's rostrum is often used by parliamentarians to relay the deepening frustrations of sections of the electorate and to win its support for parties opposing European integration or displaying a sceptical attitude towards the process. That is what far right parties in particular excel at. Spreading anti-EU propaganda, expressing disapproval of the lack of a reference to Christian values in the Constitution and accusing their opponents of betraying the nation's interest by abandoning the provisions of the Nice Treaty are their main weapons.

14. The scope and content of parliamentary debates held in Poland with regard to the Treaty establishing a Constitution for Europe are summed up in two resolutions adopted by the Sejm:

- Resolution on the Treaty Establishing a Constitution for Europe<sup>2</sup>: in its official standpoint, the Sejm indicated that it expected the Polish delegation to the Intergovernmental Conference to:
  - demand a reference to Christian values in the preamble to the Constitutional Treaty;
  - acknowledge the North Atlantic Treaty Organisation as the guarantor of European security, as opposed to defence policy initiatives competing with NATO and based on co-opting;
  - implement the “one country one commissioner” principle, and the joint Council leadership principle;
  - reject proposals weakening Poland’s position in the EU Council as compared with the principles adopted in Nice in 2000 with which Polish citizens casting their votes in a referendum on the European Constitution would be familiar; as far as this issue was concerned, the Sejm demanded that the Polish Government take a firm stance and consider using its veto if the arguments it put forward were not taken on board by the Intergovernmental Conference;
- Resolution on the Treaty Establishing a Constitution for Europe, dated 11 December 2003, in which the Sejm confirmed the validity and effectiveness of its standpoint of 2 October, and stressed, in particular, that the system of weighted votes in the EU Council provided for by the Nice Treaty of 11 December remained the best guarantee for the implementation of the principle of solidarity within the European Union. The Sejm of the Republic of Poland called on the Council of Ministers to effectively defend that system.

15. The Constitutional Treaty was just one of the issues dealt with in a parliamentary debate during the 72<sup>nd</sup> Sejm session on 2 April 2004. It concerned “the Government’s information on policy towards the European Union”. In its statement, the government summed up activities in the run-up to Poland’s accession to the EU (adapting Polish law to the EU legal system, utilising aid funds, etc.), and stated its position on the European Council’s decision to extend the Intergovernmental Conference so that the Constitutional Treaty could be adopted during the Irish Presidency: The Polish Government also declared its readiness to seek a compromise as a way of helping to break the deadlock, provided that Poland secured arrangements corresponding to those provided for in the Nice Treaty.

16. This debate was combined with a debate on several draft resolutions regarding Poland’s membership of the European Union. They referred, *inter alia*, to the following:

- the MPs’ draft resolution on Refusing to Sign the Treaty on Adopting the European Constitution (form No.2296);
- the MPs’ draft resolution on the European Union’s Constitutional Treaty (form No.2348), in which the government was called on not to sign a treaty containing a provision giving the EU Constitution priority over the Constitution of the Republic of Poland.

17. Both draft resolutions were rejected by the Sejm.

18. Several debates have recently been held in the Polish parliament on the draft Treaty establishing a Constitution for the European Union:

- during the 77<sup>th</sup> session held on 16 June 2004 the debate concerned the information provided by the Minister for Internal Affairs on the progress of preparations for the Brussels European Council, and on the progress of work on the Treaty Establishing a Constitution for Europe;
- during the 78<sup>th</sup> session held on 20 June 2004 the debate concerned information provided by the government on the results of the Brussels European Council of 17 and 18 June 2004.

19. The debates focused on a political assessment of the government’s position before the European Council and the outcome of that meeting with regard to issues referred to in the Sejm’s resolutions,

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<sup>2</sup> Polish Monitor No. 47, item 694; 2 October 2003.

with particular emphasis on the inclusion of a reference to Christian values in the preamble and maintaining the weighted voting system agreed at Nice, which was in Poland's interest.

20. The issue that gave rise to most controversy was the fact that the Polish Government had made a concession in respect of that system. The Polish delegation had agreed to seek a compromise within the framework of the double majority formula, subject to protective mechanisms in the shape of a blocking majority being put in place. The vote-counting mechanism adopted after the Brussels negotiations was widely criticised by all opposition parties and members of parliament.

21. Both pieces of information provided by the government failed to be acknowledged by the Sejm.

22. When discussing parliamentary debates, it is also worth having a look at a different type of discussion concerning the birth of the EU's Constitution. The mass media (nationwide newspapers, magazines, radio and television) constitute the broadest forum for a public debate in which large sections of society may be involved. The following points may be considered to be general conclusions drawn on the basis of the Polish mass media's overview:

- the frequency, scope and emotive tone of information on the Constitutional Treaty were determined by current events concerning the negotiations of its contents, and related Sejm debates,
- public debates in the mass media, similarly to Sejm debates, concentrated on Poland's position on the inclusion of Christian values in the preamble to the Constitution and on the system of counting votes in the EU Council,
- the Treaty was the subject of current event stories, and of in-depth analyses by both journalists and European Union experts (with the experts often challenging the opinions of politicians and journalists).

23. The most outstanding feature of mass media debates is the lack of an organised constitutional debate that enables citizens to learn how important the Constitutional Treaty is for the European Union, what its legal status, structure and principal provisions are, and how those provisions safeguard the interests of Poland as an EU member. No such educational or informative debate was prepared either by public or private mass media. Focusing on Poland's disapproval of certain provisions of the Treaty severely limited the scope of the debate and hindered citizens' access to knowledge about the Treaty itself.

24. An analysis of the aforementioned conditions would suggest that although support for integration-related undertakings varies in different countries and social groups, and is subject to continuous pressure exerted by certain political forces, the general trends are fairly positive and allow us to assume that the Constitutional Treaty will win the approval of the majority of the European population. In my opinion, in order to achieve that, one needs to:

- intensify, in all EU member countries (and outside them), educational efforts to explain the content and the nature of the EU's Constitutional Treaty, making sure that the knowledge is conveyed in particular to those who take a sceptical approach towards integration processes;
- continue to simplify European legislation so that it becomes user-friendly and understandable for citizens;
- reach a compromise concerning the European budget and shape its future assumptions in such a way that advantages for individual entities and the whole community are obvious;
- speed up the efforts aimed at working out a common European foreign and defence policy, thus enhancing European society's widespread sense of security and commonwealth;
- clearly determine the European Union's prospects regarding its expansion to take in new potential members.

25. It is the co-Rapporteur's opinion that if all these steps are taken, it should be possible to obtain the approval of our citizens for the compromises contained in the Constitutional Treaty. The text is testimony to the bold and imaginative thinking and the courageous acts of those responsible for it.

Never before has a Constitution of such historic significance been drawn up, a Constitution which will determine the fate of the entire continent and its inhabitants.



