

'A new Constitution with an uncertain future' from the Frankfurter Allgemeine Zeitung

Caption: On the eve of the signing of the Treaty establishing a Constitution for Europe on 29 October 2004 in Rome, the German daily newspaper Frankfurter Allgemeine Zeitung reviews the principal advantages of the new Constitution compared to the provisions of the Treaty of Nice.

Source: Frankfurter Allgemeine Zeitung. 29.10.2004. Frankfurt. "Eine neue Verfassung mit ungewisser Zukunft", auteur:Stabenow, Michael , p. 3.

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A new Constitution with an uncertain future

Treaty to be signed in Rome / By Michael Stabenow

Brussels, 28 October. At the Capitol in Rome, things are about to come full circle. This Friday, at the place where the Rome Treaties were signed in 1957, the Heads of State or Government of the 25 EU Member States will be putting their signature to a document which has come to be commonly referred to as the 'Constitution'. Almost five decades ago there was an interval of just eight months between the signing of the Rome Treaties and their entry into force on 1 January 1958. It is still a matter for speculation whether legal validity will ever actually be enjoyed by the 'Treaty establishing a Constitution for Europe', as the collection of texts comprising 454 articles and a number of protocols and annexes is officially known. Certainly, the road to ratification is likely to be longer and more arduous than it was at the time that the Community of Six was founded.

Despite the uncertainty surrounding the outcome of the referendums in Britain, France and Denmark, as well as in some Central and Eastern European countries, the formal signature of the Constitution in Rome is intended to be a major symbolic milestone on the path to European unification. Even the title of the document makes it clear that integration is a process. In the event of future revisions of the Constitution, the Member States will ultimately retain control over the process; they and not the European Union institutions themselves will determine the constitutional system. The Treaty establishing a Constitution nevertheless incorporates numerous features of a classic constitution. For example, it defines a Union of citizens and States and outlines tasks and objectives as well as ways of achieving them.

It appears that European development may hurry ahead of what is currently enshrined in the treaties and even the Constitution — despite the fact that, according to the current timeframe, it will not be ratified until 2007 at the earliest. This is borne out by the present dispute over the composition of the future European Commission under the presidency of former Portuguese Head of State José Manuel Barroso and over the portfolios to be assigned to the proposed Commissioners. By threatening to reject the entire Commission — as it is entitled to do under the treaties — Parliament can now exert direct influence over the assignment of portfolios and can even push for the withdrawal of some of the proposed candidates. This right is not explicitly enshrined even in the Constitution. Irrespective of views on the repercussions of the present dispute for the power triangle formed by the governments (Council), the Commission and Parliament, MEPs have succeeded in bolstering their own power.

There is likely to be less reference to this in the official speeches in Rome than there is to the argument that is central to the forthcoming ratification debate — that in practice the Constitution offers a number of advantages over the present Treaty of Nice. This does not only apply to the long-disputed 'double majority', according to which most decisions will in future require the votes of 55 % of the governments, which in turn have to represent at least 65 % of the EU population. This new arrangement is not only easier to understand than the Nice arrangement but also promises greater capacity to act in a Community that now has 25 Member States.

The Constitution provides a clearer picture than before of the division of competences between the EU and the Member States and of the role and powers of the European institutions. Hopes for the foreign and security policy are resting on the new 'European Minister for Foreign Affairs', who will be wearing 'two hats' in his role involving both the Commission and the governments and who is to have a common diplomatic service at his disposal. Although Valéry Giscard d'Estaing, Chairman of the Convention tasked with drawing up proposals for the Constitution, has failed in his objective that any secondary school pupil in Europe should be able to understand the text, it is nevertheless more comprehensibly and more clearly structured than the present bundles of treaties. It sets out fundamental objectives and values and the structure and role of the institutions (Part I), the Charter of Fundamental Rights (Part II), which will be legally enforceable in the future, the functioning of the individual areas of policy (Part III) and procedures for future revisions of the Treaty (Part IV).

The Constitution can enter into force only after ratification by all 25 Member States. As plans stand at the

moment, referendums could be held in at least ten countries. Elsewhere, probably including Germany, the procedure will no doubt still follow the classic route of parliamentary assent. It is sensible to start in countries referred to as unproblematic and to hope for positive dynamics, rather as in the voting on the accession treaties in Central and Eastern Europe.

Italy, for example, is pinning its hopes on parliamentary assent before Christmas. In Spain, a referendum is due to be held this coming February. In Britain, where a 'yes' vote looks extremely uncertain at present, there is likely to be a referendum in March 2006 at the earliest, while the Czech Republic could vote as late as summer 2006. What might happen in practice if problems arise with the ratification process is still unclear. The Heads of State or Government have portentously agreed that, if 'difficulties' are encountered in one or more countries and provided that, two years after signature — that is to say by the end of October 2006 — at least four fifths of the Member States have ratified the Constitution, 'the matter will be referred' to the European Council. All ideas about possible ways out of an impasse will probably stand and fall with the outcome of the referendum in France, one of the original Six. It is due to be held in May 2005 at the earliest.