The Constitutional Treaty of the EU and beyond
- What’s in it for the citizens of Europe?

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SOLIDAR is a European network of social and economic justice non-governmental organisations (NGOs) working in development and humanitarian aid, social policy, social service provision and life-long learning.

SOLIDAR works in Europe and worldwide in alliance with trade unions, organisations of the labour movement and civil society for an equitable and sustainable world.
1. Introduction

In May and June 2005, the people of France and the Netherlands voted against the European Constitutional Treaty. In June 2005, at the European Council, member states found no agreement on the setting of the EU Budget for the years 2007-2013. Hence, the question needs to be asked: Is the European Union in a crisis?

One of the objectives of the Convention on the Future of Europe, which drafted the Constitutional Treaty, was to bridge the gap between European Institutions and the women and men living in Europe. This they have clearly failed to achieve. People across the EU increasingly feel that they cannot make their voices heard in the political process of shaping the European Union. They perceive the EU as lacking democratic legitimacy, too remote from its people, often pushing for reforms in the name of productivity and growth only, and not protecting them from the excesses of globalisation – all too often ignoring their needs, fears and aspirations.

In the last year, across Europe, political parties, trade unions and civil society organisations have been discussing whether to support the Constitutional Treaty or not. In these debates, the judgment of the actual text became entangled with the disappointment with current political realities. Other issues clouded the debate. The eventual admission of Turkey, the disputed directive on services in the internal market, the way the enlargement of the EU had been pursued with little public debate or understanding, the effect of the Euro on prices as well as deep-seated dissatisfaction with the performances of national governments. All of these points seemed to have more impact on the outcome than the relative merit or demerit of the text itself. A debate about whether the Constitutional Treaty is dead or not will continue for some time to come. One thing is sure: the discussion on the Constitution has sparked off an unheard level of debate about Europe and its future. The Constitutional Treaty is a good starting point for such discussion and debate. The assessment of the Constitutional Treaty presented in this booklet is based on two simple questions: 1) Does the text improve on the existing treaties, i.e. the Treaty of Nice? And 2) do we believe that by rejecting the current text we can press for a better result in the future?

Solidar, together with the main European NGOs, believes that the Constitutional Treaty marks an improvement on the Treaty of Nice. To read current treaties, one has to delve through and cross-reference countless legal texts. The Constitutional Treaty has an unquestionable advantage of offering a readable and coherent text. It has a stronger social thread, incorporates the Charter of Fundamental Rights, provides for more coherence for external policies, and introduces articles providing for a citizens’ initiative and civil dialogue. Its one core weakness is that the section on implementation (Part III) was not developed to the same extent. Members of the Convention limited themselves to a few small changes, and because of lack of time, agreed to include the current implementation rules into the Constitutional Treaty without further review. They would have been better advised to listen to NGOs such as Solidar who were suggesting that they should also reform the implementation. Unfortunately, ratification or not, this part of the text will remain in existence.
How about the chances of improvements by rejecting the Treaty and pressing for a better one? Since the setting up of the Convention, the political complexion of the Union has shifted further to the right. This was evident when the “Intergovernmental Conference” which followed the Convention, weakened aspects of the text. Any renegotiation would surely endanger even those advances made.

In the days after the Dutch referendum, the Vice-President of the European Commission, Margret Wallström called for a Plan D to come into action – a plan for more debates and more democratic structures. In order to strengthen this process of democratic renewal, Solidar together with over 40 NGOs all over Europe, handed a ‘Citizen’s Key to Europe’ to Margret Wallström. Through this event, NGOs marked the day the debates on the future of Europe should start anew – exactly one month after the French referendum.

On receiving the Key for Democracy Margot Wallström said: “I am aware that this is about democracy and that receiving the key means taking on a heavy responsibility. Everybody will have to contribute if we are to ensure that this key is used properly. The European Commission wants to ensure that ordinary women and men are involved in the debates about what kind of Europe we want. I welcome the debate that you have set on track with this initiative.”

Crisis can cause helplessness and stagnation. But they can also be seen as opportunities for rethinking and striking new paths. What the European Union needs now is democratic renewal. The proposed Constitutional Treaty is in fact a step in the right direction: a) more rights for national parliaments and the European Parliament, b) the possibility of a citizens’ initiative and, c) a legal base for civil dialogue next to the political and social dialogue, are all measures which will strengthen the democratic legitimisation of the EU. But it does not go far enough and the EU has so far failed the communication test. When debating the future of a peoples’ Europe, the real question is whether we can build a Europe, which will address the real fears and hopes of our fellow citizens?

It is too early to tell what will come of the Constitutional Treaty for the European Union. But one thing is sure: if we want to ensure a more democratic Europe that reflects our common aspirations, it will be vital that citizens’ organisations all over Europe work together to think through solutions and to make their voices heard in the European political process.

Josef Weidenholzer
Vice-President Solidar

Solidar wishes to thank the Johannes Mikhelson Centre in Estonia for their great help in organising a seminar in Tallinn in March 2005. The discussions about the Constitutional Treaty we have had in Tallinn with many representatives from civil society organisations from Estonia, Latvia and Lithuania were an important input to the debate within the Solidar network and in preparing this publication.
2. Crisis? Frequently asked questions in 2005

On the 18th June 2004, Heads of Governments adopted a Constitutional Treaty for the European Union. It was signed a few months later in Rome, in October 2004. European Treaties however need to be ratified by each of the 25 Member States, which currently form the EU, before they come into force. The signing in Rome therefore did not mark the end of a process of establishing a Constitutional Treaty for the EU, but rather was the beginning of the ratification phase – and the beginning of heated debates about the future of Europe itself.

How does the ratification process work?
In some members states European treaties are ratified by parliamentary votes, whilst in others citizens directly vote in favor or against in referenda. A combination of a parliamentary vote with a consultative referendum is also possible. The Treaty can only enter into force once it has been ratified by all the signatory States.

In the last 12 months, 13 Member states ratified the Constitutional Treaty, accounting for 227 million inhabitants of the European Union. In two member states, France and the Netherlands, the people rejected the Constitutional Treaty in referenda.

As of 20th July 2005

YES

Countries that ratified the Constitutional Treaty:
- by Parliamentary vote: Austria, Belgium, Cyprus, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Malta, Slovakia, Slovenia
- by referendum: Luxembourg, Spain (both consultative)

NO

Countries that rejected the Constitutional Treaty:
- by referendum: France, the Netherlands (consultative)

Not ratified yet

Countries that plan to ratify:
- by parliamentary vote: Estonia, Finland, Sweden
- by referendum: Czech Republic, Denmark, Portugal,
- by referendum and parliamentary vote: Ireland, United Kingdom

Ratification postponed

Czech Republic, Denmark, Ireland, Poland, Sweden, United Kingdom
Two times No = EU in a crisis?

“(…) if two years after the signature of the Treaty establishing a Constitution of 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.” (Declaration on the Ratification of the Treaty).

European Treaties have been rejected in referenda before.¹ But never has talk about the European Union being in crisis been louder, and never before did Heads of Government consider stopping the ratification process because of negative outcomes in one or two referenda. This time, the situation is different: The UK, Ireland, Denmark, the Czech Republic and Sweden have postponed their ratification processes for the moment, Portugal is also planning to do so.

One reason for the reaction on this occasion is the fact that in very short succession the citizens of two EU founding members have with a decisive majority of votes rejected the Constitutional Treaty. There are many voices calling for the European Union to pause and reconsider the mechanisms with which it works. The accusation that the EU is an elitist project negotiated between very few people in Brussels cannot be ignored any longer. The mandate of the Convention was not only to reform the EU and its institutions to make them work better, but also to strengthen its political dimension and link it closer to its people. On the last point it most definitely failed.

A Constitution engraved in stone?

A second reason why these rejections are not shrugged off as minor incidences in the course of European integration, is the perceived importance of the Constitutional Treaty. Whereas earlier treaties were seen as another step along the way, valid only for a few years and therefore easily replaced by better rules, the Constitutional Treaty has achieved greater status, almost that of a founding document for a new European Union. Valéry Giscard d’Estaing, the Convention’s President fuelled misconception by calling it a ‘Constitution for the next 50 years’.

The Constitutional Treaty falls short of many of our expectations. It is a text based on compromise reached by politicians of many persuasions and as such it is in parts ambiguous. The Convention however was successful in making the functioning of the EU more transparent and democratic. The European Parliament has come out stronger by gaining extensive new powers as co-legislator with the Council and overall decision-making has been simplified and rationalised. The introduction of new provisions concerning the involvement of civil society, particularly in relation to a structured dialogue with civil society associations is an important innovation, which will bring the EU closer to its citizens. But there are many shortcomings too. NGOs were deeply unhappy that the implementation

¹ In 1992, 52% voted NO to the Maastricht Treaty in the Danish referendum, in 2001 53,87% NO in Ireland against the Nice Treaty.
section of the Treaty was not redrafted. Much of this text is over 30 years old and, more importantly, both in language and in content it clearly contradicts the first part of the Constitutional Treaty.

NGOs maintained that the campaign for the reform of the Constitutional Treaty would start the day after the ratification. That is why we argued for a simpler amendment process, which would not require the launch of a new Intergovernmental Conference. Up to now, European treaties can only be changed through Intergovernmental Conferences. The Constitutional Treaty now envisages two new and less cumbersome procedures.

1. Art. IV-443 ordinary revision procedure:

“Member States, the European Parliament of the Commission can submit amendments to the Treaty to the Council. If granted (through simple majority in the Council), the amendment is either examined by a Convention or by a conference of representatives of the governments of Member States. The amendment will enter into force when ratified by all Member States.”

2. Art. IV-445 simplified revision procedure concerning internal Union policies and action:

“1. The Government of any Member State, the European Parliament or the Commission may submit to the European Council proposals for revising all or part of the provisions of Title III of Part III on the internal policies and action of the Union.
2. The European Council may adopt a European decision amending all or part of the provisions of Title III of Part III. The European Council shall act by unanimity after consulting the European Parliament and the Commission, and the European Central Bank in the case of institutional changes in the monetary area. Such a European decision shall not come into force until it has been approved by the Member States in accordance with their respective constitutional requirements”

According to Art. IV-443, the Convention method is foreseen as a tool for any future major changes concerning the European Treaty. The Convention on the Future of Europe has shown that EU policy making does not have to happen behind closed doors. The distrust of citizens once again reaﬃrms that the unedifying spectacle of Heads of Government haggling behind closed doors as they did in Nice in 2000, is no longer feasible for a Europe of 25 or 30 countries. The new treaty provision is a step towards more transparency and a more open way of discussing treaty changes.

Art. IV-445 acknowledges the fact that Part III of the Treaty is primarily taken from earlier treaty texts, and was not adequately discussed by the Convention or the Intergovernmental Conference. It states that internal policies within the Constitution (Part III, Title III) can be subject to a simplified revision procedure. These provisions do not apply to external policies (Part III, Title V), which allows to preserve the independent position of the Development Cooperation and Humanitarian Aid within external relations.
Voted against the old or the new Europe?

The reasons for rejecting the Constitutional Treaty range widely from protest votes against national governments, to fears over EU enlargement, to concerns about the EU endorsing neo-liberal economics and the free market, and to fears about national governments losing their sovereignty. The text of the Constitution itself does not feature high as a reason for rejection.

The irony is that a lot of the arguments against the Constitution are not new. Civil society organisations have long complained that the EU suffers from a democratic deficit, lacks clear values and objectives, and that the European project is missing a political and social dimension. Instead, it turns more and more into a purely economic union. The draft treaty agreed by the Convention aimed at meeting many of these criticisms, but failed in the attempt to communicate the advances it made and involving citizens in their deliberations. One could argue that people of France and the Netherlands voted against the EU under the old treaties and not against the EU that could be created under the new Constitutional Treaty.

It seems as if the EU had lost the trust of its citizens long before, and is now struggling to make people believe that attempts for reform are not just window-dressing. For instance, many in France disbelieved the advances made in terms of social policy, because some elements in the so-called Bolkstein directive on an internal market on services which was being discussed at the same time, were perceived as a major threat to public service provisions. The EU needs to make sure that it does not change its message with each new audience. To regain the trust if its citizens it needs to be coherent, consistent and delivering its message with clarity and conviction.
3. A Constitutional Treaty for a more social Europe? A short analysis of advances and setbacks

The construction of a true social Europe stands out as one of the 21st century’s main challenges. Surveys conducted before and after the French and Dutch referenda, showed that concern about the social dimension of the Constitutional Treaty was one of the aspects which strongly influenced women and men in their decision on how to vote. In France, 16% of those who voted No said that they had rejected the Constitutional Treaty because it was not social enough.2

The importance women and men in Europe attribute to the social dimension of the European Union is not new. In defining the specificity of Europe, something akin a European identity, the social model is always one of the elements mentioned. Even though there is no agreement on how to define this so-called European Social Model, and despite the fact that social policy and social protection are Member State competences, there is a shared belief that certain values are common to all welfare models throughout Europe and that these values build the foundation of the European Social Model.

Key elements of all European Social Welfare models are:

- The belief that material needs of citizens need to be secured;
- That everyone has a right to health care, social services, housing, education, and a pension;
- That social cohesion is an important political goal;
- The principle of participation of citizens;
- The belief that certain benefits and services need to be available to all as a right and not as charity;
- The awareness that social justice and social protection are not only costs, but make a contribution to production and growth.

The last 10 years have seen important changes concerning the social dimension of the EU: the Amsterdam Treaty introduced a new article against discrimination and the Charter of Fundamental Rights was agreed. In 2000, Heads of States agreed the so-called Lisbon Strategy, an integrated approach of economic, employment and social policy for sustainable growth. Yet just at the time when the EU set out to draft a Constitutional Treaty, the climate for social policy in Europe was changing. Social policy is increasingly sidelined and subordinated to growth at all costs.

The Constitutional Treaty consolidated some of the gains in the area of social policy, and offered some smaller further advances. The danger is that in the current political climate the EU might well steer into another direction.

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Art. I-2 The Union’s values

“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”

The Constitutional Treaty is a basic landmark in establishing fundamental and social rights as guiding principles of the European Union. Whereas previous treaties contained only ‘principles’, the new article I.2 sets out values, explicitly including the rights of individuals belonging to minorities, pluralism, non-discrimination, tolerance, fairness, solidarity, equality between women and men. These values are a condition for adhesion and membership of the European Union, and could therefore be a reason for exclusion from the EU if a member state neglects them.

Art. I-3 The Union’s objectives

“3. The Union shall work for sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market, aiming at full employment and social progress (...) It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child. It shall promote economic, social and territorial cohesion, and solidarity among Member States. (…)”

Whereas previous treaties considered that the Union’s main objective was free and undistorted competition and the stability of prices, the Constitutional Treaty does not question these principles as such, but aims at counterbalancing them by stating new social objectives, such as sustainable development. The objectives also include a specific mention of the fight against social exclusion and discrimination, as well as the promotion of social cohesion.

“(…) the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principle of democracy and the rule of law. (...)”

(II - Preamble of the Charter of Fundamental Rights)

The Charter of Fundamental Rights, agreed and signed in Nice in December 2000, lays down a number of fundamental rights. These include, human dignity, the right to live, as well as social rights, such as the right to education and information. Additionally it also incorporated the consultation of workers within their company, to protection against unfair dismissal and the right to negotiation and group actions. Up until today, the Charter is not legally binding, but has acquired political and legal importance, with the European Court frequently referring to it in its decisions. The interpretation of the legal impact of the integration of the Charter in the Constitutional Treaty is still a matter of debate, but it is
undoubtedly clear that this integration will give the Charter further legal and political importance and reinforces the values set out in Art. I-2.

A balanced approach to economic and social policies?

The Lisbon Strategy in 2000 set out targets regarding economic, employment and social policy, including targets on social inclusion. The values and objectives in Art. I-2 and I-3, reflect this integrated approach of economic, employment and social policy and acknowledges the link between economic and social progress and sustainable development.

One innovation strengthening social policies in the EU is the fact that in the Constitutional Treaty social policy is defined as a shared competence between the EU and Member states, and not a supporting competence (art. I-14). In the context of a common EU currency and a EU internal market, only coordination can ensure that social policy is not sidelined. Too often have national governments used EU economic policy as an excuse to cut spending on national social systems.

The Open Method of Coordination in the area of social inclusion, employment, pensions and health and long term care, has become a way of policy coordination and exchange of practices between Member States, and offers the Commission the possibility to evaluate Member States efforts in these areas. The Constitutional Treaty acknowledges the Open Coordination Method as an instrument of economic and social policy, without however being explicitly mentioned.

Art. I-15: The coordination of economic and employment policies
“1. The Member States shall coordinate their economic policies within the Union. To this end, the Council of Ministers shall adopt measures, in particular broad guidelines for these policies.
2. The Union shall take measures to ensure coordination of the employment policies of the Member States, in particular by defining guidelines for these policies.
3. The Union may take initiatives to ensure coordination of Member States’ social policies.”

Despite these advances, Art. I-15 retains an ambiguous wording by establishing a hierarchy between the main economic policy guidelines, the European employment strategy and the social inclusion strategy. According to the article, also in future the EU will first agree on the Broad Economic Policy Guidelines, and the two other strategies have to be in accordance with the BEPGs. Along these lines, economic governance is partly counterbalanced by recognizing the political clout of the European Central Bank. The Eurogroup is now autonomous and has been officially recognized by the Union (III-194), whereas, following the Treaty of Nice, all decisions involving the Euro zone were taken by the 25 Member states. This recognition adds true political power to the European Central Bank’s role.

Mainstreaming social concerns
Art. III-116: “In all its activities referred to in this Part, the Union shall aim to eliminate inequalities, and promote equality, between women and men.”
Art. III-177: “In defining and implementing the policies and actions referred to in this Part, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.”
Art. III-118 “In defining and implementing the policies and activities referred to in the Part, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”

An important step forward is the so-called horizontal clauses introduced in the beginning of Part III of the Constitutional Treaty. Preserving the gender mainstreaming clause, the remit is now widened to include the fight against poverty and social exclusion and against discrimination to be mainstreamed into all policies and the implementation of all actions of the EU, including external policy issues.

Art. I-48 The social partners and autonomous social dialogue
“The Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy.”

The contribution of social partners to the democratic life of the Union is now explicitly and transversally acknowledged, whereas it had previously been limited to the specific areas of employment, social policies, professional training and youth.

Art. III-122
“(…) given the place occupied by services of general economic interest as services to which all in the Union attribute value as well as their role in promoting its social and territorial cohesion, the Union and the Member States, each within their respective competences and within the scope of the application of the Constitution, shall take care that such services operate on the basis of principles and conditions, in particular economic and financial conditions, which enable them to fulfil their missions. European laws shall establish these principles and set these conditions without prejudice to the competence of Member States, in compliance with the Constitution, to provide, to commission, and to fund such services.”

Public services are usually described by a negative definition, i.e. they are defined as exceptions to rules of competition. The draft Treaty aims to give a more positive definition and recognises them as an indispensable component of social cohesion within the European Union. With the draft Constitutional Treaty, the EU has been given more reliable legal means, allowing Member states and local groups to exercise ambitious public service policies.
The Charter of Fundamental Rights states that the Union should recognise and respect public services such as established by the various national legislations “in order to promote social and territorial cohesion within the Union” (II-96). The Court of Justice could therefore impose sanctions on measures impeding access to such services. Furthermore, the Constitutional Treaty recognises that, in matters of public service provision, state subsidies are not prohibited (art. III-167), as well as the need to ensure that institutions entrusted with public service missions should effectively fulfil their task.

The biggest step forward for the recognition of public services on a EU level, is Art. III-122. It recognises the possibility of a European law providing a framework for the provision for services of general interest, to be voted with a qualified majority and by co-decision with the European Parliament. This clause will circumvent the essentially negative definition of public services, which was prevalent in previous treaties and possibly subjected relevant European policies to rules of competition. Without this clear legal basis, no European framework can be envisaged.
4. A unified voice for peace in the world?

The European Union today is a key partner for most countries in the world. As the largest trading block, it represents a big market for world products, and is also the biggest donor of humanitarian aid and development assistance. The EU is a point of reference for many developed and developing countries, regarded as the bearer of the values of democracy, as well as the protector of human rights and the defender of solidarity between people. Public reactions too, for example the beginning of the war in Iraq in 2003, have shown that EU citizens want the European Union to act as a common voice for peace and would like to see this political role on the international stage strengthened. The Iraq war however, has also highlighted that EU member states are often far from united when it comes to foreign policy.

According to the European Constitutional Treaty, would the EU in future be able to speak with one voice globally? How will the relations between external policy, security and development change?

Art. I-3 The Union’s objectives

“(…) in its relations with the wider world, the Union shall uphold and promote its values and interests. It shall contribute to peace, security the sustainable development of the Earth, solidarity and mutual respect among people, free and fair trade, eradication of poverty and protection of human rights, in particular the rights of the child, as well as to strict observance and the development of international law, including respect for the principles of the United Nations Charter.”

Framing the actions of the Union and the Member-States, Art. I-2 of the Treaty spells out the values that are considered part of a shared European background and which the EU is to safeguard. These values should be considered in all EU actions and promoted both at European and international level. Art. I-3 goes on to set out the objectives of the EU and explicitly states that they need to be respected also on the global stage. Human Rights are explicitly mentioned as one of the guiding objectives of external relations. For the first time, children’s rights are given specific consideration, along with the particular commitment to respect to international law and the United Nations Conventions.

“The Union shall define and pursue common policies and actions (…) in order to:

a) Safeguard its values, fundamental interests, security, independence and integrity;

b) Consolidate and support democracy, the rule of law, human rights and the principles of international law

c) Preserve peace (…)

d) Foster sustainable economic, social and environmental development of developing countries (…)  
e) Encourage the integration of all the countries in the world economy (…)”

3 Total aid given by the European Union and the national governments.
One of the biggest challenges for the Convention was the need to give the EU a clearer identity when acting externally. It was important to establish more coherence between the different policies and institutional strands involved in the EU’s external actions. In the chapter on the Union’s external action policy in the Constitutional Treaty, the objectives to be pursued by all of the EU external action, are clearly defined.

Art. III-316
“2. Union development cooperation policy shall have as its primary objective the reduction and, in the long term, the eradication of poverty. The Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries.
3. The Union and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.”

The Millennium Development Goals (MDGs), formulated by the UN General Assembly in 2000 and in principle to be attained by 2015, are an important target in the struggle against poverty worldwide. The chapter on EU external action policy in the Constitutional Treaty clearly refers to the MDGs, and the Union commits itself to work towards attaining them. Important principles related to the MDGs can be found in the EU development policy guidelines of the Constitutional Treaty. Poverty reduction for example has been put at the heart of the development policy.

Art. I-28 The Union Minister for Foreign Affairs
2. The Union Minister for Foreign Affairs shall conduct the Union’s common foreign and security policy. He or she shall contribute by his or her proposals to the development of that policy, which he or she shall carry out as mandated by the Council. The same shall apply to the common security and defence policy.
3. The Union Minister for Foreign Affairs shall preside over the Foreign Affairs Council.
4. The Union Minister for Foreign Affairs shall be one of the Vice-Presidents of the Commission. He or she shall ensure the consistency of the Union’s external action. He or she shall be responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union’s external action. […]”

In order to represent the voice of the EU on the international stage, one of the important innovations is the creation of a EU Minister for Foreign Affairs. The Foreign Minister will be in charge of overseeing the whole of the EU’s foreign policy including trade, defence and security, as well as development assistance and humanitarian aid. He/she will be responsible
for the development and coordination of all the aspects of the external action of the Union, ensuring consistency between them. This new post is often referred to as a “double-hatted position”: the Foreign Minister will be responsible to the Commission and to the Member States, i.e. the European Council. At present Mr Solana is the EU High Representative for the Security and Defence Policy (HRSDP), answering to the Council and to the Member States, whilst Ms Ferrero Waldner is the Member of the Commission responsible for External Relations. The aim of fusing these positions is to put an end to the duplication and confusion between the two roles. In conducting his/her various missions, the Foreign Minister will be assisted by a European External Action Service, which in effect will be a EU Diplomatic Corps.

As much as the fact that this new position will give the EU’s external action more visibility and coherence is to be welcomed, it has to be noted that no adequate procedure has been proposed in order to secure clear accountability and control of the activities in light of the powerful position the Foreign Minister holds. Furthermore, the European Parliament has not been attributed a role in exercising control over his/her actions.

Peace and stability are a prerequisite for growth and development. But development and security issues should remain separate. Under the Constitutional Treaty, the line between the two fields is blurred. The competences of the EU Foreign Minister comprise common commercial policy, cooperation with third countries and common foreign and security policy. In fulfilling his/her task, the EU Minister for Foreign Affairs shall be able to “use both national resources and union instruments, together with the Commission where appropriate.” (Article I-41, 4). Furthermore, he/she should be provided with “operational capacity drawing on civil and military assets” in order to attain these goals. All foreign policy instruments could be used on missions outside the Union for “peacekeeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations.” Security measures could according to this text also use up resources originally meant for development aid.

Art. I-43 Solidarity Clause
“The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States to
(a) prevent the terrorist threat in the territory of the Member States; protect democratic institutions and the civilian population from any terrorist attack, assist a Member State in its territory (…) in the event of a terrorist attack
(b) (…) in the event of a natural or man-made disaster.”

Along the same lines, the creation of a solidarity clause reinforces this concern placed on security and the need for better cooperation between Member States. In a post 9/11 world, this clause is regarded necessary to counter the threat of terrorism.
The clause places the emphasis on the creation of a military response and the fight against terrorism, despite the need for adequate civilian response in case of “natural disaster”. In addition, Art. III-309 as well as referring to humanitarian and rescue tasks, peace-keeping and peace-making, now also includes joint disarmament operations, military advice, as well as assistance tasks and post-conflict stabilisation. According to the Constitution all these tasks may contribute to the fight against terrorism, including the support of third countries in their efforts to fight terrorism in their territories.

Until now, the principles of impartiality, neutrality and non-discrimination have guided the humanitarian operations of Humanitarian Aid Department of the European Union (ECHO). The fact that humanitarian aid is presented as part of the external action of the Union’s overall framework raises concerns, since it might entail linkages between aid provision and political or military intervention, thus creating a threat to the safety of humanitarian aid workers, as well as the population affected by political crises.

**European Voluntary Humanitarian Aid Corps**

In order to establish a framework for the contribution of young Europeans in the humanitarian actions of the European Union, the Constitutional Treaty foresees the creation of a European Voluntary Humanitarian Aid Corps (Article III-321). Although the Constitution has yet to be agreed, the Council already asked the appropriate bodies to begin to assess the possibility for the introduction of this Voluntary Corps.

**NGOs having a long history in providing humanitarian aid** are concerned about the creation of this new Volunteer Corps, particularly if this entails bringing in inexperienced volunteers, in dangerous situations. Former Commissioner Poul Nielson, supported this view when he said: “Providing humanitarian assistance means nowadays operating in complex and often dangerous environments. We therefore need professional, experienced and trained partners able to deliver quality humanitarian aid and to minimize the risks for their own security of operating in dangerous contexts.(…) Humanitarian organisations and donors are well aware of the reality and are putting a lot of efforts into the development of a humanitarian professionalism”.

For many years, professional aid organisations have been implementing humanitarian aid on behalf of the Union. Their knowledge of the field, along with their technical skills, has clearly made an important difference. This has been particularly remarkable in the aftermath of the recent Tsunami disaster, which devastated entire regions in Asia and South East Asia. Solidar members, already present in the field were able to switch their activities towards emergency help. Their acquaintance of the countries, the people and their language, as well as the cooperation and coordination between Solidar members have made a clear difference and allowed to bring an efficient and rapid response to the disaster. Emergency response needs expertise and professionalism. The creation of a EU Humanitarian Aid Voluntary Corps must to be used for emergency and relief work, however the Corps could provide interesting opportunities for volunteers in long term projects under strict supervision form professional development and aid workers.

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5. Plan D – an article on civil dialogue and new strategies for more democracy

Article I-47 The principle of participatory democracy

1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.
2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.
3. The Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.
4. Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Constitution. European laws shall determine the provisions for the procedures and conditions required for such a citizens' initiative, including the minimum number of Member States from which such citizens must come.

The practice of democracy is not fixed, but evolves as our understanding and sensibilities have developed. There was a time when only men owning property had the right to vote, and it is not that long ago that it was considered normal that women could not vote. The European concept of democracy now includes alongside our system of representative democracy by elected legislators, a social dialogue, i.e. a legislative role for the organisations of workers and employers.

NGOs have long argued that our concept of democracy needs to evolve even further. The European model of society is based on the primacy of the role of elected legislators and the complementary role of employers and trade unions. However, our democracy also depends on the contribution from civil society, the millions of citizens who through their time and effort add to the public good. The volunteer who supports a single parent, someone working in a youth club, the activist who campaigns for the cancellation of third world debt and, the eco warrior, they all are an intrinsic part of our society and a vital factor in creating social inclusion and a sense of belonging. The engagement of individuals for the public good is encouraged, organised and supported by organisations and associations set up by citizens to make our world a better place. It is this ‘organised civil society' that has been trying to make its voice heard, and to find a way to impact on decisions, which in turn shapes our societies. The NGOs' case is that the concept of “organised civil society” complements our concept of democracy, alongside our elected legislators and the supporting role of the social dialogue. Civil dialogue is fast becoming an essential component of our system of government.

Corporations and governments have learnt that listening to civil society is not only about hearing the voice of altruism and selflessness. It is also about being ahead of the curve, about anticipating the public mood and about confronting some of the pressing issues of the day. Campaigns to ban landmines, to cancel third world debt, introduce fair trade or to end
world poverty, started as issues promoted by NGOs and have now become the concern of millions, as well as the main agenda items at global political events. Listening to NGOs is also about avoiding expensive mistakes. A European transport directive, which was amongst other things, stipulating the width of train doors, almost set a width which would have been insufficient to permit access to a range of wheelchair users. As the European Commission had an established dialogue with disabilities NGOs, they were alerted to this mistake. Talking to NGO service providers and advocacy groups is getting a direct link to the everyday reality of citizens within Europe.

There is a third key element as to why civil society organisations are important to the public good. NGOs are powerful educators and multiplicators, playing a vital role transferring knowledge and information. Through their associations, citizens inform themselves and each other of problems, potential solutions and ways of getting involved. In a world of the Internet and 24 hour television, NGOs help millions of people to focus and channel their energy. Involving “organised civil society” in the decision-making processes, helps in designing policies that meet the everyday realities of people and raises ownership and acceptance of these policies.

With Article 47, the involvement of “organised civil society” in the European decision-making process, is recognised in a EU Treaty for the first time. Article 47 is the recognition of a developing process, which has been on-going at EU level for some time. In the 1990s, national NGOs began to realise that, increasingly, their work was influenced by decisions made at the EU level. NGOs from all sectors therefore felt the need to create structures to ensure coherent lobbying in their area of work at this level.

In a second stage, NGOs discovered that it was necessary to join up with other networks engaged with similar concerns as themselves. In this way the Human Rights Democracy Network, the Social Platform, the Green9 and Concord were founded.

All of these platforms have created mechanism for a civil dialogue with the Commission, the European Parliament and, even though this has proven to be most difficult, with the Council. The Social Platform, for example, has bi-annual meetings with the Commission’s Directorate for Employment and Social Affairs, and Concord has regular meetings with the Commissioner for Development. In practice, each Directorate and the NGOs it affiliates with, have set up a system with which they are more or less satisfied. The most interesting model of dialogue has been developed in the highly conflictual climate of the WTO and trade negotiations. Pascal Lamy, the then EU Trade Commissioner, set up a DG Trade Civil Society Contact Group which included the main NGO sectors, business and farmers associations, as well as representatives of the European Economic and Social Committee. The novel aspect of this structure was that the role of this Contact Group was not to conduct a dialogue on the substance of negotiations, but rather to facilitate a process through briefings, seminars and consultations, so that a wide range of actors could become involved. It is interesting to note, that one of the outcomes of the wide divergence in views amongst members of the Contact Group, has been the need to make the operating rules very clear. DG Trade staff involved has been regularly challenged by different actors in the Contact Group and has responded by ensuring transparency and open mindedness to re-examining
their practices. The DG Trade dialogue therefore, now appears to be more innovative than other dialogue systems established within other services of the Commission. There are signs that other Directorates, notably Development, may wish to adopt a similar model.

NGO alliances such as Concord or the Social Platform are made up of networks themselves composed of national or European alliances. Some networks by virtue of their field of activities may belong to more than one Platform. SOLIDAR is a member of both Concord, the Social Platform and of EUCIS. To further complicate matters some SOLIDAR members are also involved in other European Networks. Whilst some observers find these instances of multiple membership surprising or even bewildering, they are totally accepted by NGOs and the evidence of flexibility in the pursuit of an objective. It is also interesting to note that NGOs are quite prepared to join ‘no logo’ campaigns such as the Save our Social Europe campaign or the Global Call Against Poverty, if this is a way to promote their campaigning objectives.

This ability to work together flexibly and to build strong alliances for attainment of ones goals, is the reason for the creation of yet another layer of networks at the EU level. Groupings and alliances of NGOs such as the Social Platform or the Green 9 are increasingly working in concert, exchanging intelligence and good practice as well as planning and coordinating campaigns in common. The best example of this was witnessed during the work of the Convention, which was preparing the Constitutional Treaty. Six NGO platforms worked together in the Civil Society Contact Group and with the “act4europe” campaign, were able to involve a great many NGOs from member states in the work of the Convention and commonly lobby the Convention to good effect.

This development of alliances of NGOs across many sectors is fast evolving. In 2004, the European Economic and Social Committee set up a Liaison Group with Civil Society. This is the first NGO grouping which has a legal status with one of the EU Institutions and is explicitly recognised in the institutional agreement between the Commission and the Economic and Social Committee. At the time of writing, membership of the Liaison Group is based on one representative and one (deputy) for each identified sector. The Liaison Group has a wide membership, including consumers, co-operatives, the European Movement, the Youth Forum, EUCIS (education), and the European Women’s Lobby. It is still too early to judge the success of the group and it is worth noting that its future existence it conditional on the results of a two year trial period. However, even in the short period of its existence it appears to be fulfilling the important function of acting as a forum for dialogue on those issues which concern a wide range of NGO sectors. There continues to be a steady stream of NGOs wishing to join the Liaison Group.

It is legitimate to ask if any of the above is dependent on the ratification of the Constitution. Most experts agree that the civil dialogue in all its forms would continue to evolve irrespective of the Article 47 being ratified. However, having a legal base would push the Commission to be more proactive and to seek ways in which to strengthen the dialogue.

It is clear to most participants in the current dialogue that it has a severe weakness, in that there is not enough involvement of NGOs from the Member States in the debate on European matters. The strength of NGOs to act as educators, multiplicators, and initiators of
debates, has sadly not been used to its full potential. The existing treaties do not give the civil
dialogue a legal base, whereas the Constitutional Treaty would. It is unlikely that the
Commission would feel secure in launching an ambitious programme of civil dialogue in the
Member States without an unambiguous legal base in the Treaty. Therefore, even if the
current dialogue will continue, it is likely and regrettably to continue to have a Brussels bias.

Perhaps the biggest loss if the Constitutional Treaty will not be ratified will be the fourth
paragraph of Article 47, which allows for no less than a million citizens to invite the
Commission to submit a proposal where a legal act of the Union may be appropriate. This
could be a wonderful opportunity for public participation. No doubt many a bureaucrat is
wondering how this could be implemented. How to verify the signatures, how to ensure that
citizens do not launch petitions on issues on which the Commission has no competence, or
which are politically regressive; or even how to manage the flow of work, which such
initiatives will undoubtedly generate. However, this is an innovative and exciting piece of
legislation which deserves to be tested. It would be a pity to lose it before it had the chance
to develop.

The response to the Tsunami disaster in early 2005 showed that the public’s trust in NGOs is
high. A survey carried out for the World Economic Forum confirmed that NGOs are more
trusted by the public than governments, the military or business corporations. The European
project is in disrepair: our leaders squabbling, our people rejecting the edicts prepared by the
great and the good, because they feel that they have no ownership as to where the
European Union is going. The loss of Article 47 may not mean that we lose what we have
achieved in relation to the civil dialogue, but we would certainly lose the innovative thinking
and programmes that are needed to involve our fellow citizens in a meaningful dialogue
about the kind of Europe we want to build together. For the past sixty years it has been
possible to build Europe in a top down stream. It is no longer possible to do so. It is time that
we launched a large-scale public education and debate program, across all our member
states. Without such a debate, the alienation many of our fellow citizens feel towards the
European project will surely increase, and only by involving them will we be able to harness
their enthusiasm and vision for a common Europe.
Solidar members

Arbeiter-Samariter-Bund (ASB), Germany
Arbeiterwohlfahrt Bundesverband (AWO), Germany
Arbejderbevægelsens Internationale Forum (AlF), Denmark
COCIS, Italy
Community Service Volunteers (CSV), UK
FCD Solidarité Socialiste (FCD), Belgium
Fonds voor Ontwikkelingssamenwerking (FOS), Belgium
Fédération Européenne de l’Education et la Culture
Humanitas, The Netherlands
International Federation of Workers’ Education Associations (IFWEA)
Instituto Sindical de Cooperacion al Desarrollo (ISCOD), Spain
Instituto Sindacale per la Cooprazione allo Sviluppo (ISCOS), Italy
The International Solidarity Foundation (ISF), Finland
La Ligue Française de l’Enseignement, France
Lega Provinciale Cooperativa Bolzano, Italy
Movimiento por la Paz, el Desarme y la Libertad (MPDL), Spain
National Pensioners Convention, UK
Norsk Folkehjelp (NPA), Norway
The Olof Palme International Centre, Sweden
One World Action, UK
Progetto Sud, Italy
Progetto Sviluppo, Italy
Schweizerisches Arbeiterhilfswerk (SAH), Switzerland
Solidaridad Internacional, Spain
Workers’ Educational Association (TSL), Finland
UNISON, UK
Volkshilfe Österreich Bundesverband (VHÖ), Austria
War on Want, UK

Affiliated Member Organisations

Associação de Servicio de Apoio Social, Portugal
Banca Foundation for Mutual Help, Poland
Banana Link, UK
Institut für Sozialarbeit und Sozialpädagogik (ISS), Germany
Institute for International Assistance and Solidarity (FIAS)
Narodna Dopomoha, Ukraine
Nord-Süd Institut für Entwicklungszusammenarbeit, Austria
OGB • L Solidarité Syndicale, Luxembourg
Scottish Trade Union Congress (STUC), UK

Observers

International Confederation of Free Trade Unions (ICFTU)