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The European Union's Constitution

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Summary

In June 2004, the European Union (EU) concluded work on a constitutional treaty that contains changes to the EU's governing institutions and decision-making processes. Commonly referred to as the "constitution," this new treaty aims to institute internal reforms to enable a larger EU to operate effectively and prevent gridlock, but it must be ratified by all member states to enter into force. The future of the EU's constitution, however, has been thrown in doubt after French and Dutch voters rejected it in separate referenda in May and June 2005. This report provides background information on the constitution, its key provisions, the current crisis, and possible implications for U.S.-EU relations. It will be updated as events warrant. For more information, see CRS Report RS21372, *The European Union: Questions and Answers*, and CRS Report RS21344, *European Union Enlargement*.

Background

The European Union (EU) is a treaty-based, institutional framework that defines and manages economic and political cooperation among its 25 member states (Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom). The Union represents the latest stage in a process of European integration begun after World War II to promote peace and economic prosperity in Europe. This European integration project has evolved from encompassing primarily economic sectors to include developing a common foreign policy and closer police and judicial cooperation. With the end of the Cold War, the Union has also sought to extend the political and economic benefits of membership, especially to central and eastern Europe. Ten states — Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia — joined the EU on May 1, 2004. Two other states — Bulgaria and Romania — are expected to join in 2007. Turkey is another candidate for membership and is expected to begin accession negotiations in October 2005, but these will take at least a decade to complete. The western Balkan states also harbor EU aspirations in the longer term. In June 2004, the EU named Croatia as a candidate for membership.

The EU represents a unique form of cooperation among sovereign states that has been built through a series of binding treaties. EU members work together through common institutions that embody the EU's dual supranational and intergovernmental character. Different policy areas have different decision-making procedures; economic, trade, and social policies, for example, are currently decided by a complicated system of majority voting, while decisions relating to foreign and security policy require consensus. Critics have long charged that the EU's decision-making processes are too slow and cumbersome, and that the EU's institutions are overly complex, lack transparency, and are unintelligible to the average European citizen.

Key institutional reforms in the EU's December 2000 Treaty of Nice were intended to enable an enlarged Union of 25 or more to function effectively. Skeptics argued, however, that Nice set up an even more complex and less efficient decision-making process. Thus, EU leaders in December 2001 announced they would convene a Convention on the Future of Europe to reform EU decision-making further and review EU structures ahead of enlargement in May 2004.

Toward a European Constitution

The Convention on the Future of Europe. The Convention began work in March 2002 in Brussels, Belgium. EU member states appointed former French President Valéry Giscard d'Estaing to serve as chairman, and charged the 105-member Convention with addressing several key tasks, including examining and better defining the distribution of power between the EU's institutions and the member states; encouraging the development of the EU as a coherent foreign policy actor; and strengthening the Union's democratic legitimacy. In October 2002, the Convention decided to develop a draft constitutional treaty — commonly referred to as a “constitution” — to merge and reorganize the EU's four existing treaties into a single document and lay out new proposals for institutional reform. In July 2003, the Convention finalized a 240-page “Draft Treaty establishing a Constitution for Europe” and concluded its work. The draft was divided into four parts: Part One set out the definition and objectives of the Union and outlined its competences and institutional framework; Part Two enshrined the EU Charter of Fundamental Rights, completed in 2000, into EU law; Part Three addressed the

EU Institutions

The *European Commission* is essentially the EU's executive and has the exclusive right of legislative initiative. It ensures that the provisions of the Treaties are carried out properly. The 25 Commissioners, including a President, are appointed by agreement among the governments of the member states for five-year terms. Each Commissioner holds a distinct portfolio (e.g., agriculture). The President of the Commission sets its policy priorities, organizes its work, and represents the Commission internationally.

The *Council of the European Union (Council of Ministers)* is comprised of ministers from the national governments. As the main decision-making body, it enacts legislation based on proposals put forward by the Commission. Different ministers participate depending on the subject under consideration (e.g., economics ministers could convene to discuss unemployment policy). The presidency of the Council currently rotates among the member states for a period of six months.

The *European Council* brings together the Heads of State or Government of the member states and the President of the Commission at least twice a year. It acts principally as a guide and driving force for EU policy.

The *European Parliament* consists of 732 members. Since 1979, they have been directly elected in each member state for five-year terms. The Parliament cannot enact laws like national parliaments, but it shares “co-decision” power in some areas with the Council of Ministers and can amend or reject the EU's budget.

The *Court of Justice* interprets EU law and its rulings are binding; a *Court of Auditors* monitors the Union's financial management. Additionally, a number of advisory bodies represent economic, social, and regional interests.

policies and functioning of the Union, detailing how the EU would reach and implement its decisions; Part Four spelled out “general and final provisions” dealing with procedures for the text’s ratification and possible future revisions.¹

The Intergovernmental Conference. In October 2003, EU leaders convened an Intergovernmental Conference (IGC) to work out the definitive text of the new constitutional treaty to codify any alterations of the EU’s structures and functions. The Convention on the Future of Europe’s draft treaty from July 2003 served as the basis for discussions at the IGC. By December 2003, consensus had reportedly been reached on most issues proposed by the Convention, but EU leaders were unable to conclude the treaty primarily because of a dispute over the proposed voting rule changes. Spain and Poland feared that the simplified voting rules proposed by the Convention would give larger member states an advantage; the current weighted voting system tends to favor smaller and medium-sized states. The change in government following Spain’s March 2004 election, however, helped break the deadlock because the new Spanish government dropped its predecessors’ outright opposition to altering the voting rules, which forced Poland to be more flexible also. EU leaders succeeded in finalizing the constitution in June 2004; they signed it on October 29, 2004, and set November 2006 as the target date for the constitution’s entrance into force.

The Ratification Crisis

In order to come into effect, the EU’s constitutional treaty must be ratified by all 25 member states through either parliamentary approval or public referenda. Ten states have completed ratification, but the constitution’s future has been thrown into doubt following its rejection by French and Dutch voters in separate referenda in May and June 2005.² In both countries, some arguments against the constitution reflected concerns that it would enshrine liberal economic trends that could undermine French or Dutch social protections. In addition, many French and Dutch voters viewed a “no” vote as a way to express dissatisfaction with their unpopular national governments, the EU bureaucracy, and Turkey’s prospective EU membership. Other reasons for rejecting the constitution differed. In France, some feared that the constitution — by paving the way for further EU enlargement — would erode French influence in the EU, while Dutch voters complained that the EU’s big countries were already too strong and that certain provisions of the constitution would increase their power even more.

It is unclear whether other EU member states will proceed with their ratification plans in light of the French and Dutch “no” votes. Proponents of moving forward hope that if most members approve the constitution, such approval would help force a second vote in those states that rejected it. Some members, like Luxembourg and Ireland, have asserted that they will go ahead with their planned referenda. However, on June 6, 2005, UK Foreign Secretary Jack Straw announced that there was “no point” in continuing to plan for a UK poll and effectively postponed the UK’s referendum indefinitely. Other countries that had been expected to hold public referenda, such as Denmark or Poland, may follow the British lead. Many Members of the European Parliament favor continuing

¹ For more information, see the website of the European Convention on the Future of Europe [<http://european-convention.eu.int>].

² French voters rejected the constitution by 55% to 45%; Dutch voters rejected it by 62% to 38%.

the ratification process but have called for a “pause” in ratification efforts to assess the impact of the “no” votes. Some observers suggest that the French and Dutch “no” votes could encourage negative referenda results in other member states.

EU officials are quick to emphasize that the EU can continue to operate without the constitution and could enlarge further under the rules set out in the Nice Treaty of 2000. Some commentators speculate that certain elements of the EU constitution could be implemented by agreement among EU leaders or by amending the existing EU treaties. Others suggest that parts of the constitutional treaty might be renegotiated, although this would likely be extremely difficult given that the existing draft is already replete with compromises among member states and because opposition to the treaty comes from disparate directions. Regardless, the constitutional treaty is unlikely to come into force by November 2006. The EU may be facing a period of stagnation, at least in the short term, as members grapple with internal reforms and the EU’s future shape and identity. Many experts believe that big decisions, such as agreement on the EU’s next seven-year budget, may be deferred. Given that considerable opposition to the constitution is tied to concerns about EU enlargement, some predict that the “no” votes could also impede efforts toward further expansion, especially to Turkey and possibly the Balkans.³

Key Provisions in the EU’s Constitution

The text of the EU’s constitutional treaty is 341 pages.⁴ Major changes to the EU’s governing institutions, decision-making processes, and policies include:

- *A New President of the European Council.* The constitution abolishes the rotating six-month presidency in favor of an individual — elected by member states for a term of two and one-half years, renewable once — to ensure policy continuity and raise the EU’s profile on the world stage.
- *A New EU Foreign Minister.* This new post is also intended to boost the EU’s international visibility, and combine into one position the current responsibilities of the Council’s High Representative for the EU’s Common Foreign and Security Policy (CFSP) and the External Relations Commissioner, who coordinates the European Commission’s diplomatic activities and manages the EU’s development programs. The EU foreign minister will be an agent of the Council of Ministers (representing the member states), as well as a Vice-President of the Commission.
- *A Revamped European Commission.* In the first Commission appointed under the constitution, each member will retain one Commissioner. After this term (in 2014), to help decrease gridlock, the number of Commissioners will be reduced to correspond to two-thirds of the number of member states. Small states had initially opposed slimming

³ “MEPs Hit Pause Button on Out-of-tune Treaty, *Financial Times (FT)*, June 9, 2005; “Britain Postpones Plans for EU Referendum,” *FT*, June 6, 2005; “Varied Reasons Behind Dutch No,” BBC News, June 1, 2005.

⁴ Text of the EU’s constitutional treaty is available on the EU’s website, [http://ue.europa.eu.int/constitution/index_en.htm].

down the Commission, fearing that it would decrease their influence. However, the European Council may alter the number of Commissioners, thus leaving the door open to a larger Commission in the future.

- *Increased Parliamentary Powers.* The constitution extends the European Parliament's right of "co-decision" with the Council of Ministers to many additional policy areas, including agriculture and home affairs issues. It caps the Parliament at 750 and includes other provisions to encourage closer ties between EU bodies and national parliaments.
- *Simplified Voting Procedures.* The constitution simplifies the EU's current system of Qualified Majority Voting (QMV), a complex weighted voting formula. Beginning in 2009, decisions made by QMV will pass if supported by 55% of member states (comprising at least 15 of them) representing at least 65% of the EU's population. A blocking minority must consist of at least four countries. The use of QMV is also expanded to policy areas previously subject to unanimity, including asylum and immigration. Member states will retain national vetoes, however, in sensitive areas such as taxation and most aspects of foreign policy.
- *A New Exit Clause.* The text sets out for the first time in EU law procedures for a member state to voluntarily withdraw from the Union. It also retains EU provisions that allow certain rights of a member state to be suspended if it is deemed to have breached core EU values.
- *A New Solidarity Clause.* This provision affirms that the EU "shall act jointly in a spirit of solidarity" if any member is the victim of a terrorist attack or other natural or man-made disaster; it calls on member states to offer assistance, including military resources, to the victimized member.
- *Steps Toward Building a Common Defense Policy.* The text asserts that the Union shall seek "the progressive framing of a common Union defense policy," which "will lead to a common defense." It establishes a "mutual assistance clause" permitting a member state that is the victim of armed aggression to ask for military assistance from the other members. Member states may also engage in "structured cooperation," which would allow a smaller group of members — especially those with higher-end defense capabilities — to cooperate more closely on military issues. And the text calls for a "European Armaments, Research, and Military Capabilities Agency" to coordinate defense technology research, encourage harmonization of arms procurement procedures, and ensure interoperability of defense equipment throughout the EU.⁵

Almost all of the changes in the constitution represent compromises between member states who favor greater EU integration and those who prefer to keep the Union on an intergovernmental footing in which member states can better guard their national

⁵ For more information, see "The CER Guide to the EU's Constitutional Treaty," The Centre for European Reform, July 15, 2004; "What the EU Constitution Says," BBC News, June 22, 2004.

sovereignty. Also evident in many of the provisions are compromises between big and small states. Critics contend, however, that the constitution does little to simplify the EU. They point out that some changes would not take effect until 2009 or 2014 and that the creation essentially of two EU presidents could generate rivalry and confusion. In addition, skeptics assert that many of the most difficult issues that are often the source of gridlock — such as foreign policy and taxation — will remain subject to national vetoes.⁶

Implications for the United States

Many experts assert that passage of the EU constitution would have positive implications for the U.S.-EU relationship because certain provisions — such as the new president and foreign minister positions — are designed to promote an EU able to “speak with one voice” on foreign policy issues. Such an EU would be a more credible partner for the United States in tackling common challenges such as terrorism and Middle East instability. Supporters of this view also note that efforts to encourage a common EU defense policy and the proposal for “structured cooperation” in the constitution seek to improve European defense capabilities. A more militarily-capable Europe, they argue, could shoulder a greater degree of the security burden with the United States.

Conversely, some contend that a failure to ratify the constitution could inhibit EU efforts to be a more effective U.S. partner because EU attention would likely remain focused on internal reforms rather than on external challenges. The difficulties with ratifying the constitution have also sparked renewed discussion of a “core Europe,” in which a vanguard of EU member states would drive further integration. If such a “core Europe” developed that did not include the UK or other economically liberal or pro-Atlanticist states, some say that this could increase U.S.-EU tensions. Some U.S. analysts also worry that voter rejection of the constitution could stymie the opening of accession talks with Turkey, which the United States strongly supports.

Other U.S. experts who worry that a larger and potentially more united and more confident EU may seek to rival the United States are more sanguine about the potential demise of the EU constitution. They contend that a more unified EU would likely lessen Washington’s leverage on individual members and could complicate U.S. efforts to rally support for its initiatives in institutions such as the United Nations or NATO. These skeptics remain concerned that parts of the constitution that promote greater EU defense coordination could lead to the eventual development of EU military structures that would duplicate those of NATO, be financially costly, and weaken the transatlantic link.⁷

U.S.-EU trade relations are unlikely to be significantly affected by the constitution, which does not alter the roles of the European Commission or Council of Ministers in formulating or approving the EU’s common external trade policy. Although EU rules allow the Council to approve or reject trade agreements negotiated by the Commission with QMV, in practice, the Council tends to employ consensus and will probably continue to do so regardless of the changes in EU voting procedures.

⁶ “A Deal on a New EU Constitution,” *The Economist*, June 26, 2004; Interviews of EU officials.

⁷ Steven Everts and Daniel Keohane, “The European Convention and EU Foreign Policy: Learning from Failure,” *Survival*, Autumn 2003; Eli Lake, “The U.S. and a United Europe,” United Press International, June 10, 2003.