



New Europe: united in diversity

Ushering in a New Era for the Union

Editorial



Just two years after the Laeken European Council, Europe is today about to open a new chapter in its history, one that was unthinkable only a few years ago.

Following the economic and monetary phases, we are now witnessing the creation of a political Union. By adopting the Laeken "Declaration on the Future of the Union", the fifteen Member States aimed at making the Union more democratic, more transparent, and more efficient. To accomplish this ambitious objective, they decided to call a Convention, mandated to respond to no less than sixty questions, relating to the division and definition of competences, the simplification of the Treaties and of the Union's institutional architecture, and to set out a roadmap for a European constitution. This was an extraordinary and enormous task, requiring not only the definition of a working method for formulating a constitution, but the creation of the actual constitution itself. The Convention members were therefore not limited to the mere role of architect. They were also granted that of contractor, builder, and carpenter. They were expected to make this Constitution not just a draft, but above all a reality.

Now that the structure has been built, it is for the Heads of State and Government, meeting in Rome this coming December, to decide whether this new European house responds to their own "construction standards" and whether the European citizens' interests should finally take precedence over national differences. Our task is to remain vigilant. Even if certain points still remain to be clarified in the areas of culture and health, this text is an incredible achievement, from which our regions will benefit. For the first time in fifty years, the Regions have obtained the rank of true partners of the Union.

Sincerely, <

Liese Prokop
President of the AER
Vice Minister President
of Lower Austria (A)

THE UPCOMING CONSTITUTIONAL TREATY FOR EUROPE IS A KIND OF INSTITUTIONAL REVOLUTION. BY DEFINING AMBITIOUS OBJECTIVES AND MAKING THE CITIZEN A FULL-FLEDGED ACTOR IN THE UNION, THIS TEXT IS ASSOCIATED WITH MANY HOPES, WHICH MUST CERTAINLY BE FULFILLED.

Approximately eighteen months of work,

twenty-six sessions, 105 members of the Convention and 1800 interventions have been necessary to shape a document that Valéry Giscard d'Estaing, President of the Convention on the Future of Europe, calls a Constitution. This all represents a major step forward. The Convention, which first met on 28 February 2002, had the formidable task to agree on a simple, homogeneous text, summing up over fifty years of building Europe and making the complexity of the main five Treaties a thing of the past. The Union would then be endowed with a single text, accessible to all and to the citizens in particular. That was the decision of the European Council meeting a few months before in Laeken. Silvio Berlusconi, Valéry Giscard d'Estaing and the two Vice-Presidents of the Convention, Jean-Luc Dehaene (Belgium) and Giuliano Amato (Italy), had good reason to be proud when, on July 18, the 340 pages of the Treaty establishing a Constitution for Europe to the President of the European Council were handed over. "Two years ago, the word 'Constitution' was still taboo, to the point that the Laeken Declaration only referred to it indirectly. Today, the idea of a Constitution for Europe has gained ground. Public opinion is awaiting the Constitution", said Convention President Giscard d'Estaing, the father of the European Monetary System (the "snake"). And he added, not without malice: "We have cre-

ated a Montesquieu [author of *The Spirit of the Laws*] for the Europe of the XXIst century".

A strong political message

The members of the Convention have done much more than was "officially" required of them at Laeken. More than an administrative

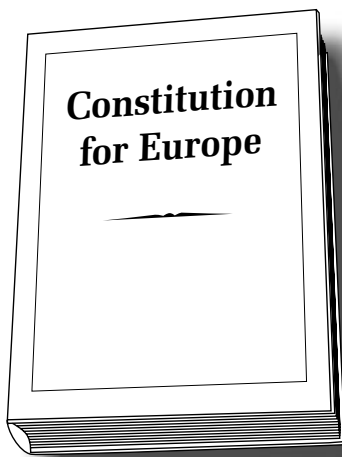


Mrs Prokop hands the AER's contribution to the European Convention to Valéry Giscard d'Estaing

simplification of the Treaties, they have given a new meaning to the Union. They have accelerated the process of integration. Just after succeeding with the phase of economic and monetary union with the adoption of the euro, they will have charted a course for a more meaningful Europe. More than an economic

Photo : ARE





market, Europe should now be a political Union, giving itself clear rules and (finally) placing the citizen at the heart of the Community mosaic. The tortoise with a dragon's head which has constantly accompanied the President of the Convention has proven to be more than a simple symbol, and has become a strong ally: the members of the Convention have been accompanied by force and perseverance. The message of the draft Constitution is strong. The Union will be a space of "pluralism, tolerance, justice, solidarity and non-discrimination" (Article 2). It will offer "its citizens an area of freedom, security and justice without internal frontiers". It will aim at "full employment and social progress, and... a high level of protection and improvement of the quality of the environment". It will "combat social exclusion and discrimination and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of children's rights, [and likewise] economic, social and territorial cohesion". Again, it will respect "its rich cultural and linguistic diversity and [shall ensure] that Europe's cultural heritage is safeguarded and

enhanced". These issues, outlined in Article 3, are dear to the Assembly of European Regions (AER).

Giving the citizens more responsibility

The citizens will gain a valuable right, that of being consulted. That is the intent of Article 46 which states that "No less than one million citizens coming from a significant number of Member States may invite the Commission 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." This provision invokes the principle of the laws of popular initiative. This small revolution could give birth to the first true instrument of European citizenship and put an end to political games. Finally, the citizens can

take responsibility! And then, above all, through its incorporation in Part II of the draft Constitution, and even if one may regret that it does not appear in the Preamble, the members of the Convention have given life, in the full and legal sense of the term, to the Charter of Fundamental Rights, a legal instrument guaranteeing the inalienable rights and freedoms of the citizens, with which all Member States will have to comply. It should be clear that all of these measures are fundamental.

The AER will have to remain vigilant in these decisive times of the Intergovernmental Conference (IGC), where the States endeavour to adapt this European draft Constitution. We should ensure that it is then applied in practice.

PETER STRAUB, PRESIDENT OF THE AER INSTITUTIONAL AFFAIRS COMMITTEE

"The role of the regions has finally been legally recognised"

Does the draft constitution meet your expectations regarding subsidiarity?

Absolutely. Just imagine: it is the first time in the history of European integration that a text explicitly recognises the principle of subsidiarity between the Union and the regions. Considering that so far this link has only existed between the Union and the Member States you get an idea of the significance of this step. It is all the more satisfying in that, just before the beginning of the work of the Convention, no one imagined that we would go so far. The role played by the regions in the development of European policies has now been legally acknowledged.

And yet, some people will object that the regions only have an indirect right of appeal to the European Court of Justice (ECJ) if the principle of subsidiarity is infringed...

We should not over-dramatise things. Yes, it is only an indirect right in that it is up to the Committee of the Regions and the Member States to refer the matter to the ECJ in the event of non-compliance. But that will not at all prevent the regions from using their rights. On the contrary. What we have to remember is that subsidiarity is worth nothing without monitoring instruments. And even if not everything is perfect, we now have these instruments.

Are you equally satisfied with the legislative process?

Yes, because even if the regions do not have a co-legislative role, like the European Parliament or the Council, their point of view may be taken into account. Article 2 of the Protocol on the Application of the Principles of Subsidiarity and Proportionality is very clear on this point: "Before proposing legislative acts, the Commission shall consult widely. Such consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged".



Peter Straub, President of the Landtag Baden-Württemberg and President of the 'Institutional Affairs' Committee of the AER

Does that mean that the regions can even express reservations or opposing legislative proposals put forward by the Commission?

That is the very meaning of Article 5 of the Protocol. The national parliaments will have a period of six weeks counting from the transmission of the legislative proposal to express their disapproval to the Presidents of the Commission, the Parliament and the Council of Ministers, if it does not comply with the principle of subsidiarity. The most satisfying thing is that if the text affects the legislative powers delegated to the regions, the latter will have to be consulted and will thus be able to speak up. That raises them to the level of true partners in the European legislative process. Who could have imagined that would ever be possible, fifty years ago!

So is the draft constitution perfect?

It is an extremely satisfactory step forward. Now certain points remain to be clarified.

In the cultural sphere, for example?

Quite so. We are operating today in a context of liberalisation of services, the General Agreement on Trade in Services (GATS) being perhaps the most telling example of that. Now, by contrast with Article 133(6) of the Nice Treaty, Article III-217 of the draft Constitution does not impose the rule of unanimity as a must in order to liberalise certain services, including culture or education. This means that a vote by qualified majority would suffice to include these services in the field of European trade policy, i.e. to make them an exclusive competence of the Union, removing all power from the regions that hitherto had legislative competences in this field.

Are these concerns identical in health questions?

Yes, it is not incumbent on the Union to govern everything. Clearly, it is important, not to say necessary, for it to intervene in the event

of a major health crisis, e.g. in the case of SARS. In this type of epidemic we need a responsive and coordinated policy at the European level in order to prevent any large-scale contagion. It would be absurd to claim the contrary. But since there is no guarantee that a liberalisation of services would not infringe on the regions' powers regarding health, we are in the same situation here as in the field of culture.

Does that mean that the entire draft constitution needs to be reviewed?

No, absolutely not. I must repeat that: endowing the Union with a constitution is an amazing step forward. But that must not prevent us from being careful about certain points concerning the daily lives of the citizens who, obviously, will be the first to be affected by the application of the Constitution.

The Protocol on the Application of the Principles of Subsidiarity and Proportionality is a big step towards recognition of the regions

Through the new definition of the principle of subsidiarity in the draft Constitution, the members of the Convention recognised the actual involvement of the regions in the European decision-making process. By subsidiarity, the provisions mean that the Union does not act, except in areas that are of its exclusive competence, unless its action is more effective than that taken at a national, regional or local level. This principle is closely linked with the principle of proportionality, which requires that the action of the Union must not exceed what is necessary to attain the objectives of the Treaty. While the regions cannot yet directly appeal to the European Court of Justice, the text does assign them, through their national governments or the Committee of the Regions, a right of indirect referral, if they deem that one of these rules has not been complied with. Moreover, before proposing a legislative act, the European Commission will now have to "consult widely", taking into account, "where appropriate, the regional and local dimension of the action envisaged".

Europe Must not be Laid on National Foundations

RATHER THAN THE IGC, IT WILL BE UP TO THE VOTERS TO DECIDE ON THE EUROPEAN CONSTITUTION. BUT AS LONG AS THEY ONLY REPRESENT A SUM OF NATIONAL INTERESTS, A POLITICAL EUROPE FOR THE CITIZENS WILL REMAIN AN ILLUSION

Active. If there is one term that could serve to describe the Assembly of European Regions (AER) and its presence throughout the work of the Convention, it is this. The AER has been active, even if it was not always an easy ride - for example when, in June 2002, it was necessary to explain to Ana Palacio, Spanish Minister of Foreign Affairs, and Jean-Luc Dehaene, Vice-President of the Convention, that they had to listen to the

regions - but that putting them on the same footing as non-governmental organisations was somewhat irrational. Not that these organisations should remain quiet. On the contrary - their voice is fundamental! But they primarily represent private interests. The regions and their elected politicians are a full component of representative democracy. Their chief responsibility is to the people they govern. They are not just merely a sphere of

influence. They are the first stop between the Union and the citizens. And the AER was finally listened to. Not only have the territorial authorities succeeded in (re)gaining the status of privileged partners, they have also obtained, in fundamental terms, an explicit recognition of their involvement in European decision-making processes. That is, in any case, what should be recalled from the insertion of the new definition of the principle of

subsidiarity into the draft Constitution. But, to quote Peter Straub, President of the Institutional Affairs Committee of the AER, even if these advances are fundamental, albeit unexpected, the equilibrium obtained

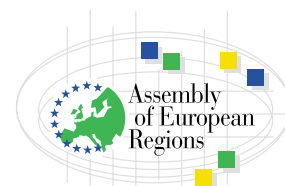
tain achievements. The Intergovernmental Conference retains the right to do or undo the work of eighteen months. Action is now based much more on the defence of national interests than on European interest. The numerous

geous than that obtained at the European Council of Nice. Ireland, finally, is against the creation of a post of European prosecutor. The new motto of the Union, "united in diversity" could not have been better chosen.

For a transnational referendum

In this cacophony, the citizens could almost be forgotten, even though they are the only ones able, ultimately, to validate a text that started off wanting to be simple. This omission could be deliberate in some states, like France, where it is feared that the mounting popular opposition to government policy may affect the outcome of a possible electoral consultation. This may be a real risk, but if it is taken into account, it will only increase a growing frustration among the citizens who have been broadly excluded from the European debate since the Maastricht Treaty. There could be a remedy for this confusion, but it will call for political courage and clear-sightedness, and that is: finally accepting the fact that the nation state no longer exists in a vacuum; admitting that, if we want to make a political Europe a reality, we must urgently think as Europeans, conceding that it is not the sum of national ballot boxes that will decide the future of the Union but the sum of votes cast by all the voters of the twenty-five member states; opting, in short, for a transnational referendum. Obviously, it is unlikely that such a referendum will be set up by next year, since it has not been foreseen in any legal text. But refusing to contemplate it, at least for the future, would be synonymous with rejecting the very idea of this political Europe of the citizens. And the members of the Convention have just laid the foundations of such a Europe.

All readers are encouraged to view the AER website (<http://www.a-e-r.org>) for current information on all matters affecting European regions.



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Photo : Parlement européen



The IGC debating the work of the Convention

remains precarious. The areas of culture and health are continually threatened by the liberal policy of the European Commission and are being potentially reduced to mere commodities. This is a reality that weighs very heavily on the future of European cultural diversity, which is essential to success and organisational emulation.

United in diversity

And now, above all, the Convention will only have been a stage. A historical one, certainly, but it is in itself insufficient to consolidate cer-

quarrels that accompany the work of the IGC are a daily illustration of this. If France, Germany or Italy refuses to "unravel" the draft, the same does not apply to all the members of this Union soon to be enlarged. Austria is calling for one Commissioner per Member State. Poland is demanding an explicit reference to Christianity in the text, at the risk of firmly closing the doors of Europe to Turkey. The United Kingdom requests a veto right in matters of taxes, social security, defence and foreign policy. Spain dislikes the new system of weighted voting, which is less advanta-

What is the Intergovernmental Conference?

Opened by the Council of Ministers at the initiative of a Member State or the European Commission, taking decisions by simple majority (following consultation with the European Parliament and, if need be, the Commission), the Intergovernmental Conference (IGC) constitutes a negotiation between the governments of the Member States, the objective being to amend European Treaties. A grand diplomatic event, it is the opportunity to reconcile the advancement of Europe with the defence of national interests. The European Convention has modified the intergovernmental process in that, this time, it is not the national diplomats who have been entrusted with the prior preparation of the work, but a group of national and European representatives. This small procedural revolution must not allow us to forget the fact that it is the States that decide on the content of the final text before its ratification by the national parliaments, or by the citizens, if referendums are scheduled. The previous IGC was launched on 15 February 2000, after formal consultations with the Commission and the European Parliament. It concluded its work in time for the European Council of Nice (7-10 December 2000) in order to give birth to the Treaty of the same name, signed on 26 February 2001. As the Heads of State and Government were able to agree on the basis of the institutional reform of the Union, the Treaty of Nice was judged a failure and was thus largely responsible for the convening of the IGC 2004 and the setting up a new, more transparent form of deliberation, the Convention on the Future of Europe.