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The European Constitution
What can be done / what should be done

PLAN A+

Revival of the European Constitutional Process

Action plan

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Green member of the European Parliament
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RELAUNCHING THE EUROPEAN CONSTITUTIONAL PROCESS

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ACTION PLAN

IMPORTANT

THIS SECTION SETS OUT THE AUTHOR'S ACTION PLAN FOR RELAUNCHING THE EUROPEAN CONSTITUTIONAL PROCESS.

THE RESULT OF THE ACTION PLAN IS DESCRIBED IN TWO OTHER SECTIONS, 'THE CONSTITUTION' AND 'THE TREATY', WHICH ARE AVAILABLE ON THE FOLLOWING WEBSITE:

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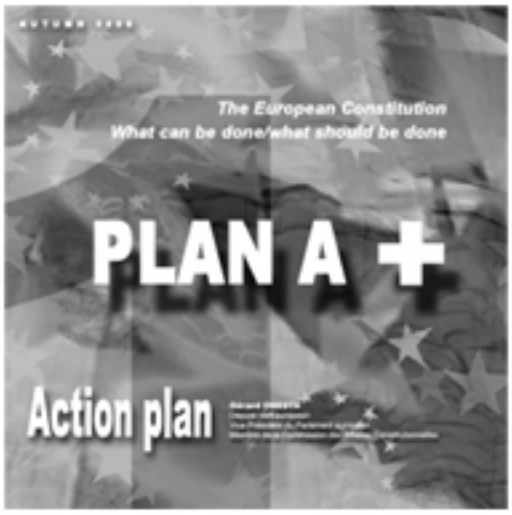
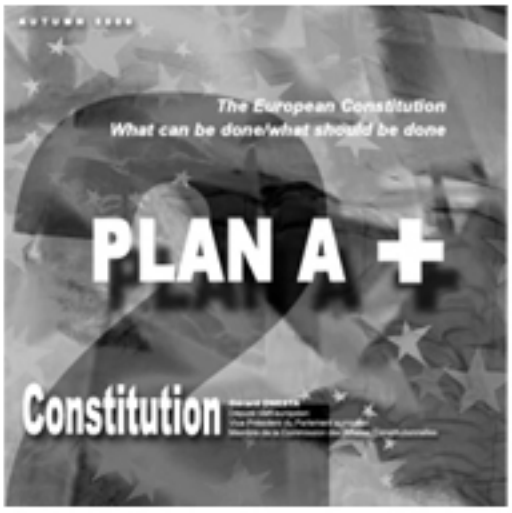
Action plan

Electronic version of this section
31 pages



The Constitution

The new text of the Constitution resulting from the process
49 pages



The Treaty

The new European Treaty resulting from the process
214 pages

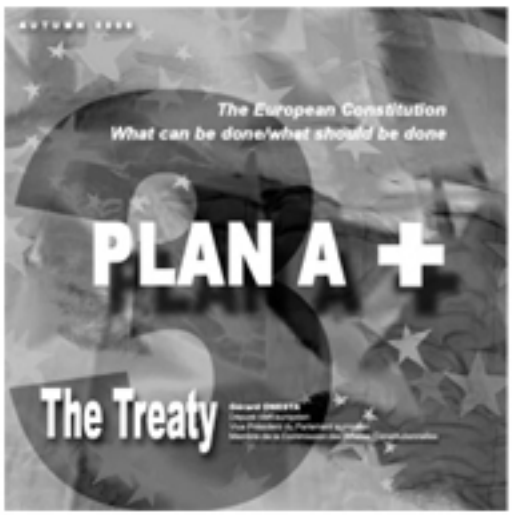
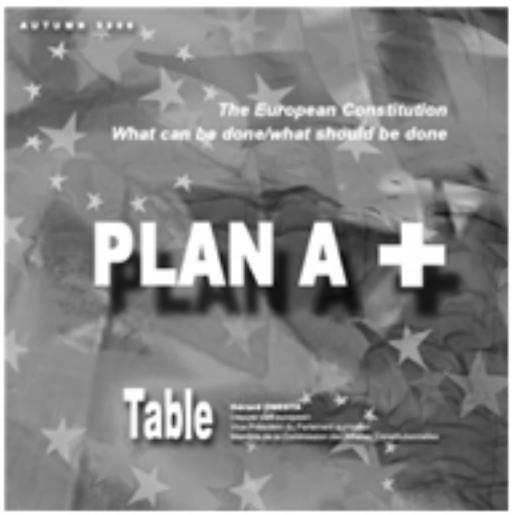


Table detailing changes to the texts, for information

53 pages



POSITIVE

It is a long time now since the European constitutional train was derailed.

The many proposals made for putting it back on track are notable for their quantity, but not always for their quality. However, they cover every conceivable option, ranging from covert attempts to bury it to wild idealism, and including minimalist ideas varying between calculated cynicism and a very relative effectiveness.

The scenario I am suggesting is intended to open up pragmatic possibilities, perhaps the only viable solution in the current political and legal situation. By avoiding many of the pitfalls, it should make it possible to adopt an initial European Constitution – which, in the current circumstances, is becoming more essential all the time – within a reasonable period.

Since it now seems that there is no plan B, C or Z, the proposals below are based largely on 'Plan A', in other words the system derived from the Convention. Ultimately this has proved to be the only 'material' that is still usable. But in present circumstances there is no longer any hope of this irrevocably damaged first draft coming to fruition. If it is to become operational, it has to be completely restructured and rethought. Sometimes it does not take much to make a radical change. 'Plan A +' will demonstrate that.

This general proposal, which is certainly ambitious, is presented in the form of three linked sections. The first explains my action plan, describing the current situation, discussing the various possibilities and outlining a complete methodology for a realistic solution to the crisis. The second section is the new text of the Constitution that would result from the process. The third section contains the existing non-constitutional European agreements (policies, procedures, protocols) that were included in the previous draft Constitution and would still have the status of a treaty.

Thus sections 2 and 3 together contain the conclusions, outlining a new draft European Constitution and a new draft European Treaty, which are now clearly differentiated. The two-part text is the fruit of patient 'deconstruction/reconstruction' work based on the Treaty establishing a Constitution for Europe signed in Rome on 29 October 2004. However, the two texts faithfully reproduce all the provisions of the old Constitutional Treaty. As explained in the first section, the only short, but certainly decisive, amendment to the original text concerns the arrangements for ratifying and amending the two new documents.

Designed as an instant solution to the crucial issue of the European Constitution, this plan could be the 'positive' scenario awaited by all committed Europeans, whatever their previous views on the subject.

Gérard Onesta

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CURRENT SITUATION

It is later than you think

The current situation in Europe is very worrying.

The dominance of economic factors, the weakness of its democratic, environmental and social regulation, its complex and impenetrable structures are – quite rightly – causing concern. It seems a long time since the concept of Europe instantly conjured up an image of peace and progress. The Union needs an immediate overhaul.

Bogged down by the working practices of its institutions, thrown into uncontrolled enlargement, haunted by the ghosts of nationalism, with limited budget resources and with many of its aims and policies rejected, for the first time in its history the European project is facing the threat of breakdown.

Committed Europeans have to re-mobilise to deal with the threat. Action is needed in the social field (redefining objectives), on the economy (reorganisation of taxation and budgets), and on policy (rethinking the hierarchy of rules). But above all it is needed in respect of the institutional structure, because although the institutional debate is not the only one, it defines all the others. The rules of the game dictate the phases of the game and the possibilities for the players. A Constitution might not be all that is needed, but it is absolutely vital to the future of Europe.

From the point of view of geopolitical balance, a Europe based on the rule of law, living in peace with a respect for differences and sustainable development, and offering to share its revitalised social model, would be a real opportunity for this new century which has started so badly. So we have an enormous responsibility. Those who think that things will work out eventually have certainly not realised the speed at which the world is now changing, or the new scale we have to operate on as a result. In the face of such different yet convergent competitors as the American, Chinese and Indian systems, putting off the development of an alternative European system until later is a luxury that neither the most disadvantaged nor the world can afford.

It is later than you think.

Brief look back

I am not one of those who felt let down by what happened on 29 May. I have felt let down by everything that has happened since.

According to the winners, the French referendum on the draft Constitutional Treaty should have been a new beginning. It is disturbing, therefore, to see that it is increasingly looking like an end.

I am one of those who enjoyed the lively debate in my country in 2005 during the campaign for the referendum on the draft Constitutional Treaty, despite its excesses and the tactical ulterior motives of some of the people involved. It was one of those rare times when a whole country, even one that is thought of as depoliticised, regains its enthusiasm for democracy. Nor should a committed European like myself object to the fact that the debate was about Europe. After all, a democrat must never shrink from a ballot, even if he loses. And I did lose.

Because I voted 'yes' on 29 May 2005. I was not over-impressed with the text we were being asked to vote on, but I was determined. After strongly criticising the serious failings of the Maastricht

and Amsterdam Treaties and complaining that we were hamstrung institutionally by the current treaty, the Treaty of Nice, I finally had in front of me rules that could enable us to resolve Europe's current problems. Above all, since it extensively overhauled machinery, powers and the regulatory hierarchy, it meant that we could combat the effects of the liberalising policies whose devastating consequences I have been in an especially good position to observe.

Certainly it would have been a complex task to implement this huge draft Constitution, riddled with inconsistencies. Complex, but undeniably exciting. Because it meant juxtaposing with the Treaty of Nice new elements that would, for the first time, offer some hope of launching the Union towards new horizons: fair trade, full employment and sustainable development. The new features were anything but anecdotal: greater powers than ever before for the European Parliament, stronger political control of the Commission, cohesive diplomacy based on conflict prevention, stability and transparency for the Council, a legal basis for protecting general interest services, fewer hold-ups in the decision-making process, possibility of relying on the Charter of Fundamental Rights in the courts, citizens' right to hold the authorities to account, etc.

Technically, therefore, the European Constitutional Treaty was easily summed up: nothing retrograde, only progress. As we saw during the campaign, the political aspect was far more delicate. Although the atavistic anti-Europeans had every reason to oppose this leap forward in European integration, the main aim of the (many) pro-European 'no' voters was to halt the Union's decline. In particular they were concerned – quite understandably – at the constitutionalisation of current European policies, and their rejection was also fuelled by the irredeemable corruption of the French Government. However, as the polls show, most of the 'no' voters saw rejection of the text as only the first step in a general mobilisation of the public to bring about fundamental improvements.

The first problem was that, although it was very easy for the pro-Europeans (often said to be on the left) to vote 'no' at the time, that started to cause difficulties immediately after they won. Because then there were only two ways of moving forward again: the 'legal' way (finding the necessary UNANIMITY in the European Council, for the time being the only decision-making body, and, although dominated by liberals, responsible for removing all liberalising elements from the text), or the 'revolutionary' way (long-term mobilisation of citizens in order to impose a different constitution). Those two attractive possibilities have since come up against quite a different situation (and no one could say they had not been warned).

The second problem was that it was not enough to target fair criticism at the productivist parts of the draft Constitutional Treaty, because they already appeared in the present treaty. They were the only ones that remained in force and made their disastrous effects felt after the 'no' victory. It is a dreadful paradox to have rejected what Europe might have become and accept Europe as it is. A terrible and instant penalty to see the failings perpetuated and worsened as a result. And a terrible situation for those, such as the Greens, who are unhappy about this Europe that has lost its way and who find that they do not have the institutional and regulatory framework to combat it.

Even if it was perfectly reasonable not to be able to endorse such a poorly thought-out plan for a constitution, you then have to face up to the consequences of its failure. It was more than just a breakdown, it was a backward step. Because two demons that I often come across in the European corridors of power have been strengthened as a result. Firstly, liberalism, whose disastrous effects, with the impunity now conferred on it by the continuation of the Treaty of Nice, are often compounded by arrogance. Secondly, nationalism, from the most sterile to the most sickening, which had already blighted the referendum campaign and has since hardened selfish attitudes in every Member State, which are a source of disunity.

So that leads to a simple conclusion. Anyone who believes in the European project cannot stop here and not move on from the Treaty of Nice. We – and especially those on the left – cannot just claim that a different Europe is possible; we have to work to bring it about.

That requires qualitative and quantitative changes to its institutions, and the draft Constitutional Treaty, despite all its faults, provided a basis for that. Thus, although it is true that most of the document on which we voted in the referendum (especially the long Part III) merely reproduced the provisions of existing intergovernmental policies, it is nevertheless also true that the strictly

constitutional additions (mainly in Parts I and II) introduced radical changes. With the extensive redistribution of powers (those of Parliament were more than doubled), it was finally possible to re-direct policies, even in their current framework. The more flexible decision-making machinery provided the transparency and efficiency that until now have been so sadly lacking in the Union. The establishment of a sound legal basis for fundamental rights was a step forward from the strictly economic approach that Europe has always been based on since its beginnings.

So we have to re-start the fragile constitutional process. It will not be easy or quick, but it is, quite simply, essential.

What should be done and/or what can be done?

Bringing a European Constitution into being at the moment, when the stagnation is both short-term and structural, treads a fine line between what should be done and what can be done.

The scope for what should be done is virtually limitless, since everyone is convinced they have the magic formula which, in a few high-flown pages, will lead the peoples of Europe towards a glorious future. It is easy to declare one's own certainties in that way and then to retreat cautiously, blaming others for the lack of action. Besides these certainties, there is one that is absolutely unquestionable: all these navel-gazing exercises, which are radical and diverse but often totally unrealistic, are doomed to failure. In any case, for some people the end result is immaterial: it is enough for them to state their views, even if they know they are sterile.

In constitutional terms, the scope for what can be done is at the moment much narrower. It means taking account of all the limits beyond which the various parties involved – governments, institutions, the public – will not go, and also reconciling these with the essential rules in force.

The purpose of the three sections in Plan A+ is to find a practical and practicable way of bringing in a first European Constitution as soon as possible. The word 'first' is important, because it indicates that, however essential and decisive the text is, it will undoubtedly only be a further step in the difficult historic process Europe has to complete.

The method chosen is to rely on public aspirations (a positive 'what should be done', in that it is backed by the majority), whilst paying due regard to European legal and political realities in all their aspects (what 'can be done' according to the decision-makers).

Any task starts from initial assumptions. These are mine: this approach assumes that, despite the doubts they have expressed so strongly, the majority of the people of Europe are still in favour of European integration, provided that it is based on ambitious social, environmental and democratic regulation, both in the way it is presented and in its results. It also assumes that national and European political leaders, finally realising what is at risk and what is at stake in this historic process, are still able to identify new possibilities and stop using Europe's future, as some do, for their own domestic ends.

THE WRONG TRACK

Many people have examined the remains of the Constitutional Treaty. I am doing so myself in this document. But what are we going to do with the body? Go on pretending it is not dead? Admit that it is brain-dead but keep it artificially alive to put off declaring it dead or wait for scientific advances? Try to resuscitate it? Dissect the corpse and use some of the organs? Give birth to a new baby?

To focus the debate, let us try and look at the various possibilities being explored in government circles. The list does not claim to be exhaustive, if only because each option might have a number of variations and some of them might even be combined.

Option N° 1: 'giving up'

Stop the constitutional process altogether and continue with the Treaty of Nice.

In view of the persistent opposition of some countries, and the impossibility of securing the necessary unanimity, the draft Constitutional Treaty would be abandoned for good. That option is only mentioned here for the record, because NONE of the governments, even those that are least enthusiastic about Europe, has seriously considered it for a moment, for two reasons:

- a) when the draft Constitutional Treaty was signed ceremoniously in Rome at the end of 2004, the Heads of State and Government declared unanimously that it was essential to Europe's future. Having for a long time pressed that point home to the public, they cannot now claim the exact opposite.

- b) All the Member States' governments are aware that the geographical enlargement of the Union is such that it has gone beyond the point of no return. There are too many countries now having to take decisions on too many issues for it to be possible to stick to rules that were devised in the early stages for six countries that had only pooled their coal and steel.

So the idea of simply abandoning the Constitution has to be rejected, because it would spell the end of the European project, reducing the Union to a mere free-trade area with marginal influence. However, it should be noted that some (rare) pro-Europeans are in favour of this 'worst case scenario', believing that the crisis would give Europe an impetus. Moving towards the failure of the Union in this way is unacceptable. In particular, it would clearly encourage dangerous extremism, and would, furthermore, unfairly penalise the most disadvantaged.

Option N° 2: 'avant-garde'

Bring the Constitutional Treaty into effect only between the countries that support it, with the other states merely associated with them through specific procedures.

Since institutional change is clearly needed, this is intended as a pragmatic response to the unwavering opposition from some states. It would be a sort of optional 'closer cooperation' (on the lines of the euro or the Schengen area), juxtaposing different types of rules and establishing two tiers of states. On the one hand there would be those (currently very much in the majority) that have ratified the Constitutional Treaty and would operate according to its laws, and the others would be associated with it on the basis of an amended Treaty of Nice. There was some interest in this option, described as a 'hard core' or 'first circle' solution, some years ago. It was based on the observation that the institutions could no longer function with too large a number of countries and that, if it proved impossible to reform them, a group of pioneers would have to progress towards closer integration on their own. That system now faces the following obstacles:

- a) Vaguely sketched out well before the large wave of accessions in 2004 (i.e. well before the institutional stalemate), it was never considered viable, since it was not supported by a country (France) that had been one of the Union's main driving forces.

- b) The institutional structures of a Europe with variable geometry would be so complex that it is impossible to see how they could be (re-)defined (what decision-making bodies? what powers? what policies?).

- c) Most of the present integrated policies are now so tied into a 'Community *acquis*' that is part of our whole daily life that they would be impossible to implement and even to rewrite (to differentiate them for the various states).

- d) No country would ever agree to being part of the second circle (you might as well call it a 'second area') and these issues of national pride would be crucial, because unanimity would be needed to put all this into practice (unless the European Union were to be wound up, for which there is no provision in the current treaty).

This option, which is not technically feasible, is now not even consistent with the present character of the Union.

Option N° 3: 'moving ahead'

Continue the ratification process without changing the text, then holding another referendum in France and the Netherlands (and any other countries that were opposed).

This option is based on the fact that the obstacles encountered with previous ratifications (the Danish 'no' to the Maastricht Treaty, the Irish 'no' to the Nice Treaty) have always been overcome in the end after further public consultation. This was the immediate response of the stunned European bodies after the 'no' vote in France and the Netherlands. Some even expressed the ridiculous view that this further consultation must be done through the parliaments, as if it were politically realistic to insult voters who had made their views clear in that way. This *'show must go on'* idea is weak from various points of view:

- a) The opposition to previous treaties came from 'smaller' countries whose political influence was generally limited. Now it is two 'heavyweights', founder members of the Union, who have signalled their rejection, and they are clearly only leading the way for other large countries that have not yet expressed their views, such as for instance (for different motives) the United Kingdom, Sweden and Poland. Furthermore, the rejection in the referenda was very clear: there was a high turnout and a high rate of opposition.

- b) To leave the text as it is would be to deny the fears (whether justified or not) that are now permanently rooted in the minds of the public whenever Europe is mentioned. The short-sightedness of the elites has already produced one rejection. If the public's views were to be spurned, a second failure would be inevitable.

- c) Despite what their governments say officially, many Member States are not 'inconsolable' at the collapse of the draft Constitution. These include, first of all, euro-sceptics such as Poland, the United Kingdom and the Czech Republic, which are not unhappy that France and the Netherlands have done the 'dirty work' for them and had wisely delayed their own ratification so that they would not be held responsible for the deadlock. Furthermore, generally speaking the ten new Member States have very little reason to press the matter. Although they do not always admit it, they are only too happy to continue with the Nice Treaty for many years to come. In fact, the Treaty of Nice gives them political, demographic and economic influence well above their actual weight (remember the slogan of the Poles, who are enthusiastic about its benefits: *'Nice or die!'*). Moreover, most of those countries have only recently emerged from Soviet control which firmly suppressed their individuality. So they are not in any hurry to move towards greater European integration, which they see as another way of watering down national identity.

- d) Eurobarometer surveys regularly show that anti-European feeling is steadily increasing and has recently become much stronger. Every month, whole sections of the population go over to the camp that believes the Union's deregulation machinery is to blame for the deterioration in their daily life. The protection afforded by European integration is not seen as preferable to, or even compensation for, the dismantling of national protection. Europe is now the problem, not the solution, and this inescapable rejection has only increased since the middle of 2005, because it has allowed the decline and stagnation of Europe to produce their disastrous effects.

So, given the nature of the opposition, the lack of understanding of the project, the unwillingness of the participants and the unfavourable timetable, this is not a viable option. Clearly the result would be the same if the same text were to be presented to the countries that had rejected it, with other countries no doubt joining the list in the meantime.

Option N° 4: 'putting on ice'

Suspend the ratification process and keep the text unchanged in case the situation improves.

This would be a 'break', with the text left as it is until the political climate clearly favours its rapid adoption in the five or six countries where it has already been or is most likely to be rejected. In the meantime the Treaty of Nice would, of course, remain strictly applicable. This was in the end the course of action the European Council decided on, in view of the possibility that others would follow the French and Dutch example. If this is combined with a period of reflection (which does not seem to be echoed in the media or public opinion), it is claimed that the text only needs to be 'better explained' (!?) and it will be accepted. That has several drawbacks:

- a) As with the previous option, the failure to review the contents of the text in some way is totally at odds with the wishes of the public, who have made their opposition plain.

- b) It is highly unlikely that public opinion will become more favourable in so many countries at more or less the same time. It is not even certain that a change of government in France would be enough, as is sometimes suggested, for France's attitude to Europe to change (would the new president take a gamble on a referendum at the start of his presidency?). And even then, developments in France would have no effect on the stalemate in other countries.

- c) As with the previous option – and even more so in fact, since the ratification clock is stopped – as time goes by the risk of a rejection only increases, because the deadlock and the social and environmental breakdown for which Brussels is now responsible are becoming worse.

So it would be unrealistic, not to say counter-productive, simply to call a halt until the situation improves.

Option N° 5: 'dressing up'

Keep the text as it is but add a further declaration to simplify ratification.

This is the option favoured by many of the countries that have already accepted the Constitutional Treaty and do not want their national decisions to be put down to profit and loss. A substantial declaration attached to the text, which itself would remain unchanged, would place the emphasis a little more on the Union's social and democratic role. The 'no' countries would then be asked to reconsider the text with that addition. This solution, which has the advantage that it does not unbalance the draft Constitutional Treaty so painstakingly negotiated (between states that mainly wanted common policies and those that wanted a review of the European machinery), has two major shortcomings:

- a) It is a little too naïve to assume that, if there were another referendum, the public, who have made their views on the general scheme of the treaty very plain, would be satisfied with what is obviously a cosmetic change. It is the wording and/or the regulatory force of the present text that is causing the problem. Additions that do not introduce any changes would therefore have no effect on the public perception.

- b) The advocates of this option are themselves so little convinced of its persuasiveness that they are suggesting the new package should be approved not by the public but by the parliaments of the countries that have voted against. It might as well be said that that would complicate the procedure even more and the resulting constitution would be so wrong that it would discredit the idea of Europe for many years to come.

So this option offers too little, too late.

Option N° 6: 'the mini-treaty'

Choose a few provisions from the Constitutional Treaty and add them to the Treaty of Nice.

This is the 'Nice Plus' option. Some of the best provisions in the Constitutional Treaty (e.g. more integrated diplomacy, extension of the parliamentary codecision procedure to other areas, greater transparency of the Council) would be picked out and added to the present Treaty, which would still have the same structure. The Treaty of Nice would be submitted to the Member States for ratification by their parliaments with those amendments. It has also been suggested that additions could be made to this 'mini-treaty' subsequently in a further, more strictly constitutional process, but only after several years. The main problems with this option are as follows:

- a) It would not be easy for states with differing interests to decide which provisions of the Constitution should be 'salvaged'. Unanimity would be necessary.

- b) The Union would not be provided with the institutional resources to meet its present needs. This would be simply a bastardised reform that would only further delay the real institutional changes Europe needs. It would even, perversely, defuse public opinion; the public would think that the necessary action had been taken and might not realise the urgency or importance of more wide-ranging reform. Worse still, if the changes to such a mini-treaty did not have the required structural effects, Europe would be even more harshly criticised, because it would no longer be able to plead the 'extenuating circumstances' of the Treaty of Nice.

- c) The highly controversial provisions of Part III of the Constitutional Treaty would be kept as they are, because advocates of the mini-treaty carefully omit to say that those policies would then be inviolable, with the same regulatory force and weight as if they had constitutional status. Thus problems with ratification could still be expected in certain cases.

- d) The ratification method proposed by advocates of the mini-treaty is also not very convincing. The convenient system of ratification by parliament somewhat overlooks the fact that it will in future be difficult not to give the public a direct say when they have expressed such strong views on the subject (particularly in France and the Netherlands), even apart from the fact that in some states ratification by referendum would still be mandatory.

This option, which is narrow in conception, complex – and indeed unreliable – in its implementation and unlikely to produce successful results, will not appeal to anyone who supports a genuinely European project.

Option N° 7: 'clearing out'

Just keep the constitutional parts and get rid of all the rest.

This would involve drawing up a new, smaller, document just covering the institutional machinery provided for in various parts of the Constitutional Treaty. It would be the whole of the constitutional corpus already agreed between the Member States (and not just small parts as in the mini-treaty). The other parts of the defunct draft Constitution would be omitted (policies, protocols, etc.) and would then be re-defined later, simply through implementation of the Constitution (the European decision-making bodies would produce new policies and new agreements between states). This is an attractive option in that it is democratic and looks simple on paper, but unfortunately there are some insuperable obstacles:

- a) To delete in legislation, just with a stroke of the pen, policies that have been developed in over half a century of European integration requires the UNANIMOUS agreement of the Heads of State and Government, NONE of whom has expressed the slightest inclination to do so (not to mention the fact that a further series of – always chancy – ratifications would then be needed in the 27 Member States, for which unanimity would again be required). Worse still, some countries, particularly some of the new Member States, have made it clear that one of their main reasons for joining the European Union was that they wanted to benefit from its existing policies.

- b) Nothing points to any consistent, massive and international public pressure for the Heads of State to take such a step. That might be regrettable, but there is no call for radical change in Europe. In any case, with the current rise in nationalism, who would really be the winners from popular pressure? Research shows that public opinion in Europe is completely fragmented in very different national areas. Those who reject Europe in its present form include both those who want an integrated and ultimately democratic Union and those who have always fought against the establishment of a political Europe.

So this option is ruled out both on judicial grounds and on the grounds of basic realism.

Option N° 8: 'back to the drawing board'

Start again from scratch, working out a new Constitution and new policies.

With this option, which is even more radical, it would be possible to overcome the persistent deadlock by showing that the Union is able to learn from experience and is determined to move towards closer integration. A body would then be asked to draw up new texts, an initial mandate would be given to (or claimed by) a re-elected European Parliament, or, most probably, a new 'Convention' representing the various (national and European parliaments) and governments would be convened. The draft would then have to be approved by the Intergovernmental Conference (IGC) and then ratified nationally. At first sight, this option is the most attractive for anyone who is a democrat or europhile. Like most environmentalists, I have personally supported this kind of scenario, in which both institutions AND policies are reformed and approved transnationally by the public, in various election campaigns even before the work of the Convention was completed. Unfortunately there are serious obstacles to this option:

- a) First it would be necessary to overcome – unanimously – the frustration and the objections of the large majority of states that have already ratified the existent draft Constitution (some by referendum).

- b) There is no evidence that a new constitutive body in which all the usual political groups would be involved would produce a more ambitious text. It must be remembered how the compromise resulting from the previous Convention in 2004 had already been secured in a process that pushed many states FAR BEYOND what they were intending to concede (as some countries soon made clear). There is a serious risk that these absolutely unexpected achievements (in particular some transfers of sovereignty or weighting of votes) would not be secured again now that the mood is one of national introspection. Institutionally, it could lead to an 'unravelling' of the present scheme rather than its reinforcement.

- c) From the policy point of view, even if one might reasonably hope for more public support for Europe's social and environmental policies during this Convention than during

the previous one, it cannot be said for certain that that pressure will have a strong effect on the policies that have been enshrined in Europe's administrative, economic and industrial corpus for decades. There again, it needs to be reiterated that any change requires unanimity between the governments and most countries are in favour of that continuing, however regrettable it might be.

- d) Populists of all persuasions are eagerly awaiting that time. The debate would come at a time when they are on a roll everywhere, so it would give them the opportunity they have dreamed of to manipulate public opinion more easily when it is so weakened and disorientated (you can already imagine what they will focus on: general insecurity, hatred of foreigners, criticism of technocrats, an appeal to national pride, and so on).

So this is an interesting option, and ideal in the best of all possible worlds, but late, and very risky because the outcome is uncertain. That would depend above all on a mobilisation of the public – something I have wanted to see for many years – which would need to be progressive, large-scale and consistent. However, that was not in evidence immediately after 29 May 2005, although it was clearly needed. Although we should never be afraid of the outcome of a debate, we still have to be aware of the present disturbing trends in public opinion, stirred up by populist demagogy. In all probability this option would result – at best – in a 'Nice Plus', but also in a 'Constitution Minus', which would be the same as ending up with the mini-treaty but by another, less risky, route.

PROPOSED INSTRUMENT

Advocating a text whose general outlines remain unchanged, but which has differentiated status, separate ratification arrangements and more flexible revision procedures.

In the unprecedented existential crisis facing Europe, in which the only real beneficiaries are liberalism, narrow nationalism, Atlanticism and populism, it is important to stimulate debate.

The proposal that follows is modest in both its form (it is more pragmatic than revolutionary, at least on the surface) and its possible effects (I am aware of Europe's complexities), but highly ambitious in its objectives. It should fulfil the popular expectations of a Europe with different methods (and therefore results), but at the same time meet the requirements of the decision-makers and the legal and political context in which they operate. It is also designed to overcome most of the numerous obstacles pointed out earlier in this document. This option, which can certainly be improved upon, should also, through dialogue and the definition of common goals, bring together both sides of the pro-European camp that has split apart during the referendum on the Constitution.

I have deliberately decided not to wait until a vigorous institutional debate is forced on us by the mobilisation of public opinion, although I am otherwise in favour of such mobilisation. I should certainly welcome it if this eagerly awaited upsurge of public opinion were to come about, especially since that would make it possible to consolidate immediately many of the ideas that I shall be putting forward below.

For the record, I am fully committed to participatory democracy, as evidenced by the fact that I have recently had adopted by the European Parliament a 'citizens' agora', a new body that will start a trial period in 2007. Hundreds of representatives of European civil society will be invited into the chamber in Parliament for several days to work out a joint position (or the real options) on a fundamental legislative issue on the European agenda (on the lines of the Services Directive or the REACH Regulation) before Parliament takes any decisions. The purpose of these agoras is to place the views of 'citizens' experts' at the centre of the debate and at the same time to bridge three gaps. Firstly the gap between Members of Parliament and non-members (MEPs will be invited to take part in the work of the agora), then the gap between the various parts of civil society (since their interests in a particular area often diverge), and finally the gap between different countries (with the ultimate aim of developing a European public opinion that is truly transnational). Public participation is therefore a key element in the future I am envisaging for Europe.

But for the time being my proposal focuses in a more 'technical' approach to the problem. If we are to produce an initial European Constitution, I would suggest that Plan A+ be based on a text whose general outline remains unchanged, but which has differentiated status, separate ratification arrangements and more flexible revision procedures.

General outlines unchanged.

Retain the whole text of the draft Constitutional Treaty as a basis.

As a basis for discussion, the simplest, least risky and least controversial method is to use the actual text of the existing Constitutional Treaty without changing the general outlines, that is to say the paragraphs it contains. That has three advantages:

- a) Re-publication would capitalise on all the consensus achieved in the European Council. That avoids the pitfall of reopening the debate between Heads of State and Government on the components of the text. Such debate would open up Pandora's boxes and Community interests would quickly be undermined. The leaders would thus simply be referred to their own formal and unequivocal commitments.

- b) At the same time, we would reaffirm our unanimous intention of moving on from the current treaty, thereby eliminating the possibility of a 'political retreat' by the countries that were (secretly) hoping that they could conveniently fall back on the Nice rules.

- c) The (very many) national ratifications that have already taken place would not be called into question. That would pay due regard to the states (and members of the public) that have already expressed their views.

However, retaining the letter of the text does not mean that it would not be possible to alter its form and substance.

Differentiated status

Separate the strictly constitutional parts of the draft Constitutional Treaty from the rest.

The big mistake that the Intergovernmental Conference (IGC) made in June 2004, as most commentators have since agreed (and the Greens emphasised in the European election campaign), was that it tried to combine in a single volume texts that were essentially completely different. The ambiguous nature of the contents was clear even from the title of the final text, 'Treaty establishing a Constitution for Europe', a treaty plus a constitution or, to be more exact, a constitution encapsulated in a treaty.

It is true that the title accurately reflected the hybrid nature of the document, whose original flaw was that it mixed purely institutional aspects with policies, which everyone agreed were out of place in a Constitution. That was certainly the fault of the IGC, but it was also the fault of the Convention, which later finalised its work by making this dubious mixture of genres official without saying a word. Because (and this was the focus of the criticism from the 'no' voters) how could one agree to the constitutionalisation of policies that in any democracy must be decided by majorities in elections? The Treaty and the Constitution therefore have to be kept separate.

The second part of the proposal, therefore, is that the constitutional aspects should FINALLY be clearly separated from those covered by an intergovernmental treaty. As far as I know, that exercise, so often talked about, has never actually be carried out exhaustively. The two sections (2 and 3) attached to this document (section 1) are therefore the result of this tedious but painstaking sorting process. No paragraph, no line, no word has been removed. One or two linking words (which are clearly indicated in italics) have been added in a (very) few places, in line with the scheme and/or syntax, but it will be readily apparent that they do not alter the meaning. Section 2 has been entitled 'The Constitution', since it brings together all the parts that are similar to a Basic Law laying down constitutional principles and the main decision-making machinery (the Charter of Fundamental Rights is referred to in particular). Section 3 is entitled 'The Treaty' and it encompasses all the rest, i.e. the other intergovernmental provisions in force: policies, procedures, protocols and annexes.

Contrary to what some have said, it was not sufficient to separate part I (institutions) and part II (the Charter) from parts III (policies) and IV (final provisions). It was necessary to go through it with a much finer 'semantic sieve'. For instance, part I, on which there was (however) consensus, contains the reference to free competition that has come in for so much criticism from the 'nos' on the left, whereas there are whole pages simply describing the operation of the institutions in the middle of the policies in the very controversial part III. For purists, a long and detailed synoptic table that can be downloaded from the Internet (www.onesta.net) shows, in academic form, all the changes from the original text to the proposed text.

This clarification process often presented problems of interpretation, particularly as regards the principles laid down in part I, because there is sometimes a fine line between what does and does not relate to a constitutional provision. In order to differentiate the two, the fundamental principles of our society, supported by everyone of whatever political persuasion (such as the protection of children's rights) were deemed to be constitutional, but concepts relating to a model of society that had to be determined by political majorities (e.g. free competition) were not included. These interpretations cannot claim to be totally impartial but, even if they are open to debate, they do give an idea of the general format. Similarly, all the procedures describing in detail the operation of the institutions could

have been included in the 'Constitution' section. To avoid making it too cumbersome, it is suggested that only the most general provisions be considered constitutional and the rest be regarded as purely procedural rules ('organic European laws') drawn up and amendable by the legislator, in particular by the Council (of Member States' governments).

This differentiation of the two new sections (Constitution and Treaty) should be published officially by an IGC (which could probably be done fairly quickly, since the text would be exactly the same as the one approved by the previous IGC) and the European Parliament (which at the moment has a purely advisory role) should then give its opinion. This 'deconstruction/reconstruction' has a number of advantages:

- a) It clarifies the nature and function of the different texts. This concern for consistency, information and transparency is always desirable in a democratic system.

- b) The Constitution is cut down to a few dozen pages instead of the original hundreds. This 'slimming down' reduces the Constitution to an average length compared with other basic texts and, in particular, makes it easier for members of the public who are its target readers.

- c) A number of European leaders (including several Heads of State who indicated their views at a plenary sitting in the European Parliament) have recently expressed strong support for this separation of the Constitution from the rest, pointing to the fact that this course of action is considered by those at the top to be not just appropriate but also credible.

- d) The 'deconstitutionalisation' of existing policies makes it clear that they have a less hierarchical status, which should make it easier to change them. So they are not carved as deeply in stone as some feared. Indeed, the European Parliament (already taking up the hammer and chisel?) announced back in January 2005, on my initiative and by a massive vote in plenary, that it was going to use the new right of amendment conferred on it by the Constitution to propose improvements to the text.

To have separated the wheat (constitutional) from the chaff (of the Treaty) is an important step. You realise whilst doing so that the text (retained in its entirety in the two sections) is not a literary masterpiece (but Europe can survive such a lack of simplicity and poetic language). However, the change of status between the two sections is more than just a semantic exercise: it would also have an impact on the ratification and then the amendment of these two documents, which would then also be different.

Separate adoption arrangements

Provision for different ratification methods, based on the new structure of the text.

The final adoption of the two texts is the first real innovation, but it is also the first real problem with Plan A+. In fact, it is really only 'new' for those unaware of all the arguments European environmentalists have been putting forward on the subject for several years, which could now be very much to the point.

A distinction is also made between the Constitution and the Treaty as regards the procedure proposed for their ratification. Derogating from my own rule that the general outlines would not change, it was the ONLY page of the Constitutional Treaty on which I took the liberty of amending a few lines in the chapters on ratification. The current version of the text (in grey and crossed through) and the proposed alternative wording (in bold type and enlarged) appear in section 2 (on page 41) and section 3 (on page 82). A copy of the two pages is also attached to this document.

The Constitution, the most formal part, would be submitted to an transnational referendum, in other words a ballot held in every country of the Union on the same day. In order to be adopted, the text would require a double qualified majority, reflecting the dual nature of Europe: unity of citizens and unity of states. So the Constitution would enter into force if it was approved by a majority of votes cast

in Europe (the Union being considered a single constituency for that purpose) and a majority of the votes cast in over half the Member States (each country in that case being considered a separate constituency). This is simply copied from the federal voting model in Switzerland, in which qualified majority = majority of voters + majority of cantons.

The Treaty, containing the more technical provisions that are already in force (since they are part of the Treaty of Nice) would only be submitted to the national parliaments for approval. That purely formal procedure would validate the rearrangement of the text, whose content (already published officially) would be the same as the present one. Since the second text would be an intergovernmental treaty, it would logically at that stage require the unanimity of the contracting parties and thus the support of all the national parliaments.

For the sake of consistency, the Constitution and the Treaty would not enter into force until both texts had been ratified. Since they were originally linked, one could not be adopted without the other, since that would create an impossible institutional vacuum. After that initial adoption, however, any future changes could be made separately.

The problem with the separate ratification of each text is that it requires the prior unanimous consent of the Heads of State and Government (meeting in the IGC) and some marginal changes in national law to allow a referendum (which is unknown in Germany, for instance). It seems, however, that these obstacles can be overcome, especially since that might be in the interests of the Council for several reasons:

- a) The transnational referendum allows the European Council largely to circumvent the tricky problem of national political issues taking over from the European issue. If they are all consulted on the same text the same day, European voters will be aware that the object of the exercise is not to express approval or disapproval of their own governments. Several Heads of State have also expressed a similar view recently.

- b) Re-consulting countries that have already approved the Constitution does not, in this case, make it look as the endorsement already given is being ignored. The new text does not contradict the text previously approved, but emphasises its symbolic significance.

- c) The pro-European 'no' camps, which in France and the Netherlands now fear that they will be cheated of their victory and deprived of further consultation, would be reassured. They can feel able to express their views on the constitutional part without in any way endorsing policies of which they were otherwise critical. In those circumstances, the European Council would be less worried about holding another vote in those countries.

- d) The IGC will find it difficult to object to submitting a text that it approved itself barely two years ago, since the different ratification arrangements do not affect the letter of the text in any way.

- e) The problem of some countries having no referendum procedure can be avoided by stipulating that if those countries do not wish to alter their national constitutions they should simply hold consultative ballots. Their national parliaments, which would take the final decision, would then undertake to bring their own votes into line with the results of the public 'consultation'. In fact, that procedure has been considered and even used in several countries (e.g. Netherlands and Poland) in the recent past.

One more question arises: what about the countries whose national electorates voted against the Constitution, when it was ratified at Union level?

In fact, the Constitution gives some indication of the answer to that. All that needs to be done is to establish beforehand, by joint agreement, that any country in which there is a 'no' vote, complying with the decision democratically taken at European level (a double majority having been achieved) will then apply the Constitution, if necessary exercising its NEW constitutional right to withdraw from the Union (for a period that it alone can decide). 'Opting out' (a well-known phrase in the Community), the permanent optional exit door dear to the heart of a few countries, would be wide open.

More flexible revision procedures

Allowing controlled and appropriate changes to the two new texts.

The future amendment of the two texts (Constitution and Treaty) is the second real innovation and the final difficulty with A+.

The decision that the text would remain unchanged, but would be clarified and approved 'separately', will still not please those who are implacably opposed to the European policies that will continue to be contained in the 'Treaty' part. Those people represent a huge pool of potential opposition to the whole constitutional process, because they will have every opportunity to say that, even though they have been 'deconstitutionalised', the policies are still 'protected'. It will not be enough to remind them that the policies are already enshrined in the Treaty and hence already being applied. Or even that the new institutional structures – which have, furthermore, been stripped of too much emphasis on ideology – will enable the policies to be redirected (although that is my personal view), despite the fact that the Treaty still has a strict framework. For those people, who are so numerous that they can make or break the final outcome, and also in order to ensure that democracy can operate more normally, we have to open up the horizons. That degree of openness has to be carefully gauged if it is to be significant, but it must also be acceptable to the European Council, which we know to be sensitive and which will have to approve it unanimously if necessary.

Therefore, I strongly suggest here that it should be possible to make changes to the texts without being subject in that specific case to the right of veto, which obviously means a unanimity rule. It was on that point that I expressed the firm hope at the beginning of this document that national and European political leaders would still be able to find some possibilities for action in the present historical context.

Derogating again from the rule that the general outline would remain unchanged, my proposals for amendment appear on the same page of the Constitutional Treaty as before (see again page 41 of section 2 and page 82 of section 3, chapter on revision, a copy of which is attached.

As regards changes to the 'Constitution' part, I would merely suggest adhering to the original ratification procedure for the text referred to above. In other words, after a constitutional amendment has been considered by a Convention and adopted in the IGC (where, since it is a Basic Law, unanimity between the Member States can still be allowed) and, after it has been approved by the European Parliament, it would be ratified in a transnational referendum according to the double majority rule (public + national government). As already laid down in the present text, minor amendments could be adopted in a simplified procedure (without convening a Convention).

It is on the question of changes to the 'Treaty' section, especially the parts relating to policies, that the biggest 'effort' is required from European leaders. Unanimity (and thus the right of veto) on changes to policies is incompatible with the very essence of a democracy. What is needed, in fact, is to consider not the content of policies (which the legislator already decides to a large extent and would do so almost entirely if the Constitution entered into effect), but the definition of their general framework.

It is proposed that, after an amendment had been considered by a Convention, changes to the text of the Treaty could be made with the agreement of an IGC by an EXTRA QUALIFIED majority representing at least four fifths (80%) of the countries sitting on the European Council. That ensures that a strong consensus should emerge in the IGC and that there could be no question about any arbitrary majority. In this unweighted vote, the interests of the weaker states would be just as well safeguarded as those of the most powerful states. To further protect certain national interests (since it will still largely be an intergovernmental treaty), it is proposed that, after being approved by the European Parliament, the amended text should also again be ratified by at least four fifths (80%) of national parliaments in order to enter into force. This dual (European and national) approval, with such a high threshold, should be an additional safeguard that would reassure the most timid Heads of State

and Government. Here again, as stipulated in the present text, minor amendments could be adopted in a simplified procedure.

The advantages and disadvantages of 'opening up the game' in this way are so obvious that there is no need to go into detail here. Just one look at voting in the Council over the past decades shows that such a measure would have enabled Europe to avoid getting into a rut on a great many occasions. The 'effort' required does not seem to be huge in the context of the future of the whole European project: the leaders of the Union merely have to be formally reminded of their responsibilities.

Reasoned and reasonable

Thus, with a text that is not rewritten but clarified, and more flexible ratification coupled with the possibility of making controlled changes, this is a coherent solution that strikes a balance between what should be done and what can be done. I hope that such a reasoned and reasonable approach still makes sense in the current political climate.

By comparison with the other eight options set out above, Plan A+ might be said to avoid the major risks of 'giving up' or 'putting on ice'. Nor does it have the pitfalls of the 'avant-garde' or the 'mini-treaty'. It allows us to 'move ahead' in a field in which the problems have been more or less eliminated. It does not preclude 'dressing up' with the addition of a strong declaration that it might be appropriate to introduce on the 50th anniversary of the Union in March 2007. Instead of the unrealistic approach of 'clearing out', it proposes selective sorting and recycling of the whole. Lastly – and this is probably its most important feature – it allows for the possibility of 'going back to the drawing board' at a later date, allowing future generations the inalienable right to decide on their future.

Let us hope that these forthcoming changes will take place in a calmer Europe that, thanks to its new constitutional system, has regained a sense of its project and values.

ANNEX

In my opening remarks, I criticised those who put forward their views on the Constitution without looking at the reality. I thought that that concluded the debate. I have to recognise now that giving one's own views on the subject is virtually inescapable, if only to ward off criticism from one's own political colleagues that one is avoiding the issue.

However, it is only after having attempted to discuss the question as a whole that I feel entitled to do so, more in order to give the reader something to think about than to add anything to what has already been said.

So what would a European Constitution be like if it were to be written just by environmentalists?

It is difficult to answer that question precisely; despite lengthy discussions, the Greens, who are noted for their diversity, have not managed to decide on any of the details. Informed observers will have already noticed the environmentalist ideas underlying my remarks earlier in this document (such as European integration, federalism, direct democracy, respect for diversity). However, environmentalists will often have different opinions, especially if they come from different countries.

The remarks that follow are based on ideas on which the French Greens have often campaigned, together with more personal reflections from my years of experience in the constitutional debate. So they are not the views of environmentalists but simply the views of one environmentalist.

An environmentalist's view of the Constitution

What Europe needs

The reason the Greens have always been committed Europeans is that they realised – probably ahead of many others – that the crisis of civilisation (which they sum up as the 'environmental crisis') cannot be resolved by the present nation states (in fact, the problems are often caused by the selfishness of such states). To combat the effects of economic and social globalisation and of pollution, wide-ranging instruments are needed, on at least a continental scale. European integration has also shown that it could be a powerful vehicle for peace between the participating countries, as the past 50 years have shown. For the Greens, any thoughts on institutions, whether local or national, must therefore take account of the development of the European project, which is far-reaching but still fragile.

The integration of Europe's laws, rules and currency and its unprecedented territorial enlargement have changed its character. The institutional machinery of the founders, however essential it might have been in the post-war climate, has had its day. A new era must begin and it is becoming clear that a constitution is indispensable. But that word is not enough. There are different kinds of constitution. Making the wrong kind of changes to the institutions might place obstacles in the way of progressive policies and indeed lend support to advocates of the most devastating productivism. The (re)founding text environmentalists would like to see has to be a democratic instrument that is suited to the work they have undertaken. Future institutional arrangements will be crucial in that respect.

So for the French Greens, the debates on an nth French Republic can only be seen as a step towards a wider goal: the first Federal Republic of Europe.

If Europe is close, it will be understood and appreciated

The Greens are Europeanists. That is true. But their vision of Europe is defined by the fact that they are, at the same time, federalists and regionalists.

Because, however necessary Europe is, it will only be accepted if it is perceived as close, understandable, concerned with individuals. There is still a danger that a new Brussels centralism will emerge, which (from the French point of view) follows its Paris model too closely. In response to that, the French Greens have established that sustainable development of our continent is only possible if its 'constituent territories' are seen as close to people, and therefore smaller, and have real powers over which citizens can have some influence. They therefore support the idea of regions, culturally cohesive territories that are large enough to allow strong economic, social, cultural and environmental action, but at the same time small enough to create a local link between citizens and Europe's federal institutions. It should be noted that, because of their small size, many of the Union's present Member States are in fact 'regions' in the environmentalist sense of the term.

Regions, which are flourishing all over Europe, do not necessarily tie in with the present national borders. Cross-border cooperation has been established and political and cultural structures have existed for many years, from the Basque country to Catalonia to Lapland, in the Alpine and Rhine regions. The word 'region' is therefore to be understood in the wider sense of a 'Euroregion', in other words it implies a territorial network that has been redefined through dialogue by human and political circumstances and might be very different from that inherited from past wars or defined by present-day radicals.

Thus the Greens see Europe not as a collection of states that, because of a commercial interest that is well understood, delegate some of their powers to a distant 'set-up' outside their control, but as a civilising process bringing together, in sustainable development, peoples with their roots in cohesive regions (some of whose borders could be redefined if necessary in a public dialogue), between which there is solidarity.

A clear bicameral structure ensures cohesiveness

In constitutional terms, the federation and the regions, or, to use a favourite expression of the environmentalists, the global and the local, obviously require a bicameral structure. That way the desire to 'walk on two feet' is reflected in the institutional structures: the 'union' foot, which, as is well known, is where the power lies, and the 'local' foot, which does all the rest: respect for and protection of cultural diversity, the capacity to base action on local needs, a real opportunity for citizens to control policies, and so on. The federalism that the Greens support is based on the duality of 'unity and difference'.

Europe's citizens must therefore be electorally represented by two bodies that incorporate the centrifugal and centripetal forces by which the whole of society operates and share the legislative power: the Lower House, standing for the 'benefits of union', the second, the Upper House, representing 'the benefits of diversity'. The Greens follow the sensible tradition that the Lower House, which by definition is more representative of the joint project than the Upper House, has the last word when the two Houses are unable to agree. Also, in view of the specific role of each House, logic dictates that each should have its members drawn from a type of constituency appropriate to its function.

The principle of solidarity ties in with the concept of unity. That implies mutual assistance, the pooling of experience, the sharing of wealth and progress, harmonious and coordinated development. It also means that no individual or group of individuals should engage in any activity that might harm all or part of the community (such as social or fiscal dumping, unsustainable development, aggressive action). The application of the solidarity principle means recognising a right of interference. To guard against any abuse, that right has to be decided on and exercised with care.

The concept of diversity is linked to the principle of subsidiarity. That requires that powers be divided between federation and region and implies that decisions are to be taken on a decentralised basis, at the level that is most competent, most knowledgeable and most able to monitor the situation.

Thus anything that can appropriately be dealt with at the level that is directly involved is not delegated to the higher level. There might therefore be exclusive prerogatives at federal or regional level and others that would be shared between the regions and the federation.

The pairing of solidarity and subsidiarity is thus a logical extension of the pairing of federation and regions. To understand the institutional system as the environmentalists see it, it is essential to take account of this permanent duality. What we have is a sort of constitutional 'yin and yang'. You cannot have one without the other: subsidiarity without solidarity is nothing more than a group of bodies acting for their own ends, and solidarity without subsidiary carries a clear risk of centralism and a loss of diversity.

Primacy of the legislature

The people are sovereign. So it is the people, and by delegation their most direct representative, the legislature (directly, freely and secretly elected by universal suffrage) that have primacy in the institutional structure. That is confirmed by the fact that the legislature creates the law that governs all the other powers. Hence a Green Constitution is essentially based on a parliamentary system.

However, it is necessary to guard against the failings of the parliamentary structure, especially if it is coupled, as the Greens advocate, with a proportional voting system. Constitutional provisions that have been tried and tested in Germany, Scandinavia and Benelux show that it is perfectly possible to combine representativeness, legitimacy and stability.

At the same time, a reminder should be given of the dangers of the presidential system. Those who cite the 'French model' and suggest that a European President should be elected by direct universal suffrage should be reminded of the corruption of the system. In France, where the people 'choose their leader', politicians are no longer asked what they think, but who they are running for, from the point of view of the presidential election, the 'major' election that marginalises all the others. First of all, that creates hierarchical confusion between the legislature and the executive. Secondly, it reduces the political debate to mere factional squabbling and one might wonder if the people it produces in the end (both in France and elsewhere) are really the best politics has to offer.

The desire for a policy to be represented by the choice of a person or group of people is understandable, but that has to be done at the end of the legislature, when policies are compared. There is clearly no shortage of models to spare Europe the referendum/Bonapartist system which is still the problem with French institutions.

Suggested institutional structure

In very broad outlines, the Green concept of a European Constitution might incorporate the following:

The Constitution is a text drawn up by a constitutive body and ratified by direct voting (in a dual majority system on the Swiss model: majority of voters + majority of territories). Its preamble contains an ambitious Charter of Fundamental Rights (individual and communal). The Charter establishes a model of civilisation, prevents subsequent abuses by the authorities by laying down ethical lines that must not be crossed and, because of its binding nature, is also a means of direct legal redress for every individual.

Powers must be genuinely separate. That principle is always stated but seldom respected by most constitutions, which in fact concentrate many of the legislative and judicial rights in the hands of the executive, often in the form of just one person. Furthermore, over two centuries after Montesquieu drew a distinction between the legislature, the executive and the judiciary, the emergence of a strong fourth power needs to be recognised, namely information. Because a debate that is not pluralist is not a debate and a democracy that is not enlightened is not a democracy. The role of the legislature is to draft laws. The role of the executive is to take any steps needed to apply the law. The role of the judiciary is to ensure compliance with the law. The role of information is to allow genuine and ongoing debate to bring about changes in the law. Obviously the purpose of including the role of the media in a constitution is not to control the press, but quite the opposite, to safeguard its freedom and pluralism in

the Basic Law. At all events, it is important to make sure that representatives of one of the other powers (legislature, executive or judiciary) cannot control all or part of any of the media. Steps also have to be taken to ensure that a pluralist and effective public service can coexist with private organisations whose size, taking all types of media together, should not exceed a certain level of concentration.

The legislature consists of two Houses elected for five years by direct, secret and proportional ballot. This bicameral system maintains a balance between the solidarity and subsidiarity principles. The Lower House (Parliament) represents the benefits of union, the people as a whole without regard to their individuality. For that reason, their representatives must not be associated with a particular part of a territory (or they would end up giving it preferential treatment and discriminating against others) and so are elected for a single constituency covering the whole Union territory that they represent. The Upper House (Senate) represents the benefits of diversity, the federated territorial bodies. Its representatives safeguard the specific character of the territories they come from: thus their constituencies correspond exactly to the territory they represent and with which they are directly associated.

The Lower House, the European Parliament, might only have 250 seats. In order to be more representative of the Union, it is therefore elected from transnational lists. It succeeds the present European Parliament with, in addition, a cohesive structure at European level for each political grouping. The Upper House, the European Senate, might have 750 members (because hundreds of regions have to be represented in an enlarged Europe). The Senate is elected from Euroregion constituencies on the basis of population, with the number of seats weighted so that the smaller regions are properly represented by being given an extra allowance. This Senate merges and supersedes the bodies currently representative of diversity at European level: the Council of the European Union (Council of Ministers), the Committee of the Regions and COSAC (Conference of Community and European Affairs Committees).

The two Houses, meeting in a Congress of 1 000 members, can amend the Constitution by qualified majority. In that case, the vote of each Member of the European Parliament counts as triple to ensure that both Houses are equally represented. The Constitution may also be amended in a European referendum, again with a dual majority system on the Swiss model, on the basis of a proposal by the Congress.

The legislative power has the right to propose legislation and organise referenda. The executive cannot dissolve the legislature, which holds its power in a direct line from the people (hence the legislature can only be dissolved if it dissolves itself or following a referendum). Legislative power can also be exercised directly by the people in a referendum (instituted by the people or by parliament). However, the issue on which the referendum is held must not infringe the fundamental rights enshrined in the Charter preamble.

The executive power is collegial. It must embody the cohesiveness of the policies represented by a declared majority (absolute or relative) in the European Parliament. Hence this European government has a stated and assumed 'political shade' that distinguishes it from the present European Commission, which it replaces. No requirements are laid down as regards the nationality or number of its members (which should be kept reasonably small). They will bear the title of 'federal ministers'. Political and specialist skills, competence, impartiality and probity are the only criteria. The composition of this collegial government body is approved by the European Parliament, on the basis of a proposal by a head of this European government previously appointed by the European Parliament. The person heading the Union government will have the title of European President. All federal ministers may be individually dismissed by Parliament or the President for misconduct. The executive has the right to propose legislation and, in certain circumstances, to organise referenda.

The body representing the Heads of State and Government of the present nation states (the European Council) might continue to act as an advisory body for the President of the Union in a transitional period whilst the regional structure was being developed.

Judicial power is exercised by a federal judicial system, independent of the other powers and based on a unified European law, with ordinary law brought into line with the most advanced national

system. A federal Supreme Court appointed by the Congress (with arrangements to be decided) is responsible for ensuring compliance with the Constitution. Citizens may refer their cases to the Supreme Court direct if they consider that their constitutional rights have been infringed.

Attached constitutional provisions will lay down general democratic rules: a ban on holding more than one office, gender equality, status of Members of Parliament and political groups, political funding, transparency of the civil service, etc.

In view of the incredible number of territorial authorities at present, the French Greens have opted for them to be reorientated towards three key levels: local (municipality/country), regional (with the abolition of departments), and federal (European level). That entails bypassing the nation states that have been the norm over the last two centuries (with the advantages and disadvantages of which we are aware), which will require free, i.e. slow, deliberate and calm consent. In other words, there is no question of 'abolishing France' (or any other nation state), especially while the protection and services it provides with varying degrees of success (security, health, social welfare, control of the economy, etc.) are better provided in the long term at a different territorial level. This peaceful bypassing of the present states and the shift to a federal European state should simply result from the increased power of the regions (bypassing from below) and European integration (bypassing from above).

Finally, European integration is only possible with the simultaneous and peaceful emergence of other continental bodies with which Europe will establish mutual relations, in the framework of a UN that is at last democratic; in other words it operates in a completely different way.

TEXT OF ONLY AMENDED PAGE IN SECTION N° 2 (PAGE 41 OF THE NEW DRAFT CONSTITUTION).

The present version of the text is in normal type and crossed through; the suggested alternative wording is in larger bold type.

DRAFT EUROPEAN CONSTITUTION
(ONLY PARTS AMENDED)

ARTICLE III-126

Ordinary revision procedure

…

3. A conference of representatives of the governments of the Member States shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to *the Constitution*.

The amendments shall enter into force after **being approved by the European Parliament and after** ~~being ratified by all the Member States in accordance with their respective constitutional requirements~~ **a European ballot of all citizens of the Union held on the same day**.

4. ~~If, two years after the signature of the treaty amending this Treaty, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter shall be referred to the European Council.~~ **The amendments shall be approved by a majority of votes cast in the Union, the latter being considered as a single constituency, and a majority of votes cast in over half the Member States, each Member State being considered a separate constituency for that purpose.**

ARTICLE III-127

Simplified revision procedure

1. Where *the Constitution* provides for the Council to act by unanimity in a given area or case, the European Council may adopt a European decision authorising the Council to act by a qualified majority in that area or in that case.

This paragraph shall not apply to decisions with military implications or those in the area of defence.

2. Where *the Constitution* provides for European laws and framework laws to be adopted by the Council in accordance with a special legislative procedure, the European Council may adopt a European decision allowing for the adoption of such European laws or framework laws in accordance with the ordinary legislative procedure.

3. Any initiative taken by the European Council on the basis of paragraphs 1 pr 2 shall be notified to the national Parliaments. If a national Parliament makes known its opposition within six months of the date of such notification, the European decision referred to in paragraphs 1 or 2 shall not be adopted. In the absence of opposition, the European Council may adopt the decision.

For the adoption of the European decisions referred to in paragraphs 1 and 2, the European Council shall act by unanimity after obtaining the consent of the European Parliament, which shall be given by a majority of its component members.

ARTICLE III-128

Ratification and entry into force

1. *The Constitution* shall be ratified ~~by the High Contracting Parties in accordance with their respective constitutional requirements~~. **by a European ballot of all citizens of the Union held on the same day**. **The Constitution shall be approved by a majority of votes cast in the Union, the latter being considered as a single constituency, and a majority of votes cast in over half the Member States, each Member State being considered a separate constituency for that purpose.** The instruments of ratification shall be deposited with the Government of the Italian Republic.

2. The Constitution shall enter into force ~~on 1 November 2006, provided that all the instruments of ratification have been deposited or, failing that, on the first day of the second month following the deposit of the instrument of ratification by the last signatory State to take this step.~~ **after promulgation of the results of the European ballot ratifying the Constitution, where it has been ratified. The entry into force shall not take effect until after the ratification of the European Treaty.**

The whole of section N° 2 is available on www.onesta.net

TEXT OF ONLY AMENDED PAGE IN SECTION N° 3 (PAGE 82 OF THE NEW DRAFT TREATY).

The present version of the text is in normal type and crossed through; the suggested alternative wording is in larger bold type.

DRAFT EUROPEAN TREATY
(ONLY PARTS AMENDED)

ARTICLE III-321

Ordinary revision procedure

. . .

3. A conference of representatives of the governments of the Member States shall be convened by the President of the Council for the purpose of determining ~~by common accord~~ **by a majority of four fifths of the Member States** the amendments to be made to this Treaty.

~~The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements~~

4. ~~If, two years after the signature of the treaty amending this Treaty, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter shall be referred to the European Council.~~ **The amendments shall enter into force after being approved by the European Parliament and ratified by at least four fifths of the national Parliaments, in accordance with their respective constitutional requirements.**

ARTICLE III-322

Simplified revision procedure

1. Where *the European Treaty* provides for the Council to act by unanimity in a given area or case, the European Council may adopt a European decision authorising the Council to act by a qualified majority in that area or in that case.

This paragraph shall not apply to decisions with military implications or those in the area of defence.

2. Where *the European Treaty* provides for European laws and framework laws to be adopted by the Council in accordance with a special legislative procedure, the European Council may adopt a European decision allowing for the adoption of such European laws or framework laws in accordance with the ordinary legislative procedure.

3. Any initiative taken by the European Council on the basis of paragraphs 1 or 2 shall be notified to the national Parliaments. If a national Parliament makes known its opposition within six months of the date of such notification, the European decision referred to in paragraphs 1 or 2 shall not be adopted. In the absence of opposition, the European Council may adopt the decision.

For the adoption of the European decisions referred to in paragraphs 1 and 2, the European Council shall act by unanimity after obtaining the consent of the European Parliament, which shall be given by a majority of its component members.

ARTICLE III-323

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 or Part III *of this Treaty* 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 *of this Treaty*. 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.

3.The European decision referred to in paragraph 2 shall not increase the competences conferred on the Union *in the Constitution*.

ARTICLE III-324

Duration

This Treaty is concluded for an unlimited period.

ARTICLE III-325

Ratification and entry into force

1. This Treaty shall be ratified by **the national Parliaments of the Member States** ~~High Contracting Parties~~ in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of the Italian Republic.

2. This Treaty shall enter into force on ~~1 November 2006, provided that all the instruments of ratification have been deposited, or, failing that, on~~ the first day of the second month following the deposit of the instrument of ratification by the last signatory State to take this step. **The entry into force shall not take effect until after the ratification of the European Constitution.**

The whole of section N° 3 is available on www.onesta.net

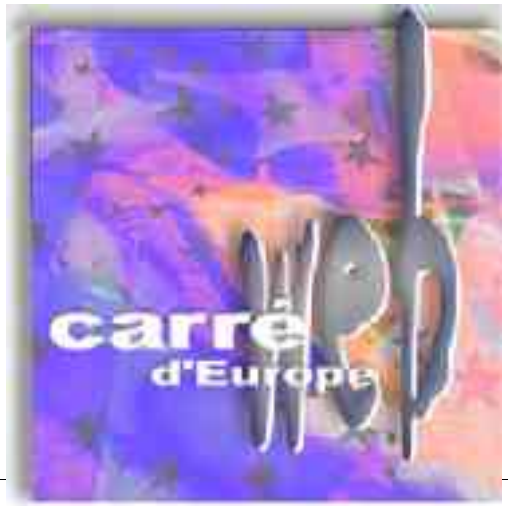
Synoptic table

A synoptic table showing the revision and the changes in the text used as a basis is available in electronic form on the following website:

www.onesta.net

Carré d'Europe Web

If you are interested in the European debate, you can find all kinds of information on the same website: fact files, Internet links and details of what's happening on the political scene. You can also subscribe to the free 'Carré d'Europe Web' newsletter and receive specific information on important issues on request.



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in the European Parliament
