



The People's Movement campaigns against any measures that further develop the EU into a federal state, and to defend and enhance popular sovereignty, democracy and social justice in Ireland.

EU Constitution implemented by stealth – beware!

Ten areas in which provisions of the draft EU Constitution are already (July 2005) being implemented:

I European External Action Service (III-296 Constitution)

According to the present treaties, a European External Action Service (EEAS) (diplomatic service) can be established on the basis of delegation by the Commission and the liaison offices of the Council. However, the following problems remain:

- It is clear that the EEAS is designed for the EU structures and administrative capacity, with the Constitution having been ratified. This would be especially true with regard to strengthened competence in the Common Foreign and Security Policy (CFSP) as is proposed in Art III-294.
- Although Declaration 24 annexed to the Constitution stipulates that the preparatory work should start after the signing of the EU Constitution, it is clear that the establishment of the EEAS is based on the assumption that this Constitution will enter into force.
- The entire Union, and not only the Community, would have to acquire a single legal personality (as in the Constitution) so that it could be represented by its delegation. At the moment, delegations only represent the institutions. The concept of a single legal personality is dealt with in the People's Movement 'Brief Critique of the Constitution' – see <http://www.people.ie/>.
- The idea and concept of an EEAS is closely linked to the premise that the Union Minister for Foreign Affairs would have taken over his mandate.

II Mr Euro

A decision was taken on 10 September 2004 on a 'Euro-Group' (ministers of member states whose currency is the euro) – informal ECOFIN (comprising all member states' ministers for economic affairs and finance) meeting in Schevening, Netherlands.

The present Treaty of the European Communities (TEC) only provides in its Article 203 for a rotating Presidency. Although the Euro-Group is to be considered as an informal ECOFIN Council, decisions on the establishment of a permanent President of a certain Council formation – in this case Mr Euro for ECOFIN - would require a change of TEC 203.

Yet the decision here is based on Protocol 12 annexed to the Constitution. Therefore, the provisions of Protocol 12 on the Euro-Group and, in particular, the appointment of Mr Euro, cannot be activated until the Constitution has entered into force.

Mr Euro is currently Luxembourg's Prime Minister Jean-Claude Juncker, who represents the twelve nation Euro-zone internationally.

III Foreign Affairs Minister

Appointment of Javier Solana – European Summit June 2004.

IV European Agency on Fundamental Rights

Representatives of the member states meeting at head of state level (not the European Council) on 13 December 2003: 'The Representatives of the Member States, meeting at Head of State or Government level, have decided by common accord to build upon the existing European Monitoring Centre on Racism and Xenophobia and to extend its mandate to make it a Human Rights Agency responsible for the operation of the Charter of Fundamental Rights' – Part II of the Constitution.

V European Space Policy – Articles I-14 and III -254

The following measures all assume ratification of the Constitution:

- Green paper of the Commission COM 2003/17: The aim of this Green Paper is to initiate a debate on the medium- and long-term future use of space for the benefit of Europe and on the policy options available.
- White paper of the Commission – Space COM/2003/0673: a new European frontier for an expanding Union – an action plan for implementing the European Space policy.
- 2004/578/EC: Council Decision of 29 April 2004 on the conclusion of the Framework Agreement between the European Community and the European Space Agency.

VI CFSP (Common Foreign and Security Policy)

Setting-up of the European Defence Agency (EDA). Articles I-41 and III-311. The website of the EDA is at <http://www.eda.eu.int/> and a fact-sheet can be found at <http://ue.eu.int/uedocs/cmsUpload/EDA.pdf>.

The 'Battle Group' concept (22 November 2004, defence ministers). See: <http://classes.maxwell.syr.edu/psc490/EUROSIM IR/EU battle groups.htm>

The establishment of the EU Neighbourhood Policy, which should be far more significant than the present Neighbourhood Policy (Summit October 2003COM (2004) 628) Article 1-57.

The application of the Solidarity Clause – under the Irish Presidency – to counter terrorist threats or attacks (Declaration of the Council from 25 March 2004). Articles and II-292 and especially I-40, I-41 and I-43. Bertie Ahern's statement on the occasion can be found at: <http://www.statewatch.org/news/2004/mar/09eu-terr-plans.htm>.

VII Single procedure for the European Asylum System

The draft Constitution aims at the development of a common asylum policy, whereas the present treaties only aim at the fixing of minimum standards. The European Council of Thessaloniki in 2003 has reiterated its determination to establish a Common European Asylum System as had already been called for in Tampere 1999 and in Seville 2000.

VII Fight against terrorism

Most of these initiatives are not really based on the Constitution, but 'The Treaty establishing a Constitution of Europe served as a guideline for the level of ambition of Council and Commission. The existing Treaties provide the legal basis for Council action until such time as the Constitutional Treaty takes effect. Accordingly, the various policy areas have been examined to determine whether preparatory work or studies could already commence, so that measures provided for in the Constitutional Treaty can be taken as soon as it enters into force'. Summit December 2004.

The Constitution contains many new provisions related to the fight against terrorism, especially in the field of CFSP (I-43, III-160, III-276.1, III-309.1).

Measures taken within the framework of the fight against terrorism:

- Declaration on Terrorism in September 2004. This Declaration contained a reaffirmation of the commitment to confront the terrorist threat 'relentlessly and comprehensively'.

- Appointment of an EU counterterrorism coordinator (De Vries). Read what an Taoiseach had to say about this at:
http://www.eu2004.ie/templates/news.asp?sNavlocator=66&list_id=462
- Directive on compensating victims of crime.
- Regulation introducing new functions for the Schengen Information System, including functions in the fight against terrorism.
- Council Decision establishing the Visa Information System. See what Bertie Ahern had to say about it at:
http://www.eu2004.ie/templates/news.asp?sNavlocator=66&list_id=420
- Europol (police) and Eurojust (justice) Agreement. See
<http://www.europol.eu.int/legal/agreements/Agreements/17374.pdf>
- Council's revised Action Plan/Roadmap of May 2005. More information at:
http://www.finfacts.com/irelandbusinessnews/publish/article_10001761.shtml
- Integrating in the Council Secretariat an intelligence capacity on all aspects of the terrorist threat. Council requested to implement such arrangements as soon as possible, taking into account the views expressed at the Council (Justice and Home Affairs) on 8 June 2004. See:
<http://www.statewatch.org/news/2004/oct/08hague-programme.htm>
- Hague Programme, 'which reflects the ambitions of the Constitution' Summit-November 2004. See:
<http://www.statewatch.org/news/2004/oct/08hague-programme.htm>
- Common investigative techniques: The Council is invited to encourage the exchange of best practice on investigative techniques as a first step to the development of common investigative techniques, envisaged in Article III-257 of the Constitutional Treaty, in particular in the areas of forensic investigations and information technology security. Summit November 2004.
- Committee on Internal Security: 'To that end, the Council is invited to prepare for the setting up of the Committee on Internal Security, envisaged in Article III-261 of the Constitutional Treaty, in particular by determining its field of activity, tasks, competences and composition, with a view to its establishment as soon as possible after the Constitutional Treaty has entered into force.' Summit November 2004. Read the *Statewatch* analysis at:
<http://www.statewatch.org/news/2005/may/01eu-internal-security.htm>
- European training network for judicial authorities for both civil and criminal matters: 'The Commission is invited to prepare as soon as possible a proposal aimed at creating, from the existing structures, an effective European training

network for judicial authorities for both civil and criminal matters, as envisaged by Articles III-269 and III-270 of the Constitutional Treaty'. Summit November 2004.

IX External Border Agency

A Regulation to establish an External Border Agency (2007/2004, 26 October 2004) was promulgated late last year. Although officially based on Articles 62(2)(a) and 66 TEC, these only provide for cooperation and the establishment of standards and procedures, not the establishment of an agency. However, III-265.1.c provides for the establishment of an integrated management system for external borders.

X Powers of the Council of Ministers

Article I-35 empowers the Council of Ministers by majority vote to give the Commission power to make laws itself.

The European Court of Justice in Luxembourg has recently implemented a very important part of the draft (and rejected) EU Constitution by allowing the European Commission to decide on issues regarding the penal code, in this case for infringements of Environmental Directives.

Until now questions regarding the penal code could only be regulated by intergovernmental cooperation. This procedure preserved the sovereignty of the national parliaments. The 25 governments agreed to include penal code questions in the draft constitution so that the penal code part of a law could be regulated in the same way as other parts of a law. This means that the Commission would bring forward a proposal which would be decided upon by a qualified majority in the Council. In this instance, a Member State would no longer have the right to veto.

This undemocratic system was formally rejected by the French and Dutch voters when they returned the proposed Constitution. The European Court has now rejected the referendums and has implemented it anyway. It favoured the Commission position against that of the governments of eleven member states out of fifteen, including Ireland.

The Irish voters have never transferred penal code powers to Brussels. The verdict from the European Court can only be legal in Ireland if it is approved by the Dáil or is sent for approval in a referendum. The courts are obliged to disregard the European Court verdict. It is an illegal decision outside the community competence.

The EU Court of Justice (ECJ) has always been a major engine of Euro-federalism. One of its own judges once described it as 'a court with a mission' – that mission being to expand the supranational powers of the EC/EU and its institutions to the utmost, at the expense of national governments, parliaments and electorates. Many ECJ court judgments have done this over the years – which amounts to high-level policy-making by a group of non-elected judges who are under no democratic control whatsoever.

The Commission's press release welcoming the Court ruling can be read at:

<http://www.statewatch.org/news/2005/sep/ecj-environment-dec.pdf>