

Inquiry into the EU's Constitutional Treaty

*Written evidence from Federal Union
submitted to the House of Commons European Scrutiny Committee*

Federal Union

Federal Union was founded in 1938 and campaigns for federalism for the UK, Europe and the world. Federalism divides political power between levels of government to achieve the best combination of democracy and effectiveness. It is not the bureaucratic centralisation of popular myth.

1. The practical consequences of the new references (in Articles 2 and 3) to the Union's values and objectives.

We think there are none.

It may look a little unusual to British eyes to start with the values and principles of public policy in a constitutional document. That is not because British public policy is valueless and unprincipled but rather because the British tend to fight shy of spelling out those values and principles. For example, for all the historic achievement of re-establishing an elected parliament in Scotland, the Scotland Act 1998 notes only that "There shall be a Scottish Parliament."

Other European countries have a different tradition. For them, a political document such as a constitution would be incomplete without reference to such basic values and objectives. The nature of European integration is the incorporation of elements of the different national traditions, so to object to these references on the grounds that they are not the British tradition would be to miss a rather important point.

It may well be the case that future judgments by the European Court of Justice might refer to the values and objectives set out in the constitution. But this would not amount to a change given that the ECJ refers to these values in its judgments already. In this sense, therefore, the inclusion of the values and objectives in the constitution is, as with other aspects of the constitutionalisation of the EU, the codification of existing practice.

2. Whether the treaty makes "enhanced cooperation" more likely.

The change in the constitution over the previous Nice treaty is that enhanced cooperation groups will be permitted to use QMV rather than unanimity. It is not clear that the restriction to unanimity is the reason why such groups have not been established so far.

Cooperation using supranational institutions to deal with cross-border problems lies behind the original rationale for European integration. It is also the motivation for enhanced cooperation as well. This is a political motivation, not an institutional one. Provisions in the constitution for enhanced cooperation recognise a political need.

It is likely that in the future, a grouping will emerge based on the eurozone countries and seeking to establish more cooperation on economic matters such as corporate taxation and the employment rights of migrant workers. The proximate cause of this will not be the constitutional provisions but rather Britain's failure to join the euro. It might even make it harder for Britain to join the euro in the future.

3. How public meetings of the Council when legislating would work in practice — in particular, how much would be public.

It is a matter of fundamental principle that the Council of Ministers should legislate in public and not in private. Legislative proposals should be published and sufficient time allowed for analysis and scrutiny - importantly, in national parliaments - before formal readings in the European Parliament and the Council. Amendments to these proposals must also be published and open to analysis and scrutiny in the same way.

This might sound obvious, but it is not. At present, the closed meetings of the Council see amendments and proposal arise for agreement during the meetings themselves and there have been occasions of genuine uncertainty about what is being proposed and discussed. It acts like a committee, where the chair takes the sense of the meeting, rather than an assembly which takes decisions by casting votes. The results of a meeting might not be known for several days until the relevant civil servants have deciphered their notes and written the minutes of the meeting.

An increase in the number of member states present will tend to reinforce this switch to a more orderly legislative process, but the interests of democratic accountability should make this change in habits unstoppable.

Member state parliaments can make an important contribution to the workings of this process. They are the ones with the duty to hold their respective government ministers to account for their actions. Their ability to do this will be greatly strengthened by the opening up of the Council as a legislature. It is therefore important that they recognise this in insisting on the correct procedures to be followed in doing so.

4. How the new Council Presidency and new Foreign Minister would work, and the relationship between the European Council Presidency and the Presidency of individual Council formations.

The new Foreign Minister will be a Vice-President of the European Commission, at the head of the EU's external representative services and a member of the Commission that coordinates trade, aid and the other external policies of the EU. The Chair of the European Council will have none of these resources or responsibilities, but rather a symbolic role in external representation. The two posts can work well together, but foreign policy will have to be developed through the EU's institutions – thereby respecting the role of the member states – rather than on the hoof.

There is no reason to suppose that the Council president will have any influence over the chairs of the individual Council formations. But one should not overstate the influence of rotating Council chairs over the business of the Council in any case. The success of EU policy depends on more continuity than is available from the Council alone. Providing such continuity is one of the roles that the European Commission plays in the institutional system, representing the common European interest. The Council plays an important role in representing the interests of the member states but is not the primary locus of leadership within the EU.

5. The extent to which the UK government held its red lines over QMV relating to treaty changes, taxation, social security, defence, criminal procedural law, the system of own resources and the Common Foreign and Security Policy.

The nature of European integration is that it depends, to a certain extent, on negotiation and compromise. It is the case that no member state may be forced to agree to things which are contrary to its political desires, but each member state must equally recognise that all other member states have their own political desires which also seek fulfilment. Negotiation and compromise are therefore inevitable. In this context, talk of “red lines” is unhelpful and provocative. What to one member state is a “red line” may to another appear to be an “unreasonable veto”.

9. What the consequences would be if the treaty is not ratified.

There are two scenarios to be considered here: the possibility that the treaty fails ratification in several member states; and the possibility that it fails only in the United Kingdom.

The failure of ratification in several member states would provoke a crisis, but such a failure would not mean the end of the need to develop a more democratic and effective European Union. It would be a setback for Europe, but not a disaster.

Those who think that the way forward in that situation should be to start unpicking those negotiated aspects of the European Union with which they disagree should be wary of where this might lead. Britain might propose to withdraw from the Common Fisheries Policy, for example, but would Britain wish to see Italy drop out of the single market in aviation? Would that be in the interest of British airlines and air passengers? The European

constitution may not be perfect but it is probably the best deal that could have been negotiated in the circumstances.

Rejection of the constitution by the United Kingdom alone is likely to be a different matter. Some have suggested that such a rejection would force Europe “to confront its failings”. More likely, it would confront the fact that it had a member state that did not share the outlook and objectives of the others. Britain would therefore be forced out at least of the European mainstream and possibly out of the European Union altogether.

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