

GREEN
PARTY
Comhaontas Glas



A Constitution for Europe
A GREEN PARTY DISCUSSION DOCUMENT



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Foreword

Uniquely among Irish political parties, the Green Party will consult its membership on the Party's attitude to the new European Constitution. We have already held one seminar which was attended by Dr. Garrett FitzGerald and Mr Ben Tonra, and we hope to hold at least two more seminars once the Inter-Governmental Conference has concluded negotiations. The Party will then hold a special convention on the issue, where party members will have the opportunity to debate the issue and come to a conclusion by way of referendum or vote.

This document offers a brief overview of the key issues in the Constitution. It outlines the pros and cons, and should be seen as the starting point for our internal party debate. The document will be put in 'pdf' format on our party website and there will also be a discussion forum on the issue, which will be open to party members. Those outside the party who wish to participate can do so using e-mail. We want to see a full, open and honest debate on these issues. There may be arguments which we have overlooked, but we would be more than happy to include all points of view in the discussion forum.

On the 22nd of February 2004 the Irish Green Party celebrated along with our other European colleagues the formation of a European Green Party. As European Greens we have made it clear that the Constitution, if it is to have real democratic legitimacy, should be ratified in a European-wide referendum. We look forward to the debate within the Irish Green Party, the European Greens and amongst the people of Europe about the future shape of the European Union.

John Gormley, T.D.,
Green Party Chairman & Foreign Affairs Spokesperson
Irish Representative on the European Convention.

I. Introduction

The nature of the Constitution

The European Union's Laeken Declaration of January 2001 called for "more democracy, transparency and efficiency" in the EU and for reforms to bring the EU closer to its citizens. There was a need to simplify the various EU Treaties' texts and bring them all together into one, clear document. The idea of producing a Constitution for the EU was something envisaged 'in the long run'. A Constitution is a far greater undertaking than a mere 'tidying up' and simplification of Treaties: it is the core document of a State, and, up to now, the EU has not been regarded as a State. An EU Constitution gives the EU enhanced legal status, strengthens its powers to negotiate international treaties/conventions over a broad area on behalf of the Member States, and has primacy over the national Constitutions of the Member States in all areas covered by the EU.

There are basic questions to be addressed, including whether we are in favour of the EU developing into a 'State' and having a Constitution which overrides the Irish Constitution in many areas. Or would an EU Constitution be only a recognition of the present reality in which the EU already has many of the features of a State. In areas of the EU's competence – which are far-reaching – EU law/treaty obligations already take precedence over the Irish Constitution.

It must also be recognised that the present draft EU Constitution goes further than 'tidying up' the current Treaties by expanding the EU's powers and altering its institutions. The draft Constitution is also far from 'tidy': indeed, it runs to about 330 pages.

The making of the Constitution

The 'Convention Method', whereby the Member States sent delegates to a special Convention to draw up the Constitution, was far preferable to the usual 'behind closed doors' approach to EU treaty negotiations. A Constitution, by its very nature, should be written with maximum popular input and debate. During the

Convention process, the official positions of the

Member States towards provisions in the draft Constitution were much clearer, as the Governments' representatives openly put forward amendments to the various drafts.

However, most of the real negotiations, unfortunately, did take place behind closed doors: in the Presidium. The idea of open sessions was also a myth. There were

over 1000 amendments offered but no votes were taken on any of them and most were never even discussed.

The ratification of the Constitution

The Green Party/Comhaontas Glas has long campaigned for the ratification of EU treaties by referendums in all the Member States. EU laws directly impact on all our lives and all the treaties should have been subject to democratic approval by the people in each state. This argument applies even more powerfully to the concept of a Constitution for the EU. How better to fulfil the Laeken Declaration's aims of bringing the EU closer to the people and reforming the EU's democratic deficit than to have a referendum. During the Convention, the European Greens supported a proposal for a European-wide referendum on the Constitution. Ratification would require a double majority consisting of a majority of citizens and a majority of States. Unfortunately, this proposal was rejected and it seems unlikely to be accepted by the Inter-Governmental Conference.



II. What the Draft Constitution does

Following is a brief outline of some of the main changes, institutionally and in policy, that are being proposed in the current draft Constitution. This list is by no means definitive but merely an initial assessment of the current Draft Constitution.

A. Institutional Changes

1. EU President and EU Foreign Minister

- Both new positions will be elected by Qualified Majority Vote (QMV) by the Council. The National Government will have no veto.
- The new EU President will chair the European Council, made up of Heads of State, and serve for 2 1/2 years, renewable once. He or she will receive ambassadors, sign laws and treaties, and behave very much as the President of an EU state. The President is also instructed to 'drive forward the work' of the EU. The concern here is that this new President will be superior to the Heads of State/Government of the various Member-States. At the moment, the Presidency of the EU rotates every six months between the different Member-States: the Taoiseach, Bertie Ahern, is not for the present six months 'superior' to the other EU leaders but is merely sharing, on an equal basis, the EU Presidency.
- The new EU Foreign Minister will also be a Vice-President of the Commission and will be the permanent Chair of the Council of Foreign Ministers. This will be a powerful new position, and like the new EU President, the EU Foreign Minister will be superior to the foreign ministers of the various Member-States. He or she will be assisted by a new Foreign Ministry and diplomatic service, the European External Action Service, and will 'conduct political dialogue on the Union's behalf and shall

express the Union's position in international organisations and at international conferences".

- **Comment:** The argument given for these two new positions is that they will enhance the efficiency of the EU and allow the EU to act more effectively internationally. Also, for those wanting the EU to develop into a State, these new posts, plus the already existing President of the Commission, provide the EU with the structures of a State: a new EU President, a Foreign Minister, and a Prime Minister (the President of the Commission) overseeing a Cabinet of Ministers with various portfolios. The Green Party/Comhaontas Glas has always expressed concern about the EU developing into a State, particularly in relation to the questions of democratic accountability and legitimacy. There is also much to be said for the present system of rotating EU Presidencies which provides some sense of shared ownership of the EU and its institutions. Any hopes of Ireland ever pursuing an active and positive neutrality policy would also be severely hampered by an EU Department of Foreign Affairs and EU diplomatic corps.

2. The Commission

- The The Draft Constitution proposes changing the agreement reached at Nice, in which each Member-State would have one Commissioner with full voting rights until membership of the EU reached 27. The Draft proposes a maximum of 15 Commissioners with full voting rights.
- **Comment:** The Green Party/Comhaontas Glas believes that Ireland and all the other Member States should retain a Commissioner with full voting rights. We do not accept the Irish Government's argument of 'equality' between member-states on the Commission when that 'equality' refers to not having an EU Commissioner for a period of time. We feel that permanent representation on the Commission is vital. This is particularly of importance for the new accession states who will be faced with new challenges by EU membership and

will require adequate representation on the Commission. While some have argued that having a Commissioner per Member State would be inefficient, it was clear at the Convention that the vast majority of delegates favoured the retention of one Commissioner per Member State.

3. Changes in the Voting System

- From 2009, the Nice weighted voting system in the Council will be replaced so that a measure can be approved by a simple majority of Member States, (13 states out of the present 25), representing 60% of the EU's population.
- More areas (about 30) presently subject to unanimity will move to qualified majority voting.
- The "Passerelle", or "Escalator" Article, [I-24 (4)] will allow the European Council to decide, by unanimity, to transfer certain policy areas now requiring unanimity to decision by qualified majority voting.
- **Comment:** Simplifying the present weighted voting system makes the system more understandable, although it should be recognized that the new proposed 'double majority' system does confer an advantage on the larger States by virtue of their larger populations.. The 'Passerelle Clause' is a matter of concern, as it allows major changes in the powers of the EU to be instituted without recourse to a new EU treaty and without approval, either of the people via referendum or even of national parliaments, who are merely notified of the intended changes.



B. Policy Changes

1. The Charter of Fundamental Rights + Justice Issues

- The EU Charter of Fundamental Rights, which was declaratory up to now, is incorporated in Part II of the draft Constitution and given full legal force. The Charter will give the EU's European Court of Justice in Luxembourg greatly increased powers. The human rights guaranteed are similar to the ones in the Irish Constitution and in the European Convention on Human Rights but go further in terms of social and economic rights. In the justice area, the EU will now have powers to harmonise civil and criminal law and procedures and a European Public Prosecutor may be appointed to control the prosecution of crimes affecting more than one Member State or offences against the Union's financial interests. Chapter IV of the Draft Constitution moves from setting minimum standards in the field of asylum to a common asylum policy and also develops a common immigration policy.
- **Comment:** While welcoming the Charter, the Green Party/Comhaontas Glas will be addressing such issues as Article II-52 (1) of the Charter which allows basic human rights to be limited if this is seen to meet the "objectives of general interest recognised by the Union". Also, there should be a recognition of environmental rights in the Charter. There is a reference to the EU's duty to integrate environmental concerns into other policies but this provision could be strengthened with the following: "Every person has the right to live in a clean and

healthy environment as well as the duty to safeguard the quality of the environment for present and future generations" This has been proposed by eight environmental groups, including Friends of the Earth and Greenpeace, and would act as a guide to the EU institutions to act in a manner which would uphold this right. In the justice area, there would be concerns, for example, that the Common Law tradition of the UK and Ireland, which includes the principles of habeas corpus, trial by jury, and presumption of innocence, could be overridden by the Continental tradition of 'preventive detention' and no presumption of innocence. There is also a need to ensure that a common asylum policy does not involve the lowering of standards in the protection of asylum seekers and refugees in some Member States. Also, the constitutional provision that allows for 'partnership and cooperation with third countries for the purpose of managing inflows of [asylum seekers]' should not be misused by Member States as an excuse to shift 'responsibility' for asylum seekers to states outside the EU. Clarifications are also needed in terms of data protection and the activities of Europol.



2. The Environment

The Green Party/Comhaontas Glas recognises the very positive role the EU has played in promoting environmental protection. However, in pursuit of its twin goals of achieving the most competitive economy in the world and promoting sustainability, the latter has lost out on a number of occasions (e.g. encouragement of intensive farming, massive funding of road building). The Draft Constitution has some welcome developments but also needs strengthening in a number of areas.

- It is weakest in terms of environmental protection in its policy chapters (Part III), with many of the sectoral objectives conflicting with sustainable development. We would give positive consideration to many of the amendments proposed by the Group of Eight environmental groups in their "Towards a Green EU Constitution" submission. These would include, for instance.
- i. Placing more environmental safeguards into the policy chapters, including strengthening the

precautionary principle and the polluter pays principle, encouraging the harmonisation of health, safety, environmental and consumer protection upwards rather than at the lowest common denominator, and ensuring that sustainable development is integral to development in each policy area.

2. Ensuring the environmentally sustainable and rational development of agricultural production.
 3. Promoting the 'environmental, social and economic performance of transport', with the 'polluter pays' principle emphasised, and all infrastructure developments funded by the EU being given much more rigorous evaluation prior to commencement.
- The Draft Constitution has extended co-decision with the European Parliament into many areas related to the environment and sustainable development and this is to be welcomed.
 - Protocol on Sustainable Development: The Environment Commissioner, Margot Wallstrom, has proposed the inclusion of a 'Protocol on Sustainable Development' to the Constitution. This is a very positive suggestion and we await to see if it emerges in the final Constitution. We would also support amendments to strengthen the Protocol via development of a Sustainable Development Strategy with concrete objectives, targets and timetables, and by an explicit recognition of the impact of EU policies on developing countries.
 - Euratom Protocol: If the Protocol on Sustainable Development and the undertakings to integrate high environmental protection into all the EU's policy areas are to be taken seriously, it is essential that the European Atomic Energy Treaty (Euratom) Protocol be removed from the Constitution. It is the EU's only remaining sector specific treaty and makes a 'special case' for nuclear energy. This distorts the EU's single energy market to the detriment of other energy sources, including renewables. Indeed, Euratom obliges the EU 'to create the conditions necessary for the speedy establishment and growth of nuclear industries' and 'to facilitate investment to develop nuclear energy'. For a country so opposed to Sellafield and the polluting and dangerous nuclear industry, it would be outrageous if the Irish Presidency were to oversee an EU Constitution which promoted nuclear power. Instead, there should be a date given for the complete phasing out

of the Treaty and Euratom's functions in relation to nuclear safeguards be incorporated into the regulatory functions of the EU. There are, of course, others who have argued that nuclear power is essential if we are to combat global warming and that Euratom provides a regulatory framework for the nuclear industry in Europe.

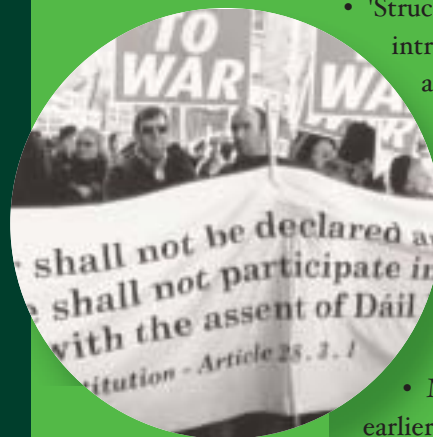
3. Trade Issues

- Article 133 of the Nice Treaty gave the European Commission increased powers to negotiate on behalf of the Member-States at international trade negotiations. In the area of liberalisation (and ultimate privatisation) of trade in services, any proposal put forward by the Commission could be supported or rejected by the Council of Ministers by Qualified Majority Vote. However, if there was any proposal forthcoming involving politically sensitive areas such as health, education and audiovisual/cultural services, the Council of Ministers had to decide by unanimity; i.e. each Member State retained a veto on the matter. The draft Constitution removes the veto Member-States retained in Nice on the liberalisation of trade in services in the above politically sensitive areas and decisions will now be made by Qualified Majority Voting. (Trade in cultural and audiovisual services will still need unanimity, but only if it can be shown that the 'cultural and linguistic diversity of the Union is prejudiced').
- **Comment:** This could greatly harm publicly funded education, health and cultural services, because the delivery of these essential public services could be gradually commercialised and privatised. Some believe that publicly funded broadcasting could be subject to legal challenge from the private sector. It's also necessary to insert the aims of sustainable development and poverty eradication into the Constitution's provisions for the EU's Common Commercial Policy and to increase the European Parliament's involvement in international trade agreements. On the other hand, those who support greater liberalisation of trade and further globalisation believe that Europe must rid itself of all barriers to trade to embrace the capitalist model fully.



4 Military and Defence

- An EU 'common defence' is the agreed goal and it 'will' be achieved when the European Council, unanimously, so decides.
- Member States are obliged to make civilian and military capabilities available to the EU's common security and defence.
- "Member States shall undertake progressively to improve their military capabilities".
- A European Armaments, Research and Military Capabilities Agency is established. It will be directed at improving the EU's military capabilities and strengthening the 'industrial and technological base of the defence sector'.



- 'Structured cooperation' is introduced into the defence area for the first time, allowing States to form mini-military alliances, using the EU's institutions. They will be able to engage in military operations in the name of the EU.

- **Mutual Defence:** The earlier drafts of the Constitution provided for mutual defence arrangements amongst some EU member states within the Union framework until such time as the entire EU agreed a common defence. Such arrangements would require an automatic military response to any attack on another participating state, and such states 'shall work in close cooperation' with NATO. The last draft, however, under the Italian Presidency, included a mutual defence clause for all EU members. The four neutral States, in the last stages of negotiations, inserted amendments which they argued would provide opt-outs. What the final Constitution will include in this area is not yet clear.

- A Solidarity Clause is included, requiring Member States to act jointly against terrorism and disasters, including the threat of terrorism.
- The so-called Petersberg Tasks, outlining the duties of the EU's new military Rapid Reaction Force, have been expanded from humanitarian, rescue, and

peacekeeping and peace-enforcement missions, into 'joint disarmament operations', 'military advice and assistance tasks' and post-conflict stabilisation'. "All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories".

- **Comment:** The Green Party/Comhaontas Glas is very concerned by these new military provisions in the Draft

Constitution, not just because of the impact on Ireland's neutrality but because of the contradictions with the EU's aims of peace and sustainable development. The armaments industry is being promoted and military approaches to world conflict emphasised. The United Nations is undermined by the willingness of the EU to embark on military missions without a UN mandate. The close association

with the NATO nuclear military alliance has always been unacceptable to the Irish Greens. The Solidarity Clause would seem to endorse the doctrine of pre-emption. Within the European Union, however, there are many, even on the left, who argue that the militarisation of the European Union is the only way to counter the growing dominance of the United States on the world stage. They have argued at the Convention and elsewhere that if Europe is to be more than an economic giant it must flex its military muscle in the future.

If you have any critical comments or points that you would like to make in relation to this document, please contact us at the address or email below.



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