



**From the European Convention to Public Discourse:
Debating on Common European Future**

**Istituto Affari Internazionali
in cooperation with
The Trans European Policy States Association**

convention watch

PORTUGAL

1. Evaluation of the work and results of the European Convention

1.1 Overall assessment of the results of the Convention

What is your government's overall assessment of the results of the Convention? How have they been received by the other main political and social actors?

Both the Portuguese Prime Minister and the Minister for Foreign Affairs have judged the draft Constitutional Treaty «globally positive». Although the government's representative at the Convention, Ernâni Lopes, was rather critical in respect to some institutional solutions, the draft Treaty was globally thought to be much better than what had been foreseen by the government some months before. The socialists - the main opposition party - also expressed a positive opinion about the Convention's result. In Portugal, there has been traditionally a consensus between the two major parties – the socialists and the governing social democrats, currently the largest party - on EU matters, and their approaches to the European Convention are similar.

Beyond this overall positive reception there is a general concern, shared by the whole political spectrum, that provisions of the draft Constitution concerning institutional matters strengthen the bigger countries' powers and jeopardise the principle of equality between Member States. *Bloco de Esquerda* (“Left Block”, an extreme left wing party) was the most critical in stating that the Convention's final text was a “fraud” and announcing a radical opposition to it.

The Christian Democrats - traditionally against any kind of “European federalism” - have remained silent about the Convention's final outcome. This stance is probably due to the policy of “non-confrontation” towards their partners in the government, the Social Democrats. Their only criticism concerns the lack of reference to the Christian heritage in the Preamble.

The President of the Republic, Jorge Sampaio, has welcomed the text while distancing himself from some of its institutional aspects.

Social partners, in general, have paid little attention to the draft Constitution. This is attributable to the fact that the issues that most affect them – those concerning the European economic and social model - have remained largely unchanged.

1.2 Convention method

Is there the perception in your country that the Convention has contributed substantially to making the process of constitutional reform of the EU more transparent and democratic? What are considered to be the main positive elements of the Convention method? And those that, on the contrary, have drawn the most widespread criticism?

Many political leaders and media commentators have shown enthusiasm for the Convention method. Compared with the IGC procedure, where negotiations normally take place behind “closed doors”, the Convention has been seen as more democratic for its openness, diversity of actors and transparency.

There has been, however, criticism both from the left and the right wings of some Portuguese society. The critics denounce four big “deficiencies” in this Convention method: lack of legitimacy, internal decision-making, insufficient citizens’ participation and lack of internal political debate.

The first criticism mainly derives from the erroneous idea (though conveyed by Giscard d’Éstaing himself) that the European Convention had true constituent powers and that the IGC would have nothing left to decide. The second “deficiency” is, according to some, directly related to the constant search by the President of the Convention for a consensus at all cost. Furthermore, the fact that there was no voting and that national Parliaments did not discuss or vote on the positions of their representatives at the Convention prevented an adequate political debate and variety, all vital elements of a democratic procedure.

The Convention’s President was also criticized for having rushed through the negotiations on institutions and for having openly revealed his own ideas before the various subjects were even brought to the plenary session.

There was criticism also about the fact that many of the civil society contributions were not incorporated in the draft text and that the Convention was a “hostage” of a political and intellectual elite.

1.3 Performance of national representatives

How do you judge the performance of the representative of your government in the Convention? Do you think that he/she played a proactive and dynamic role? What are the Convention issues on which he/she concentrated his/her interventions and proposals? Did your government work actively to adopt common positions or establish a unity of action with other governments? Did the representatives from your country at the Convention take similar stances on the most important issues, or did their different political affiliations and ideological convictions reflect in substantially different positions?

It can be said that the Portuguese representatives have, in general, taken similar stances on the most important issues discussed at the Convention. This is logical if we take into

account that only two political forces were represented at the Convention: the Socialists and the Social Democrats who, as mentioned above, usually adopt common positions towards EU affairs.

The interventions of the government's representative have covered a broad number of issues, but he seems to have paid particular attention to the institutional aspects and CFSP. He also insisted that tourism should fall under EU's "coordination, complementing and supporting measures" competences and on the need to clarify and improve the status of the outermost regions. Together with national parliament representatives, he pushed for the "constitutionalisation" of the open method of coordination, a mechanism in which creation Portugal had a fundamental role.

Criticised by a few media commentators for having assumed a very defensive and conservative posture, the government's representative has, in his turn, always been rather critical of the Convention's internal functioning. Although very coherent and determined in the defence of some positions and principles, like the strengthening of the Community method and the equality among Member States, he was not very pro-active for instance, in proposing better alternatives to the suppression of the rotating presidencies. In line with the so-called "group of small countries" willing to maintain the "status quo" in institutional aspects, Portugal has preferred, since the very beginning, that the institutional debate take place within the IGC instead of within the Convention.

Since the beginning of the Convention's work the Portuguese government has tried to coordinate its positions with countries sharing the same views. It has been a strong supporter of the "Benelux paper". The Portuguese representative at the Convention was one of the promoters of a contribution, subscribed by 15 other "small countries", about the principles that ought to guide EU's institutional reform: maintaining and reinforcing the Community method; preserving the institutional balance; no new institutions; the equality of Member States; openness¹. In September 2003, the Minister for Foreign Affairs attended a meeting in Prague where representatives of 15 small EU countries defined a common position for the upcoming IGC.

2. National debate and public opinion trends

2.1 Public opinion trends

How have the attitudes of public opinion towards the EU evolved in your country in the last months of the Convention's work? Can it be argued that the completion of the Convention's activities, and the presentation of the draft constitutional treaty have had a substantial impact on public opinion trends?

Eurobarometer 59², published in July 2003, confirms the Portuguese support for a European Constitution, with 60% of the respondents saying yes, a percentage close to the one shown by the previous European poll.

However, according to the Eurobarometer fall 2003, the question regarding support for a European Constitution gets from the Portuguese one of the highest rates of "Don't Know/No answer" responses and most Portuguese are unable to answer specific

¹ CONV 646/03, Contrib. 288

² Fieldwork: March - April 2003. Available at http://europa.eu.int/comm/public_opinion/archives/eb/eb59/eb59_en.htm

questions about the functioning of the European Convention. Questions about specific proposals for reform also received very high levels of non-responses. On institutional reform, a majority of the Portuguese (55 %) is in favour of keeping the rule that allows one Commissioner per Member State while 43 % of respondents agree with the notion that “the Presidency (of the European Council) should be extended because six months is too short to achieve significant results” (36% disagree). Lastly, 45% of the Portuguese agree with the preservation of the veto right “in order to preserve national interests”.

A June poll conducted at the national level showed that an increasing number of Portuguese people had heard of the European Constitution (67%) while 33% were still unaware that the EU was preparing its fundamental law. The most important result of the poll is, however, the fact that a staggering 84% of the Portuguese population wants to have a referendum on the European Constitution.

Despite the intention to hold a referendum, almost half of the respondents (47%) did not know what the draft Constitution was about, which confirms the findings of Eurobarometer 59.

2.2 The role of parliament

Was the draft constitutional treaty approved by the Convention discussed in your national parliament? Did the committees of your parliament working on EU issues address and examine, on a more or less regular basis, the work of the Convention? How did the government inform parliament about its initiatives and positions concerning the constitutional reform of the EU?

According to a 1994 law at least one debate during each EU Presidency shall take place in the Parliament with the presence of the government. The law also requires that the government keep the Parliament regularly informed on EU activities.

On June 12, the Prime Minister presented before the Parliament the government’s stance on the draft text and the broad orientations for its future policy on EU matters. The debate ended with a broad consensus between the two major parties on the text’s main guidelines, but the Christian Democrats and the Social Democrats expressed some concerns about its lack of references to Christianity. The Communists and Bloco de Esquerda questioned, once more, the Convention’s legitimacy and representativeness. The Prime Minister proposed to set up a contact group formed by government and parliament representatives with the view of improving the Parliament’s follow-up of negotiations at the IGC.

Also, on the eve of the European Council of Thessaloniki, the Minister for Foreign Affairs, António Martins da Cruz, held the usual consultation with the political parties to hear their positions on the Council’s agenda. After his return from Greece, the Minister presented the outcome of the European Council before the Parliament’s specialised committee on European Affairs and Foreign Policy.

2.3 Other relevant initiatives

Do you think that the many initiatives undertaken by the EU to promote a public debate on European constitutional issues, notably by involving civil society, have had an impact in your country? Has your government played an effective role in raising the

knowledge and awareness of public opinion concerning the Convention's goals and activities?

The government's role in this field has been quite limited. It consisted mainly in the participation in debates and other events by its representatives. The two successive government representatives at the Convention and several members from the Foreign Office have taken part very actively in the public debate, writing in newspapers and attending the (rare) TV debates; the presence of the Prime Minister and the Minister of Foreign Affairs in this kind of events was less visible. In the Government's website, for instance, no link to the European Convention or any sort of civil society forum were available, unlike in the Parliament's website.

Information campaigns and debates were organised mainly by universities, professional associations and European information centres. Of these, the most dynamic was undoubtedly the "Jacques Delors Centre", which operates under the authority of the Presidency of the Republic.

In Portugal, there are very few think tanks. It was, however, one of them, the Institute for Strategic and International Studies, that launched the broader initiative involving civil society in the discussion of the "Future of Europe" and the Convention's work. Co-funded by the European Commission and the European Parliament, this initiative was organised jointly with universities, business and industrial associations. Named "National Debate on the Future of Europe", it consisted of 10 seminars organised from October 2002 to June 2003, in six main Portuguese cities, culminating with a final congress in Lisbon where more than 500 persons participated in working groups, and presented and discussed their papers on a wide range of subjects concerning the Future of Europe and the Convention.

2.4 Media coverage

How was the media coverage of the final, crucial phase of the Convention's work? How extensive has information on the content of the draft constitutional treaty been? Has it been presented in a positive or negative light? Which issues have been covered the most?

Media coverage increased substantially during the final phase of the Convention's work, reaching its peak when the final text was approved and released to the public opinion. TV coverage has, however, been largely insufficient compared with newspaper coverage. In the final phase, newspapers gave an overview of the draft Constitution's main changes, highlighting the persistent contrast on the institutional changes.

They paid attention to the creation of a full-time President of the European Council, to the suppression of rotating presidencies and to the new composition of the Commission. The politicians' opinion that these changes were harmful for Portugal was passed onto the media, contributing to a somewhat negative idea of the draft constitutional text.

Likewise, TV coverage has dedicated some attention to the most controversial institutional aspects of the draft Constitution, but there were almost no debates on these subjects. In sum, the media coverage appeared to be adequate.

3. Prospects for the Intergovernmental Conference

3.1 Link between the Convention and the IGC

The Thessaloniki Council did not go beyond defining the text of the draft constitutional treaty “a good basis for starting the Intergovernmental Conference”. In your government’s view, should the IGC limit itself to endorsing the results of the Convention, concentrating only on the few issues that still remain controversial, or engage in a more comprehensive review of the draft constitutional treaty?

The government has already announced that it would only concentrate on the few issues that, according to it, the Convention did not address in a satisfactory manner. These issues include the European Commission’s composition, the Presidency of the European Council and the Council of Ministers, the definition of qualified majority voting and lack of a reference to the Judaic-Christian heritage in the Constitution’s preamble.

3.2 Organisation of the IGC

To prevent the upcoming Intergovernmental Conference (IGC) from bogging down in obscure and prolonged negotiations, as in the previous IGCs, the Italian government, which will hold the EU’s presidency until December 2003, proposes that the IGC be held mostly at top-level, i.e. at the level of the Heads of State and Government and the Ministers of Foreign Affairs. Does your government agree with this approach?

The government does not agree with the proposal in the exact terms it has been presented by the Italian Presidency. Even though there has been no official position on the matter, the government thinks that it will eventually be necessary to set up a number of technical support groups, with a limited duration and mandate, structured to deal with the more complex topics such as the qualified majority voting rules.

3.3 Controversial issues

3.3.1 Elected President of the Council

While there is general agreement concerning the establishment of a permanent and elected President of the Council, there are still different ideas on his/her functions, especially on whether or not he/she should play a co-ordinating role with regard to the presidencies of the other Council formations.

The Portuguese government would not subscribe to the idea that there is a “general agreement” concerning the creation of a permanent President of the European Council. Portugal was one of the many small countries signing a communicate denying the existence of a “general consensus” in institutional matters.

The creation of a full-time President of the European Council is contested because, according to the Portuguese official position, it enhances the intergovernmental aspects of the European Union. Moreover, his/her role and competences have not yet been clearly defined. The government also thinks that this new institutional figure would not make the EU more effective but rather contribute to shifting the institutional equilibrium to the profit of the biggest Member States. Despite considering that this

post is not good in every respect the Prime Minister has recently declared that he would be ready to make a compromise at the IGC, accepting the President of the EU in “exchange of strengthened powers of the Commission”.

The government has not yet expressed its views about the duties to be assigned to the proposed permanent President of the European Council, since its creation remains hypothetical. In any case, the Prime Minister said he would oppose any attempt to transform the Commission into a mere secretariat of the Council.

The government has also said that the IGC should “clarify” the President’s appointment procedure to avoid that only the candidates from the most populated countries be elected. It therefore proposes that, in this particular election, each Member State shall hold only one vote.

3.3.2 Composition of the Commission

The debate in the Convention concerning the European Commission eventually concentrated on its composition. The Convention approved the following proposal: “The Commission shall consist of a College comprising its President, the Union Minister of Foreign Affairs/Vice-President, and thirteen European Commissioners selected on the basis of a system of equal rotation between the Member States.” In addition, “the Commission President shall appoint non-voting Commissioners, chosen according to the same criteria”. Does your government back this proposal or is it in favour of a different solution?

The Portuguese government favours a different solution, whereby the Commission should include one national of each Member State. Moreover, it supports the agreement reached in Nice, which states that when the Union consists of 27 Members, the number of members of the Commission shall be less than the number of Member States. The Members of the Commission shall be chosen according to a rotation system based on the principle of equality.

3.3.3 Definition of qualified majority voting

The Convention has proposed abolishing the current weighting system for qualified majority voting (QMV), by defining QMV as the majority of the member states representing at least 60% of the European population. Is your government satisfied with this provision, or would it rather change it?

The Portuguese government prefers the Nice Treaty system for QMV. If this system is abandoned, another acceptable option would be to introduce a “double majority” consisting of 60% of States representing 60% of the population.

3.3.4 Extension of qualified majority voting

Does your government support an extension of QMV to policy fields other than those indicated in the draft constitutional treaty, such as taxation and CFSP?

The government is overall satisfied with the scope of the extension of QMV made in the draft Constitutional Treaty. Both CFSP and taxation should however remain subject to unanimity.

3.3.5 Minister of Foreign Affairs and EU diplomatic service

While there is a consensus on the creation of a EU Minister of Foreign Affairs, different views exist concerning the executive structure he/she should rely upon. What is your national government's position on this issue? Should the structure be placed within the Commission or the Council?

The creation of a Minister of Foreign Affairs was welcomed by the Portuguese government as an important instrument for improving the coherence of EU's external action. According to the official view, the Minister's executive structure should be placed within the Commission.

Moreover, many of the powers given to the Minister by the draft treaty in the field of CFSP should, according to the government's view, be reduced.

4. The ratification process

4.1 Eventual obstacles

Do you think that the process of ratification of the new constitutional treaty may encounter difficulties or major political opposition in your country? If so, which?

What will happen after the Intergovernmental Conference depends much on its results, that is on the substance and impact of the EU's new Constitutional text. Apart from the traditional opposition from the Communist party whenever a EU treaty revision takes place, there has usually been no major internal opposition to ratification, either at the political or at the public opinion level.

The leader of the socialists has declared that the negotiations at the IGC should not become the object of a national political dispute. Furthermore, left-wing opposition will not be an obstacle to parliamentary approval, because the coalition government holds a comfortable majority in parliament. Although it is obvious that, because of the constitutional nature of the treaty, the political discussion will be more intense than in the past, and serious difficulties might eventually arise only with regard to the already promised referendum.

4.2 European Parliament elections

According to the conclusions of the Thessaloniki Council, the Intergovernmental Conference should "complete its work and agree the Constitutional Treaty as soon as possible and in time for it to become known to European citizens before the June 2004 elections for the European Parliament". Do you expect the constitutional issues to become a central matter of debate during the electoral campaign in your country? Or do you think that the European Parliament elections are more likely to be dominated by national issues?

In Portugal, EP elections are normally dominated by national issues. European matters receive very little attention from electors, like in the rest of Europe. The level of debate in the June 2004 electoral campaign will, once more, depend on the substance of the changes achieved at the IGC. The European elections might be dominated, not so much by constitutional issues, but by the prospect of the national referendum. If the new EU constitution is approved in time for the EP June elections, issues like the referendum's most appropriate date, its exact terms and the need for a constitutional revision will certainly heat the campaign up. *Bloco de Esquerda* will propose to hold a referendum before the June 2004 elections. It has also promised to campaign for the "no".

4.3 Referendums

For constitutional reasons, some countries need to submit the EU Constitutional Treaty to a national referendum before it can enter into force. Others may decide to hold a referendum in order to give the national ratification more legitimacy. Is a referendum foreseen in your country? If so, do you expect this to be a factor that will complicate or facilitate the ratification process?

In Portugal, the ratification of international treaties does not require a previous national referendum. However, this time the Prime Minister has announced that, if the IGC introduces "substantial" changes to the EU's architecture, the first referendum ever on European matters will be held in the country.

Holding a referendum on the EU's constitutional treaty would definitely complicate the ratification process, because, in principle, the Portuguese constitution would have to be changed. In fact, the Constitution says that there cannot be referendums about issues that are the "object" of an international treaty or a legislative act. In any case, the Constitution forbids the holding of a national referendum in the period between the convocation and the realisation of elections for the European Parliament. There are, consequently, two possibilities:

- Revising the Constitution. This requires the approval of two-thirds of parliament.
- Trying to find the right question for the referendum. The preferable, simpler solution. Instead of asking for the approval or rejection of the Treaty, there could be one question (or more), for instance on only a particular substantial institutional change. In this case a constitutional change will not be required.

The results of such a referendum are, right now, completely unpredictable; the most recent poll shows that two-thirds of citizens support the new Constitutional Treaty.

4.4 What to do in case of failed ratification

Has your government expressed any preference on the eventual initiatives to be undertaken in case one or more countries should fail to ratify the new treaty?

The government's official position is that the Constitutional Treaty should not enter into force unless it is ratified by all member states.