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CSC Report on the Treaty Reform

After several years of institutional discussion, the Reform Treaty “Treaty of Lisbon” was, to all EU Member States’ satisfaction, approved at the Lisbon Summit on 19 October 2007. It will be signed on 13 December 2007 in Lisbon and it is hoped to enter into force on 1 January 2009.

The package called the Reform Treaty incorporates most of the innovations of the Constitutional Treaty (CT) into the two existing treaties: Treaty on the European Union (TEU) and the Treaty establishing the European Community (TEC). Of these the latter is renamed the Treaty on the Functioning of the Union.

Since the Intergovernmental Conference (IGC) was launched in late July this year, the details of the Reform Treaty were examined by Member States’ legal experts. The most difficult questions tackled by the group, which finalized its work at the beginning of October, concerned the Schengen Agreement and the special arrangement the United Kingdom and Ireland had in relation to it as well as the European Court of Justice’s competency in justice and home affairs. The draft text was also discussed by the EU Foreign Ministers in two occasions during IGC.

The Intergovernmental Conference was conducted under the overall responsibility of the Heads of State or Government assisted by their Foreign Ministers. The European Parliament had the following three representatives: Elmar Brok (EPP-DE), Enrique Barón Crespo (PES-ES) and Andrew Duff (ALDE-UK). The European Commission had one representative.

The Reform Treaty is available on the IGC 2007 website:

<http://www.consilium.europa.eu/showPage.asp?id=1317&lang=en&mode=g>

TREATY EVALUATION BY THE CHURCH AND SOCIETY COMMISSION

When comparing the Reform Treaty with the objectives the Church and Society Commission (CSC) advocated all along the process, the following could be stated:

CSC called the EU to be more than an economic cooperation and to have a strong value-basis. Although there are reasons to be content about the way the EU's values and objectives are now defined, CSC will continue to monitor their implementation in the EU policies. CSC welcomes the reference to Europe's religious inheritance in the preamble.

CSC wanted the Charter of Fundamental Rights to be made legally-binding and the EU to accede to the European Convention on Human Rights (ECHR). This is happening. The Charter will become legally-binding, except for the UK, and the EU shall accede to the ECHR.

CSC hoped the treaty reform to serve as a way to balance the now dominating economical interests with social considerations. The new social clause stipulates that "in defining and implementing its policies and actions" the Union shall take into account requirements linked to the promotion of a high level of employment, adequate social protection, fight against social exclusion, high level of education, training and protection of human health. The social dimension is also strengthened by the Charter of Fundamental Rights. Yet again, the real test will lie in the practical implementation of these legal innovations.

Furthermore, CSC promoted participatory democracy. In this regard, the treaty reform brings along a couple of innovations. The first one is the "citizen's initiative". In the future, one million signatures of EU citizens of several EU countries will compel the European Commission to make a legislative proposal on the matter in question. The proposal will then, of course, go through the normal procedure in the European Parliament and the Council. Citizens' initiatives might become a useful mechanism for churches. Moreover, CSC welcomes the commitment on the part of the EU institutions to conduct an open, transparent and regular dialogue with civil society.

CSC also feels that participatory democracy will be empowered by the increased clarity concerning the competences of the different EU institutions. Moreover, the EU processes will become more transparent with the introduction of the co-decision procedure (the European Parliament is involved) as the ordinary legislative procedure.

Finally, the Reform Treaty will also include an article on open, transparent and regular dialogue with churches and religious associations (Article 15b; cf. Article 52 of the CT). This same article also confirms that the Union respects the status granted to churches and religious associations or communities by the national legislations of Member States.

There are, nevertheless, areas where CSC did not succeed in achieving its objectives. The biggest disappointment concerns the lack of progress in the enhancement of non-military means of conflict prevention and crisis management.

All in all, even if the methods used for treaty negotiations this year do not comply with the requests of openness and participatory processes, there are reasons to believe that the Reform Treaty will be one step towards the kind of Europe CSC has promoted.

MAIN ELEMENTS OF THE REFORM

STRUCTURE

The Constitutional Treaty (CT) signed in October 2004 will not enter into force. Instead, most of its innovations are incorporated in the existing two treaties: Treaty on the European Union (TEU) and the Treaty establishing the European Community (TEC). Of these the latter is renamed the Treaty on the Functioning of the Union. The entire package of innovations is also called the "Reform Treaty".

CONSTITUTIONAL ELEMENTS

At the June Summit 2007, all the constitutional elements were deleted, including any terminological reference to "constitution" and symbols such as the flag, the anthem and the motto. Also the proposed denominations "law" and "framework law" were abandoned and the existing denominations "regulations", "directives" and "decisions" retained.

PREAMBLE

The preamble of the EU Treaty (TEU) is amended in order to include the following sentence: "Drawing inspiration from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law."

VALUES AND OBJECTIVES

The European Union accepts to embrace the following values: "respect for human dignity, freedom, democracy, equality, the rule of law and the respect for human rights, including the rights of persons belonging to minorities". The Reform Treaty also states that "these values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail." Such as Article 2 of the CT on values retained its content, Article 3 of the CT regarding objectives was also adopted with one exception. At the June Summit France successfully lobbied to exclude the objective of "free and undistorted competition". On the request of the UK however, this removal was compensated by a legally-binding protocol reaffirming the commitment to ensuring that competition is not distorted. Furthermore, the number of references to competition in the existing treaties will remain. The legal position in relation to competition therefore remains unchanged.

DIALOGUE WITH CHURCHES AND CIVIL SOCIETY

The Reform Treaty contains Article 15b (cf. Art 52 CT) regarding the status of churches and religious associations and the open, transparent and regular dialogue with them. The Reform Treaty also introduces the innovations concerning democratic equality, representative democracy and participatory democracy: open, transparent and regular dialogue with civil society and the citizens' initiative (Article 8b TEU).

Article 15b (Treaty on the Functioning of the EU) on the status of churches and non-confessional organisations stipulates the following:

1. Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.
2. The Union equally respects the status under national law of philosophical and non-confessional organisations.
3. Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations.

CHARTER OF FUNDAMENTAL RIGHTS

Reference to the Charter appears in one Article (Article 6 TEU) only but it is made legally binding except for the UK.

SINGLE LEGAL PERSONALITY

The EU will have a single legal personality, which allows it to adhere to international conventions including the European Convention on Human Rights.

QUALIFIED-MAJORITY VOTING

The QMV is extended to more than 50 new areas (energy market liberalisation, space policy, humanitarian aid, judicial cooperation in criminal matters etc.). UK was allowed to opt-out in respect of its criminal law system and police and judicial processes in addition to its earlier opt-outs in migration and asylum issues. Unanimity remains the rule for foreign policy, social security, taxation and culture.

COUNCIL VOTING SYSTEM

At the June Summit Poland lost its battle over the Council voting system but managed to postpone the entering into force of the new system until the beginning of November 2014 with a possibility for further delay until the end of March 2017. According to the new system, the qualified majority requires at least 55% of the members of the Council representing Member States comprising at least 65% of the population of the Union.

IOANNINA COMPROMISE

Poland's demand for the Ioannina compromise was satisfied by making it a formal decision of the Council, which can be modified unanimously. However, as it did not become part of the core treaty it has more of a political value. Ioannina compromise allows a group of countries, which have almost enough votes to block a decision, to have that decision re-examined. From 1 November 2014 to 31 March 2017, the blocking minority will require at least $\frac{3}{4}$ of the population, or at least $\frac{3}{4}$ of the number of Member States. As from 1 April 2017, at least 55 % of the population, or of the number of Member States is needed to form a blocking minority.

WITHDRAWAL FROM EU MEMBERSHIP

The Reform Treaty includes an article on the voluntary withdrawal of a Member State from the Union.

EU FOREIGN MINISTER

EU will have a High Representative of the Union for Foreign Affairs and Security Policy as of November 2009. The High Representative will occupy the functions currently

exercised by both the High Representative for Common Foreign and Security Policy and that of the Commissioner for External Relations. Furthermore, the High Representative will hold the position of European Commission Vice-President and lead the EU diplomatic corps. European Commission will take “appropriate contacts” with the European Parliament during the nomination process.

STABLE COUNCIL PRESIDENCY

The creation of a stable European Council presidency was agreed. The President of the European Council will have a mandate of two and half years, renewable once.

NATIONAL PARLIAMENTS

The role of national parliaments will enhance. The Reform Treaty affirms the right of national parliaments to be kept informed on EU developments and stipulates their role in safeguarding the respect of the principle of subsidiarity. Moreover, national parliaments will be granted a role in controlling the initiatives of the Commission. If a draft legislative act is contested by a simple majority of the votes allocated to national parliaments, the Commission will re-examine the draft. It will have to deliver a reasoned opinion if it chooses to maintain the draft.

EUROPEAN PARLIAMENT

The co-decision procedure becomes the ordinary legislative procedure for the great majority of legislative acts, thus substantially strengthening the role of the European Parliament (EP). The main new areas where the co-decision procedure will apply are agriculture, police and judicial cooperation in criminal matters. The number of Member of the European Parliament shall not exceed 750 in number, plus the President. Representation of citizens shall be degressively proportional, with a minimum threshold of six members per Member State. No Member State shall be allocated more than 96 seats.

EUROPEAN COMMISSION

The number of Commissioners will be reduced to two thirds of the number of Member States as of 2014. The member of the Commission shall be selected on the basis of equal rotation between the Member States.

EUROPEAN COURT OF JUSTICE

The number of Advocates-General will be increased from 8 to 11. Poland will get a permanent seat as it is already the case for Germany, France, Italy, Spain and the United Kingdom. The rotation system will apply to five seats.

SERVICES OF GENERAL INTEREST

The Reform Treaty includes a specific protocol (N°9) concerning services of general interest. The protocol recognises that the shared values of the Union in respect of services of general economic interest include, in particular, “the essential role of the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of users”. Furthermore, it acknowledges the diversity between these services and the differences in the needs and preferences of users that may result from different geographical, social and cultural situations. The shared values also include a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights. Finally, the protocol states that the provisions of the Treaties

do not affect in any way the competence of Member States to provide, commission and organise *non*-economic services of general interest.

SOCIAL ASPECTS

The social clause (cf. III-117 of the CT) is incorporated into the Treaty on the Functioning of the European Union. The clause stipulates that “in defining and implementing its policies and actions” the Union shall take into account requirements linked to the promotion of a high level of employment, adequate social protection, fight against social exclusion, high level of education, training and protection of human health.

ENERGY AND CLIMATE CHANGE

The Reform Treaty includes new references regarding “the spirit of solidarity between Member States” in relation to energy and climate change without conferring new competences on the Union in those areas.

REFERENDA

Once signed, the Reform Treaty will have to be ratified. Ireland is the only country certain to hold a referendum. The Dutch Government recently decided not to hold one but to ratify the Treaty by a vote in parliament. Denmark is currently examining whether the Treaty involves a transfer of sovereignty and whether, therefore, it will need to go through a public vote. In the United Kingdom, the pressure to hold a referendum remains high but the government continues to argue that such a referendum is not required.

The ratification process is hoped to be concluded by the end of 2008, which would allow the new Treaty to come into force on 1 January 2009, well on time before the June European elections.

Most EU leaders avoid speculating what consequences a no vote in any of the Member States would mean for the ratification of the Reform Treaty. However, in their joint text the former EU Commission President Jacques Delors and former Commission Vice-President Etienne Davignon propose that the use of qualified majority would also apply to the ratification process. This would allow those Member States who support the reform to move forward.

For more detailed information concerning the ratification process, read the following briefing of the European Policy Center. The Church and Society Commission is a member of this Brussels based think tank.

http://www.epc.eu/TEWN/pdf/562373347_The%20EU%20Reform%20Treaty.pdf

This briefing as well as all the previous briefings reporting on the developments of the treaty reform process are available at the CEC website:

<http://www.cec-kek.org/content/integration.shtml>.

CSC INVOLVEMENT IN THE DEBATE

The Church and Society Commission of the Conference of European Churches (CSC/CEC) has been involved in the debate on the future of Europe in numerous ways.

Recent initiatives include:

A joint CSC-Eurodiaconia statement on the social dimension of the Constitutional Treaty, 19 June 2007.

<http://www.cec-kek.org/content/pr-cq0729e.shtml>

A CSC letter to German Chancellor Angela Merkel on the eve of the June Summit, 6 June 2007.

<http://www.cec-kek.org/content/pr-cq0725e.shtml>

A CEC Press Release issued on the eve of the 50th anniversary of the Rome Treaties, 23 March 2007.

<http://www.cec-kek.org/content/pr-cq0716e.shtml>

A meeting with the German Foreign Minister Frank-Walter Steinmeier to discuss the future of Europe, 15 January 2007.

<http://www.cec-kek.org/content/pr-cq0703e.shtml>

A Church Leaders' meeting organised on 12-13 December 2006 issued an "Open Letter from church leaders to political leaders in Europe".

<http://www.cec-kek.org/content/openletter13.shtml>



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