

# Europe's new constitution

Europe The E. Post 13-6-83

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**H**eated debate is continuing on the new draft constitution prepared by the 13-member presidium headed by former French President Valéry Giscard d'Estaing. The draft constitution had already been presented to 105-member Convention on the Future of Europe for discussion. The draft constitution has come under intense fire from almost all quarters. It is however just a skeleton text, which will be fleshed out as the Convention continues its work, before its final proposal next year. The draft text, nevertheless, will have to be presented before the upcoming EU summit in Greece.

The draft text, in its present form, avoids committing itself to some of the most controversial issues, such as whether there should be a new president of the Council of EU member states. It, inter alia, also avoids specifying the time period for the post of EU's foreign minister. "Our constitution is called a democracy because power is in the hands not of minority but of the whole people", is foundation statement upon which the whole edifice of the draft constitution has been erected. The smaller member states have voiced their concern over the certain provisions of the draft constitution and have demanded either their immediate removal or amendments. They have feared the draft constitutions, if implemented in its present form, will lay the foundation stone of a super state curtailing the role of the smaller states in the future EU affairs.

The common foreign and security policy, appointment of a EU foreign Minister, the president of the European Council, formation of the European Commission are some of the core issues the Convention for Enlargement is confronted with. Article 15 of the draft constitution deals with common foreign and security policy. The article says, "The Union's competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union's security, including the progressive framing of a common defence policy, which might lead to a common defence". Then, the 2nd clause of this article makes it incumbent upon all the member states to support the Union's common foreign and security policy in a spirit of loyalty and mutual solidarity.

The Convention has gathered required support in favour of this article and therefore the said article is likely to be retained as it is in the final. The presidium has dwelt upon the future structure of the European Parliament in article 19 of the draft constitution. The article comprises three main clauses. The clause 11 says, "The European Parliament shall be directly elected by universal suffrage of European citizens in free and secret ballot for a term of five years. Its members shall not exceed seven hundred in number. Representation of European citizens shall be digressively proportional, with a minimum threshold of four members per member state". This clause, however, does not indicate the pos-

sible numerical strength of the European Parliament. The president of the European Parliament will be elected for a term of five years, from among its members.

Article 20 deals with the composition of the European Council. The European Council's status is cardinal since it comprises all the heads of state or government of the member states together with its president and the president of the European Commission. As per this provision, the EU Foreign Minister shall also participate in the meetings of the European Council.

The main task of the European Council has been to provide necessary impetus to Union's development related activities and define its general political directions and priorities. The Council, as per the new constitution, would continue playing similar role. A qualified majority shall elect the European Council president for a term of two- and-a-half year, renewable once. The person elected must be, or have been for at least two years, a member of the European Council. In cases of serious malpractice, the European Council can end his mandate according to the same procedure. It is important to note here that the president of the European Council may not be a member of another European institution or hold national mandate.

Article 22 and 23 deal with the formation of the Council of Ministers and Council formations respectively. The presidium has retained most of the provisions of the existing procedure for the formation of Ministers' Council and Council formations. Article 24 of the draft constitution defines the procedure of qualified majority. It says, "When the European Council or the Council of Ministers take decisions by qualified majority, such a majority shall consist of the majority of member states, representing at least three fifths of the population of the Union". Clause 11 says, "Within the European Council, its president and the president of the Commission do not vote".

The first clause of this particular article has evoked serious criticism from the smaller EU states. As per the qualified majority rule, the big states would be having greater say in all decisions. In other words, Germany and France being the biggest states in terms of population would happen to influence all the decisions of the European Union. Spain and Poland have disliked the amendment in this particular article, which gives both countries disproportionate blocking power. The smaller states have formally conveyed their reservations to the presidium. Mr. Giscard wants a system under which any vote could be won by a majority of member states representing a majority of the EU population. This is, nevertheless, a contentious article and therefore requires to be dealt with prudence since it may jeopardise the enlargement prospects of the Union. Article 25, 26 and the 27 are highly important in the sense that they deal with the most significant institutions such as

European Commission, Commission president and the EU foreign minister. As per this article, the European Commission shall consist of a president and up to fourteen other members. It may call on the help of the associate commissioners. The Commission shall be completely independent in carrying out its responsibilities. Importantly, the members of the Commission shall neither seek nor take instructions from any government or other body. Currently, the 20-member Commission is functioning under the aegis of Mr. Romano Prodi, who saddled in, after the dismissal of the previous Commission, on corruption charges.

As per the second clause of this article, each member state shall submit a list of three persons, of whom at least one must be a woman, whom it considers qualified to be a European Commissioner. The President-elect, taking account of European political and geographical balance, shall, from among the names submitted, select as members of the Commission up to thirteen persons chosen for their competence, European commitment, and guaranteed independence. This article empowers the president of the Commission to pick up as members persons of his own choice. It is, therefore, not necessary that each member country has its representation in the Commission. The article, however, does not specify the tenure of the Commission.

Article 27 elaborates the appointment of a EU foreign minister. It says, "The European Council, deciding by qualified majority, with the agreement of the President of the Commission, shall appoint the Union's Foreign Minister. He shall conduct the Union's common foreign and security policy". It is important to note here that the foreign minister shall be from one of vice-presidents of the Commission. No tenure of the foreign minister has been given in the article. The big countries seem reluctant to borrow the idea of having a foreign minister from within the Commission.

The draft constitution does not discuss the issue of rotating EU Presidency. The presidium, ab initio, came out with the proposal for a permanent EU presidency. But after stiff resistance and opposition from the smaller states, the idea seems to have been diluted. The integrationist-minded Benelux countries want to retain the current system of rotating the union presidency every six months. But Britain and other big countries believe this would weaken their concept of the full-time presidency.

As a tailpiece, one can show cautious optimism that the Convention, at the end of the day, would be able to iron out differences on the certain provisions of the draft Constitution. Preparation of new constitution is always an uphill task and therefore subject to amendments/changes. The concerns shown by the smaller EU states do carry weightage; hence their interests need to be looked after carefully since it is vital for the future well-being of the Union.