

## The Treaty on the Constitution for Europe and its effect on the EU foreign relations and the position of SCG

When the Treaty establishing the Constitution for Europe was signed in June 2004, it marked the end of the process that started with dissolution of Western and Eastern European blocks. This process has now symbolically finished with the European Union expanding across the borders of the former USSR. Former President of France, Francois Mitterrand, compared the development of the European integration with building medieval cathedrals - it took generations to finish and a new era would add its own touch to the construction. Similarly, the Constitution for Europe represents a finalisation of the basic structure, including the facade and the roof. It should put an end to the constant changes that the former European Communities underwent for over a decade. There were four series of great institutional reforms (Maastricht, Amsterdam, Nice and Brussels) in this period, as well as two enlargement waves (to the north and to the east of Europe). In comparison to the previous period, each of these institutional reforms was a step forward. Gradually, the European Union has changed beyond recognition. It has expanded and deepened its competencies, introduced a single currency, new mechanisms and instruments of decision making and functioning, and it has become much more than just an international organisation – it has become a kind of (con)federal entity, which to a greater or a lesser degree deals with practically all issues that a normal state deals with.

As regards foreign relations and the international position of the Union, the Constitution for Europe has brought a number of innovations and achievements, building on the reforms undergone earlier (the Nice Treaty). The biggest change is in connection with the 'construction' of the building, i.e. institutional aspects. Another great achievement is about the single security and defence policy as a component of the EU single foreign policy. It is fair to say that after the adoption of the Constitution for Europe, the EU will no longer be just a political and economic union, but a military and defence pact.

However, let us start from the beginning. Firstly, the Constitution for Europe will give the European Union its explicit international subjectivity, i.e. it will become a legal entity, which was not the case before (up until now, only the European Communities, as narrower components of the EU, have had the legal entity status).

The European Union has so far been based on a rather artificial division between the so-called 'single foreign and security policy' (Second Pillar of Cooperation) and international economic relations of the EU (First Pillar of Cooperation). In other words, the EU was based on two different treaties, but this division has definitely been revoked by the new Constitution. However, this change does not mean that the process of decision-making is the same. All areas of the EU foreign relations as well as the single defence policy issues have been brought under the same roof, that is, a single chapter of the Treaty (up until now, two separate EU (EC) Treaties have been in effect). Decisions on the issues relating to classic 'foreign policy' will still be made unanimously (with a few exceptions), as

opposed to the majority decision-making (i.e. 'qualified majority') in other areas of foreign policy, predominantly the economic ones (trade, energy, transport, fishery, etc.).

The following innovation in the Treaty is also of institutional nature. So far, legal and operational division between 'foreign policy' and 'international economic relations' has been embodied in two separate offices: the EU High Representative for the Single Foreign and Security Policy (held by Javier Solana) and the EU Commissioner for Foreign Relations (until recently held by Chris Patten). The new Constitution, however, introduces a joint office of the Minister for Foreign Affairs, which marks a 'personnel union' of the two international offices mentioned above, i.e. harmony in the international performance of the EU. Cohesion between what Mr Solana (i.e. the Council of Europe) and Mr Patten (i.e. the EU Commission) were doing was not quite perfect, which is best illustrated by the EU mediation in the establishment of the State Union of Serbia-Montenegro.

Let us, however, return to the Constitution for Europe. Minister for Foreign Affairs, who will simultaneously hold the office of the Vice President of the EU Commission, will be appointed by the Council of Ministers. He or she will be in charge of representing the EU internationally, including the envisaged diplomatic apparatus in the EU administration. In the international representation of the EU, the Minister will not work alone. The Constitution envisages President elect of the European Council (which comprises Heads of State or Government of the EU Member States), who will also "represent the EU internationally in the single foreign and security policy affairs" while at the same time respecting the competencies of the Minister for Foreign Affairs.

In other words, when the Constitution for Europe comes into force the EU will practically have its own president as well its minister for foreign affairs, just like the EU Member States do. In this way, Henry Kissinger's famous remark about not knowing whose telephone number to dial to talk about the EU stance regarding an international crisis becomes outdated.

The new Constitution for Europe gives a much clearer and a more consistent structure of the international competencies of the EU, sets clear aims of its international activities, as well as the division into 'exclusive', 'explicit' and 'implicit' competencies, in line with the to-date interpretation of the EU law given by the European Court of Justice. The new formulation of exclusive competences of the EU in the framework of single foreign trade policy is particularly important, as it now covers foreign direct investment issues, trade in services and commercial aspects of intellectual property.

Another innovation in the Constitution is in its introduction of the institutional concept of the 'neighbourhood policy'. It envisages signing special agreements by the EU and its neighbouring countries ('immediate neighbourhood'), based on single values and specific interests. These provisions will probably apply to the future relations between the EU and former USSR, as well as the South Mediterranean and (perhaps) the Near East countries. Constitution dedicates special chapters to the world development, humanitarian aid, co-operation with international organisations, negotiating techniques and ways of concluding

international agreements. However, one can say that this is mostly about taking over existing EU provisions, except that they are now much clearer. Nevertheless, a stronger role of the European Parliament in the formulation, and especially control of international policy, should be pointed out. Along with the Council of Ministers, the European Parliament will be responsible for the ratification of all international agreements that the EU will be signing in the future (so far, EP has had a minor role in the ratification of the EU's international trade agreements).

As we have mentioned above, innovations in the field of single security and defence policy are especially important. It is fair to say that with the enforcement of the new Constitution for Europe single defence policy will come into existence. The Constitution now has a number of completely new provisions, such as the clause on mutual help in case of military attack on an EU Member State. The so-called 'Petersburg tasks' (i.e. peace operations) have been expanded, the 'Solidarity Clause' between the Member States (in case of a terrorist attack or a great disaster) has been introduced, the European Strategic Research and Armament Agency (ESRAA) has been established, a possibility of a so-called 'continuous structural co-operation' in the defence issues between some EU Member States has been envisaged, etc.

Overall, we can say that the Treaty on the Constitution for Europe presents a serious effort in the transformation of the European Union into a real political union of countries sharing 'common destiny'. The Treaty also presents an endeavour to establish a much clearer and potentially a more efficient (though a very complex) structure – a kind of peaceful, democratic 'empire' – both for its citizens and for the rest of the world. In the field of foreign relations, the EU will, in principle, act in a clearer and much more consistent way, while the scope of its activities will expand.

Finally, we may wonder how these changes will affect the Western Balkan countries, which, for the time being, have been left out of the EU enlargement process, or how these changes will affect Serbia-Montenegro. The Western Balkan countries are, as we know, 'potential candidates' and Croatia and Macedonia have already submitted their applications for the EU membership.

The Treaty on the Constitution envisages that it should come into force on 1 November 2006, the year that should mark the end of the current EU enlargement process to 27 or 28 Member States (negotiations with Romania and Bulgaria are still ongoing), which, for other reasons, may be important for our region (referendum in SCG, Kosovo, etc.).

The new 'Constitution' does not envisage changes in provisions and criteria as regards conditions for the EU membership. The only novelty is the introduction of provisions that envisage a procedure for countries that want to leave the European Union.

However, although the formal criteria for the EU membership have not changed, there is no doubt that with each EU enlargement tasks for the future membership candidates become more complex. Simply, the so-called *acquis communautaire* corpus has become larger, its structure and the way it functions have become more complex. At the time

when Spain entered the EU (in the 1980-ies), the total number of all EC regulations was around 40,000. It is now 100,000, not to mention that the competencies have spread to new sectors.

Apart from this, the great EU expansion to Central and Eastern Europe brings a psychological change at the Member States political level. In fact, with the enlargement that has happened this year, some political elements in the EU countries imply that the historic mission, that is, the EU obligation towards the rest of the Europeans (in the east) is basically over, that there is no need to rush into further enlargement and that the EU should concentrate on itself in the future period. In this decade, the EU will concentrate on 'digesting', that is, the assimilation of newly acquired Member States, as well as on adapting new institutional arrangements envisaged by the Constitution for Europe (of course, provided the 'Constitution' is ratified in all Member States).

Consequently, although the principle of future membership for the Western Balkan countries will not be at stake, becoming an EU member is getting more complex and time consuming, which could be because the EU is facing other complex issues, such as Turkish membership, etc.

Serbia-Montenegro is notoriously lagging behind in the institutional approximation to the EU, which is largely (if not exclusively) the result of our internal dispute about whether we should join the EU together or separately. Signing the Stabilisation and Association agreement with the EU is uncertain because the Feasibility Report on the SAA negotiations has been held up for almost a year. This situation endangers country's vital interests in the long-term and is not sustainable. However, bearing in mind the newly established European Partnership between the EU and Western Balkan countries, the process of getting closer to the EU has not been stopped and constitutional co-operation could be established relatively quickly.

We believe that Serbia (or SCG) could make up for the lost time in the process of institutional approximation if it submits a formal application simultaneously with the signing of the Stabilisation and Association Agreement with the EU. There is a precedent – this is what Slovenia did in 1996, thus managing to 'get on the train' of the EU membership negotiations. As for SCG, a desirable deadline for the membership application/signing the SAA could be as early as 2006. The second half of this decade could therefore be used for the acceleration of reforms and faster adoption of the *acquis*, so that the membership negotiations could finish around 2010.

Dr Dusko Lopandic