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NOTA DE ENVIO

de:	Secretariado
para:	Convenção
Assunto:	Contributo de vários membros, membros suplentes e observadores: "Referendo sobre a Constituição Europeia"

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REFERENDUM ON THE **EUROPEAN CONSTITUTION**

ADOPTION, RATIFICATION AND ENTRY INTO FORCE PROCEDURE

We propose that the Convention recommends to the Inter-Governmental Conference that the draft European Constitution be approved not only by National Parliaments and the European Parliament but also by the citizens of Europe in binding referendums. These referendums should take place in accordance with the constitutional provisions of the member states. They should be held simultaneously on the same day, an option being the same day as the European Parliament Elections in June 2004. Those member states whose constitutions do not currently permit referendums are called upon to hold at least consultative referendums. An information campaign must be publicly funded.

NOTES

BACKGROUND

The Laeken Declaration recognised the need to bring Europe closer to the people. This was the impetus for the Convention on the Future of Europe, which will produce a Constitution or a constitutional treaty for Europe. If the Constitution is to have real democratic legitimacy, then it ought to be put to the people of Europe in a Europe-wide referendum. Not to do so would simply reinforce the impression of a deep democratic deficit in Europe; it would also send a signal that Europe is not about the people but about the governing elites.

WHY A EUROPE-WIDE REFERENDUM?

It has been argued that there is no European demos, that Europe consists solely of member states which ratify treaties according to their own constitutional requirements. While it is the case that a 'European People' does not exist, it is equally clear that a Europe-wide referendum would create a common political space. It would be a means of bringing the peoples of Europe closer politically; it would ensure that the people were more engaged with and had a greater knowledge of the project.

The demand for greater and more effective involvement of European Citizens in the political process is not new. In 1949, before the emergence of the European Economic Community (EEC), Charles de Gaulle declared, "I think that the organisation of Europe has to proceed from Europe itself. I consider that the start shall be given by a referendum of all free Europeans".¹

Similarly, Altiero Spinelli proposed, in 1984, the creation of an EU Constitution, which would have to be ratified by the people in a referendum.²

Many members of the Convention have already spoken in support of a Europe-wide Referendum. The Convention President, Valéry Giscard d'Estaing, stated at the opening of the assembly that treaties should be concluded by countries, but a constitution by the people. Mr. Amato and the other Vice-President, Mr. Dehaene, have supported him in his call for a referendum. In the European Parliament, the Liberals and the Greens have both declared their support for a European Referendum. As the work of the Convention reaches a conclusion, an increasing number of leading European political figures are speaking in favour of a Europe-wide Referendum.

Legal difficulties

Such a proposal does not come without political or constitutional difficulties. Currently, ratification of a European treaty requires unanimity. Theoretically, therefore, in a Union of twenty-five, one country can block the European treaty. Not only can this be seen as unfair and undemocratic, it must also be recognised that the present position puts undue pressure on certain member states which have a constitutional obligation to hold a referendum. For example, during the second Nice Referendum in Ireland, the most compelling argument to ratify had nothing to do with the treaty itself and everything to do with the fact that Ireland would block the treaty by voting 'no'. In a Europe-wide referendum, held on the same day in member states, arguments could centre on the merits or otherwise of the constitution and not on the political consequences of voting 'yes' or 'no'. Member states which have at present no constitutional provision for holding a referendum would need to immediately introduce appropriate measures to enable such a possibility. If this is not achievable at least consultative referenda should be held. They would undoubtedly carry enormous political weight.

Method

As Europe consists of citizens and member states, the fairest and most democratic means of consulting the people would be by a referendum based on a dual majority, i.e., a majority of citizens and a majority of states would be necessary to secure ratification. If in any member state the proposed constitution is rejected in the referendum, the state in question can – in accordance with the relevant provisions of international and European law – use one of the following options. It could – after negotiating special status – hold a second referendum. It could try to regulate its relationship to the new “constitutional” European Union by a bilateral treaty; or it could choose to leave the European Union. It is therefore necessary to include a secession clause in the new Constitution. So we avoid two extremes: no country can be forced under the new constitution against the will of its citizens and on the other side one country alone can not block the whole constitutional process by its veto.

In any EU Referendum Campaign, it is vital that the electorate is properly informed about the issues. That is why we propose a referendum information leaflet to all households listing the arguments ‘for’ and ‘against’. An elected Referendum Commission which would be responsible for ensuring a fair and balanced dissemination of information to the public could be an additional instrument.

In the White Paper on “Good Governance” recently published by the EU Commission, it is stated that the institutions of the EU have to become more transparent and more open to participation by the citizens. If the Convention fails to make such a recommendation to the Intergovernmental Conference a real opportunity to democratise the European Union and empower the European citizens will have been missed.

¹ De Gaulle, Charles (1970). “Discours et messages. Dans l’attente. Février 146 – Avril 1958. Paris: Plon, Vol II. P.309.

² Spinelli, Altiero: “Una strategia per gli stati uniti d’Europa”. Bologna: Società editrice il Mulino.