

POSITION PAPER NO. 15

FOR A EUROPEAN CITIZEN CONVENTION

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I. Preliminary Remark

This position paper is a continuation of an earlier position paper entitled “European Citizens’ Convention”, published 6 December 2012. It outlines a roadmap for creating an EU Constitution. Proposals regarding the content of an EU Constitution are contained in a position paper published as “Rethinking and Reshaping Europe. Proposals for a Refounding of the EU” on 22 June 2016.

The EU is mired in crisis, disoriented by Britain’s decision to leave the Union and the increasing scepticism towards Brussels and Germany’s dominating influence. Even though the election of Macron as President of France has given new momentum to the debate on the future of the EU, it has not given this debate a more precise direction. Proposals for a European constitution have triggered lively discussions. At the same time, however, the majority of EU citizens continues to oppose deeper integration towards a European nation-state.¹ In early 2017, EU Commission President Jean-Claude Juncker outlined five possible scenarios, which he then laid out in detail in September that year.

II. The Path Determines the Goal

In this context, it is worth turning to Armin Steuernagel’s ideas, for instance.² His primary concern is not what Europe’s future constitution should look like. He is much more interested in defining a path to help us draft a constitution that is backed by as many Europeans as possible. His central thesis: On the way to drawing up this new European Constitution, it is not only its content that matters. Its acceptance will also hinge on the degree to which the EU and its member states succeed in involving their citizens from start to finish. The citizens have to be convinced that it is “their” constitution – Steuernagel calls this “Emotional Ownership”.

This is not just a question of acceptance - in other words, of avoiding the kind of situation that emerged in the wake of the last EU Constitutional Convention, when the Constitution was rejected in referendums in both France and the Netherlands. Rather, he believes that involving Europe’s citizens will help forge an entirely different kind of constitution. The last Constitutional Convention in 2002-2003 largely lacked any form of citizen participation. It was not even clear that it should be put to the vote. In its final form, this Constitution comprised 448 articles, and it was not intended to be understood and read by its voters, i.e., by ordinary people. The Convention’s main aim was to draft a constitution that would be approved by the European Council, i.e., the national governments, and then adopted by the parliaments, rather than a constitution that would be read by the citizens and adopted by way of a referendum.

¹ Thomas Raines, Matthew Goodwin and David Cutts: The Future of Europe: Comparing Public and Elite Attitudes. Chatham House, June 2017.

² Armin Steuernagel: Emotional Ownership (Citizens Emotional Constitution Making Process) - Lessons from Philadelphia, Reykjavik, Mexico City and Zurich. April 2017.

Hence, it came as a complete surprise in the end that nine EU states decided to hold a referendum and when the referendums in France and the Netherlands failed, the governments simply adopted the Treaty of Lisbon not as a constitution, but as an international treaty, even though they hardly differed in content. The governments ignored their citizens' vote.

This begs the question: Based on these experiences, what could be done differently? How can we develop a constitution through a process that involves citizens from the very beginning and ensures it will also be approved in referendums in the end? We believe such a constitutional process would have to meet three criteria:

- **Representativity** – To this end, the Constitutional Convention – the Citizens' Convention – must be elected directly and must adequately represent the citizens of the EU, the regions and today's nation-states.
- **Citizen participation** – This is the only way to guarantee emotional ownership, the only way to ensure that the Constitutional Convention evolves into a Citizens' Convention, and the only way to create a constitution forged by Europeans and a European Union that is embraced by as many citizens as possible as their European Union.
- **Democratic legitimacy** – The constitution must be ratified not by parliaments, but by way of a referendum.

Article 48 of the Lisbon Treaty already contains an obligation to hold a convention in the event of general treaty amendments. Mehr Demokratie e.V., therefore, believes that the adoption of measures to save the Euro without a convention was a breach of European law. However, this cannot be brought before the European Court of Justice, as European Law does not accommodate constitutional complaints. In any case, Article 48 only provides an initial point of intervention. Ultimately, a convention would have to be made more democratic in essential respects than Article 48 stipulates. The crucial question, therefore, is: Can we overcome these stipulations?

III. The Citizens' Convention and Democratic Legitimacy

Today, Europe is primarily a union of governments that are reluctant to give up their respective powers. Revising the EU Treaties will, therefore, require significant efforts to politically mobilise citizens, civil society, political parties and parliaments and launch a broad political debate that encourages citizen participation.

These mobilisation efforts should be focused on calling for a directly elected representative constitutional convention – convened by the citizens of the EU – i.e., a Citizens' Convention. A directly elected convention is most likely to have the strength to overcome concerns and blockages and forge a genuinely European constitution. The result must then be presented to the sovereign, i.e., the citizens, by way of a Europe-wide vote.

a) Convening

The preparations for convening the Citizens' Convention should already be flanked by public debate. This debate should be prepared by large forums bringing together NGOs, trade unions and associations in all EU countries with the aim of discussing the project with broad participation of civil society. The process should then be launched by way of a Europe-wide referendum in all EU states on the convening of the Convention. This popular decision should address the convening of the European Citizens' Convention and lay down a set of rules to reassure citizens that the entire process will lie in their hands from start to finish.

b) Openness to results and respect for the sovereignty of nations

In order to avoid the impression that the Brussels administration or the large EU states are imposing a constitution on the people, the resolution for convocation must contain three principles:

- From the outset, it must be clear that the process is open to outcome. For example, the referendum on convening the constitutional convention in Zurich in 1999 provided that if the constitution was rejected, the convention could be extended, so that citizens would not be confronted with an all-or-nothing decision.
- Similarly, the result itself should be open to outcome. It might well be the case that the convention presents a constitution for a unified Europe. However, it is also conceivable that the final result will be a multi-speed Europe of regions, with each member state's population opting for the level of integration that it considers appropriate.
- No nation is forced to accept a constitution that it does not agree to by a majority vote. That is why the constitutional process will include a final referendum in each EU member state.

c) The composition of the Citizens' Convention

The Citizens' Convention should consist of two halves that should be elected separately and are able to meet either together or separately. One half, the Citizens' Chamber, should be elected by proportional representation. Seats shall be allocated according to European lists. However, the electoral process should ensure that elections are conducted by constituency, so that each state forms at least one constituency and is able to elect at least one member. A body representing the nation-states constitutes the other half of the convention. Here, all states should be represented by an equal number of members, who are directly elected.

In addition, regulation is needed for those states that are currently accession candidates. These states would also be allowed to send delegates. They would, however, act solely as observers and advisers, as was the case at the 2002/2003 Constitutional Convention.

d) The Draft Constitution

Once the consultation process has been concluded, the draft Constitution is adopted. It must secure a majority in both chambers of the Citizens' Convention. However, since the next step is a referendum in all states, there

is substantial pressure on the Convention to give the Constitution a form that will secure a majority in all states. Close votes over controversial issues would only add to the challenge.

The final draft Constitution may also include variations of passages that remain subject to debate, which will then also be voted on during the vote on the Constitution. Alternatives supported by a third of the Convention's members must be put to the vote.

The final draft Constitution may also contain optional provisions to make possible a Europe with different levels of integration. If these provisions are included in the Constitution, each member state can then decide individually whether it chooses to adopt these optional regulations now, later, or not at all.

e) Ratification

The Constitution should be ratified (i.e., by way of a referendum) by the citizens of all nationstates, not by governments or parliaments.

A Europe-wide referendum will be held on the draft Constitution, which should take place in all member states on the same day. Candidate countries may also participate in the vote. However, their results will not count towards the overall result but work as a referendum on whether the population approves the Constitution and EU candidacy.

Ratification of the Constitution requires the approval of a Europe-wide majority of citizens. There must also be a qualified majority across all states to adopt the Constitution. One conceivable option could be a two-thirds majority.³

When voting on alternatives, citizens should be allowed to vote for several alternatives and, if necessary, to express their preferences, as is the case in Switzerland. The decision on any one alternative does not affect the overall approval of the Constitution.

Should the referendum fail to produce the necessary double majority, the Constitution is rejected, and consultations will be reopened.

³ When the Constitution of the USA was adopted in 1787, it entered into force after ratification by referendums in nine out of thirteen states. Some of the remaining states only joined years later. Such a procedure means that states that vote against the Constitution do not have the right to veto it - which can be an essential argument for the vote. The challenge the U.S. was facing back then resembled the EU's dilemma today: in most countries, it was parliaments that had to approve the new constitution, and many local politicians were reluctant to hand over competences to a central government. For this reason and via a number of crucial votes, those in the convention pushing for a stable central government established that not the parliaments, but specially elected constitutional conventions - i.e. essentially, the citizens themselves - should vote on the new constitution, and that it should come into force if it was adopted by at least 9 out of 13 states.

If a double majority is secured, the Constitution shall enter into force in all countries in which a majority has voted in favour of this Constitution. The countries in which the referendum failed to produce a majority shall then hold a second referendum to decide whether they want to join this new EU or establish other contractual relations with the EU.

IV. The Citizens' Convention - Functioning and Citizen participation

The elected Convention is given the mandate to draft an EU Constitution. In this context, it is essential to place trust in the citizens right from the start. The Convention can only succeed as a Convention of the citizens of Europe. Any distrust vis-à-vis citizens and citizen participation would in turn trigger distrust among citizens vis-à-vis politics, and would thus undermine the process.

a) Autonomy

All further rules for the work should be decided by the convention itself in public session. The mere fact that in the end the results will be voted on in all member states will lead to the drafting of a constitution that is easy to understand and puts citizens first, to work on the basis of consensus, and to actively organise and encourage citizen participation. This focus on putting citizens first could, under favourable conditions, also be organised as a learning process between the Convention, civil society and citizens. Extending administrative autonomy can facilitate and promote this learning process.

b) No time pressure

In order to promote active citizen participation, the functioning of the convention must not be subject to time pressure. Decisions may only be made after hearing all points of view. In the case of Zurich and its successful constitutional revision, for instance, the convention was given five years – from 1999 to 2005 – to draft a revised constitution.

c) Transparency

The Convention's work should be made as transparent as possible by making full use of digital media. The plenary of the Convention should always meet publicly, and the working groups should meet at least predominantly in public. These public sessions should be broadcast live across all participating states and in all official EU languages, both by public service broadcasters and on the Internet. Drafts, working papers and interim results should be available online. Suggestions and petitions coming from by the population by way of the participation process should also be published online, as should the Convention's reviews and responses.

d) Citizen participation

During the entire consultation period, suggestions coming from the population should be reviewed and considered for debate.

Steuernagel envisions active participation as a cyclical process: Phases of internal consultation would be followed by phases in which the submitted proposals or drafts are opened up to debate. They would then be re-examined and, if necessary, integrated and subjected to renewed consultation. All in all, this would result in a cyclical process of consultations and responsive feedback.

Communication should be facilitated at different levels using various channels. The following examples, which vary in the degree of participation they allow, are mainly based on experiences in Mexico City and Zurich:

- Citizens can comment on submitted drafts online – **Online Editing**⁴
- **Online surveys, telephone interviews and street surveys** conducted on a regular basis to assess citizens' opinions on the functioning of the Convention and the Constitution's content. Participants provide their email address and receive feedback. 45,000 interviews were conducted during the consultations for the Mexico City Constitution.
- **Public conventions** in all states or regions – possibly including citizen participation forums with working groups to formulate statements.
- **Written statements** from individuals and civil society groups, professional associations, NGOs and other organisations
- **Official hearings** of professional associations, NGOs and lobby groups in the Convention
- An **internet platform (online petition tool) to submit amendments** which can be searched by keyword and supported by others.
 - At 10,000 supporters, petitions are published separately. The Convention will produce a response which will be emailed to all supporters.
 - At 100,000 supporters, initiators will have the opportunity to present their proposal to a Convention Committee.
- **Citizens' alternative:** At 1 million supporters, the petition will be debated by the Convention, and its initiators will be invited to present their ideas.⁵ If the proposal is not adopted or the Convention and the initiators reach a compromise, the proposal will be put to the vote as an alternative in the referendum
- Establishing **representative citizen forums** with participants drawn by lots in a representative way, which develop statements, opinions and other forms of input.
- These statements could be forwarded to a **European Citizens' Forum**⁶ with citizen participants drawn by lots, too, which could produce suggestions containing amendments to the draft Constitution. If these suggestions are not adopted, or the Convention and the Forum fail to reach a compromise, its suggestions

⁴ Due to a lack of feedback, this procedure failed in Mexico City.

⁵ In Mexico City (9 million inhabitants), signatories of any proposal that won 5,000 or more signatures received a detailed analysis of the proposal. At 10,000 signatures, the petitioner was invited to present his proposal to 3 members of the drafting group. At 50,000 signatures (4 petitions), petitioners were invited to present their proposals to the mayor.

⁶ The successful constitutional reform in Ireland in 2015, where most of the Convention's members were not elected, but randomly drawn, is a positive example of such an assembly. Even though we are not suggesting this here, we believe that a randomly composed citizens' forum that has the mandate to review proposed amendments is a useful instrument.

will be included as alternative proposals in the referendum. The members of the Forum would have to be reimbursed for costs and expenses.

All participation processes should ensure that participating citizens receive a written response and, ultimately, appropriate feedback regarding the consideration of their proposal.

V. Results and impacts

The open nature of the process we are proposing here makes it impossible to predict individual results. However, we would not be promoting it if we were not convinced that the active participation of thousands, and hopefully, hundreds of thousands of citizens could spark some higher reason, that is to say, that its outcome might surpass those produced by experts or technocrats.

There are good reasons to believe in this. Experience teaches us that the prospect of a referendum and extensive citizen participation hardly inspire lame compromises but lead to outcomes that are often more courageous and more responsible than what professional politicians dare to formulate. Take Switzerland, for instance, where referendums so frequently determine the country's course and have paved the way for surprising decisions: whether it is shifting freight from road to rail, introducing a basic pension for all, funded mainly by the rich, or becoming the first country to enshrine animal welfare in its constitution. In Germany, such decisions would be met with massive opposition and fierce criticism – ignoring the fact that large majorities of the population that would welcome them. Despite being unable to predict the results of the process, we would nevertheless like to list a few points which we believe would help us secure majorities and win over sympathies in the context of such discourse:

a) Democracy

We are convinced that the desire for more democracy will play a significant role. Democracy, though, is about more than elections and their resulting coalitions.

Democracy requires robust instruments to ensure citizen involvement not only during but also in between elections. It also requires decentralisation of decision-making processes by way of strengthening local and regional authorities and thus, local democracy, as well as consensus building, genuine equal opportunities, and much more.

Such a constitution will indeed contain provisions for a fully-developed parliament mandated with a full range of rights (full rights of initiative and control and budgetary sovereignty), facilitate and promote citizen participation and direct democracy, and promote consensus building on controversial issues. We, therefore, believe that the ultimate outcome of a citizens' convention will not be a central state resembling France or the U.S., but a decentralised consensus democracy similar to Switzerland.

b) Comprehensible language

We are convinced that a citizens' convention will forge a constitution that will be understood not only by legal experts but by the majority of people in the EU. Enhanced citizen participation will also produce a constitution that is clearer, easier to read, well-structured and as concise as possible.

c) Possible contents of an EU Constitution

The contents of an EU constitution or new EU treaties will, of course, be decided autonomously by the Citizens' Convention. However, our experience of direct democracy tells us there is every reason to believe that a Citizens' Convention will safeguard that key issues, including social justice, nature conservation, anti-corruption and other public welfare issues, are adequately considered in the constitution – even if strong economic lobbies can be expected to oppose this.

VI. Conclusion

- With yesterday's ideas and concepts, there will be no way of overcoming the crisis and no way of building an EU of the future. Some issues call for close international cooperation, such as human rights, peace, financial market regulation, minimum social and environmental standards, and transport. Policies in the remaining fields do not necessarily have to be shaped in unison but can be, if the citizens so wish.
- What is certain is that the structure of today's nation-states cannot directly be projected onto the EU. We have to acknowledge that the European public sphere is limited, if it exists at all, and that there are no "European people", hardly any European media, no vibrant European parties and that European civil society is underdeveloped. Adding to this are the challenges caused by linguistic diversity.
- What is really damaging to democracy, however, is the current practice of transferring more and more competences from the nation-states to the EU, which still lacks full legitimacy. This makes controlling power even more difficult, increases the influence wielded by lobbyists, and allows the executive to cement its dominance. In addition, large, centralised state structures typically face a further challenge: Centralist solutions are hardly ever able to accommodate the heterogeneity and diversity of social conditions and realities.

A democratic citizens' convention is one solution to tackling the difficult task of democratising the EU. Should a convention procedure be initiated, we must ensure that it amounts to more than just a pseudo-participatory event that ultimately only produces a constitution or new EU treaties to be ratified by parliaments. The immense potential inherent in appropriate convention procedures is obvious: By building on the wisdom and creativity of the many, by bringing out the best in citizens who are willing to take action, and by ensuring that procedures are consistently democratic, we will move forward and strengthen transnational democracy.