

Constitution and Constitutional Principles in the EU

Meaning of a constitution



- *Legal functions*
- *Social functions:*
 - *Common values*
 - *Basic principles*
 - *Human rights*
 - *State organisation*

European Constitution

Constitutional interpretation - ECJ

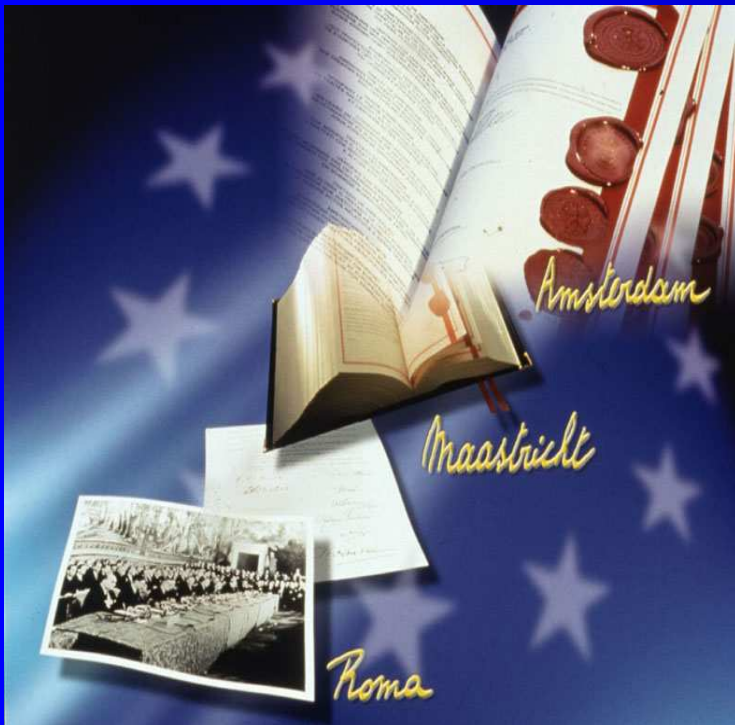
Supranational Constitution - Theory

Draft of the Convention – New Treaty of Rome?

I. The existing treaties and ECJ

- Direct effect, supremacy (Van Gend en Loos 1963, Costa v ENEL 1964)
- Constitutional interpretation (Internationale Handelsgesellschaft 1970)
- Treaties as constitution (Les Verts 1986, EEA opinion 1991)
 - In *Partie Ecologiste 'Les Verts' v. Parliament*, Case 294/83 [1986], the Court affirmed that the European Community is 'a community based on the rule of law' and, in particular, the Treaty had to be recognised as its 'basic constitutional charter' and EP can be brought to court
- Limits of 'constitutionalising' (ECHR opinion 1996)

Constitutional character of the Treaties



- At the top of EC-law hierarchy (Foto Frost 1987)
- Powers of EU (Roquette v Council 1980, Factortame 1990)
- Constitutional rules (TEC Art. 43-49 TEU Art. 1, 6-7)
- Material elements

Citizenship of the Union

- Freedom to move
- The right to vote and stand (local + EP level)
- Diplomatic protection
- The right of petition + appeal to Ombudsman



Counter-arguments

- Originally international treaties
- Amendment if all Member States agree (no separate 'constitution making' power)
- Subject: economic integration
- No competence-competence

II. Real constitution for the EU?

Functions and characteristics:

- Treaty-like
- Complementary
- Integrative and strategic
- Incorporative
- Federative

Problems:

- European identity
- Sovereignty of Member States

III. Constitution making Preliminaries

- Ceremonial Declaration about the EU 1983
- Spinelli suggestion 1984
- Adonnino report 1985
- EP Declaration on basic rights and freedoms 1989
- Hermann report on Constitution of the EU and the draft Constitution by EP 1994

European Convention



- December 2001 Laeken Declaration

Mandate:

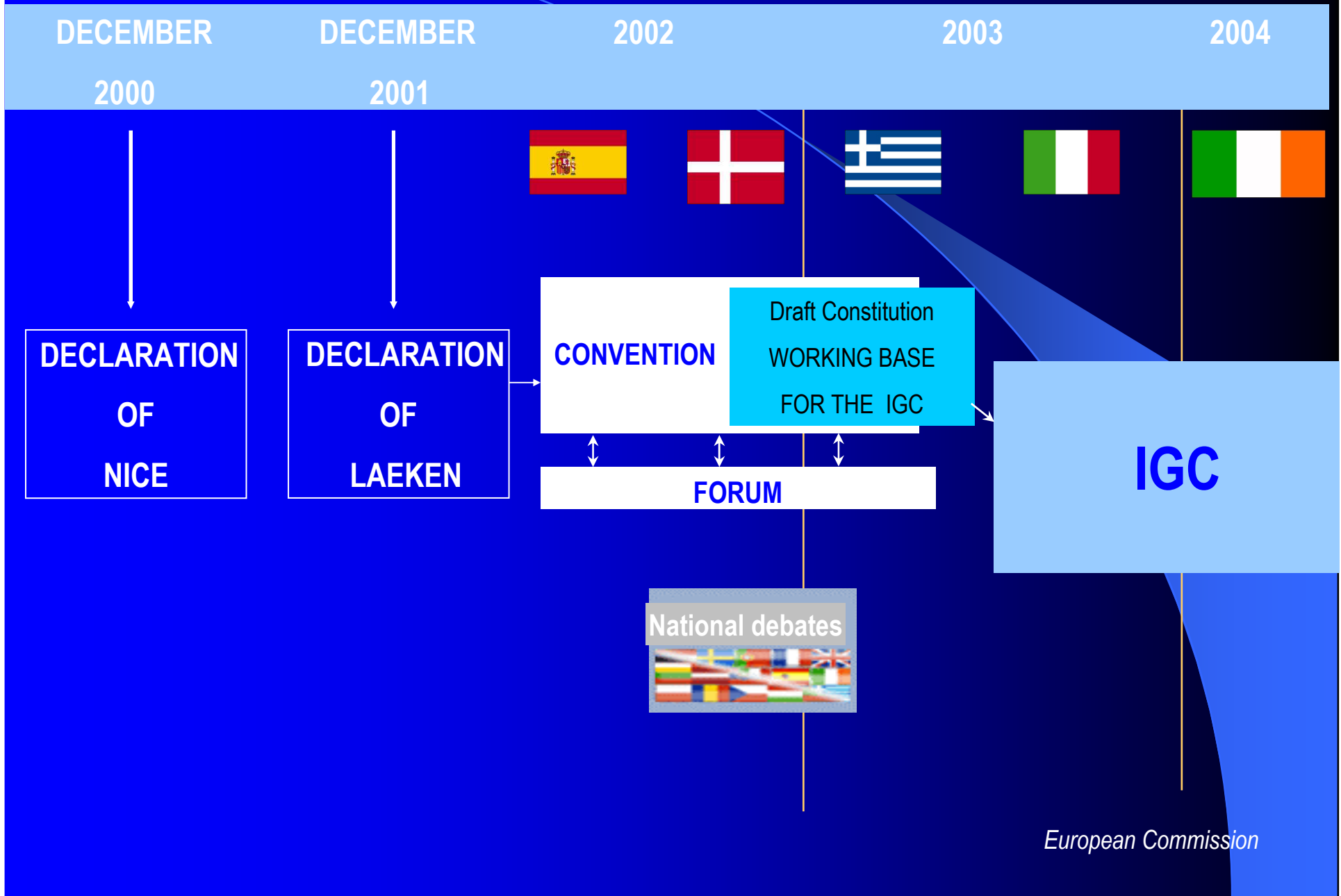
- Revising competencies
- Simplification of legal means
- Democracy, transparency, efficiency
- Constitution of European citizens

Organisation

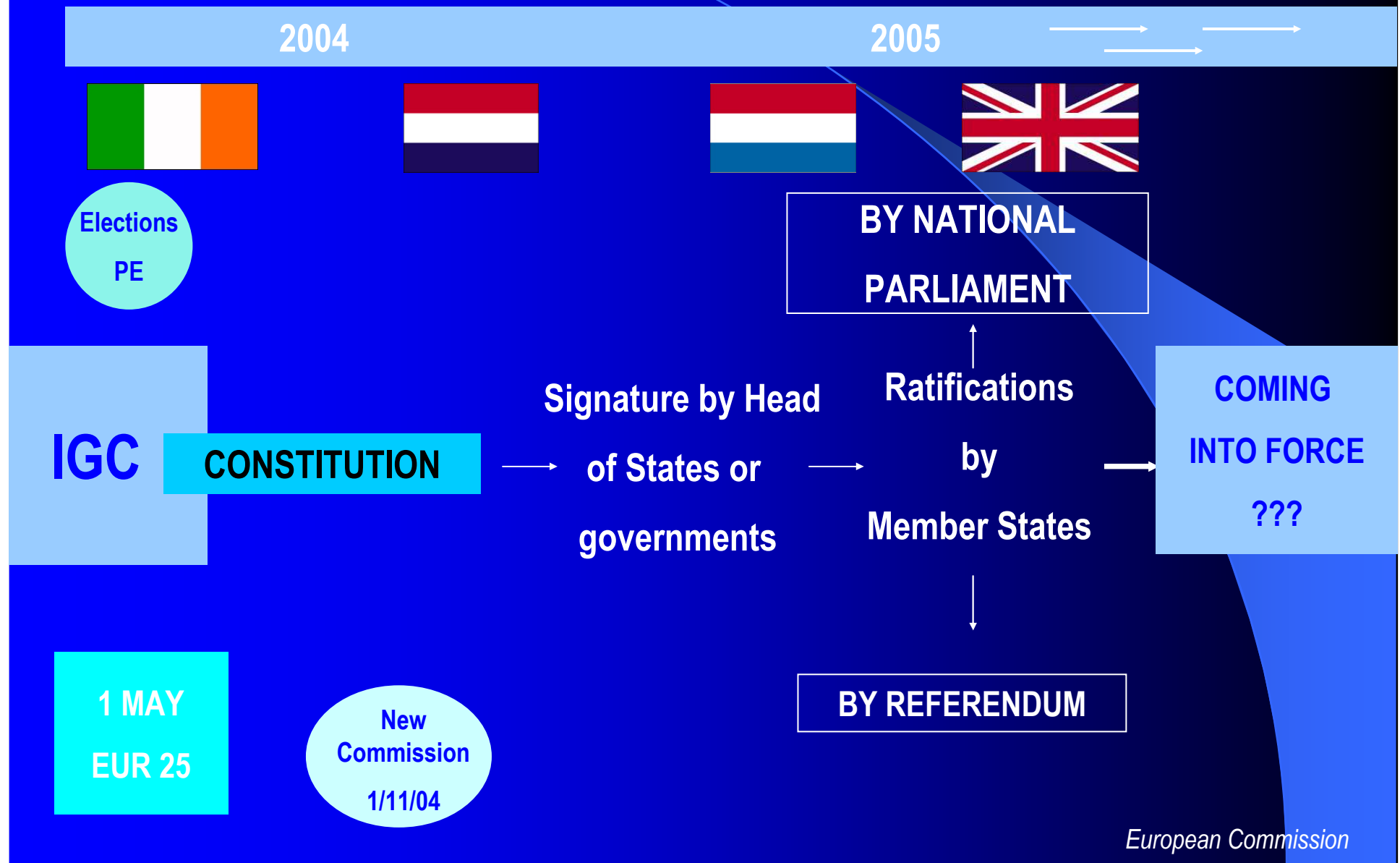
- Plenary session
- Gaps
 - Political
 - National
 - Functional
- Presidium
- Working Groups



FROM THE CONVENTION TO THE CONSTITUTION



FROM THE ADOPTION OF THE CONSTITUTION TO ITS ENTRY INTO FORCE





A Constitution
for Europe

How to assess the results of the Constitution ?

- ***Simplification***
- ***Democracy***
- ***Transparency***
- ***Effectiveness***
- ***Legitimacy***



A Constitution for Europe

- **ONE TREATY**
- **A LEGAL PERSONALITY FOR THE EUROPEAN UNION**
- **GENERALISATION OF THE LEGISLATIVE PROCEDURE**
- **A REDUCED NUMBER OF LEGISLATIVE INSTRUMENTS**
- **CLARIFICATION OF COMPETENCES**



A Constitution for Europe

- **THE CHARTER OF FUNDAMENTAL RIGHTS**
- **PUBLIC MEETINGS OF THE COUNCIL/LEGISLATOR**
- **ENHANCED ROLE FOR THE NATIONAL PARLIAMENTS**
(Monitoring of the principle of subsidiarity)
- **TAKING ACCOUNT OF CIVIL SOCIETY**



A Constitution for Europe

- **A BALANCED INSTITUTIONAL SYSTEM**
 - **A LIMIT ON THE RIGHT OF VETO**
- **PROGRESS IN THE AREA OF FREEDOM, SECURITY AND JUSTICE**
 - **A HIGHER PROFILE FOR THE EU**
(One Foreign Affairs Minister)