

EU CONSTITUTION AND HUMAN RIGHTS

The Treaty establishing a Constitution for Europe was signed in Rome on 29 October 2004. Its entry into force requires ratification by all Member States, a process which is now underway across the EU.

Does AI believe that the Constitution is good for human rights?

Yes, because the Constitution takes a number of steps forward in placing human rights at the heart of the EU:

- by explicitly recognising the rights listed in the EU Charter of Fundamental Rights. By incorporating the Charter into the Constitution, it will, if the Constitution is ratified, become legally binding on EU Member States when implementing EU law.
- by the accession of the EU to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Accession to the ECHR will serve to fill gaps in accountability on human rights.
- by making clear that the rights in the ECHR and in Member States' common constitutional traditions are general principles of human rights in EU law.
- By enhancing democratic and judicial controls over the common asylum and immigration policies.
- By explicitly promoting the right to non-discrimination which opens the door for greater protection of minorities.

Does the Constitution create new rights?

Not exactly. Part II of the Constitution is designed to codify the existing rights that EU Member States have signed up to in the ECHR independently from the EU and incorporates the EU Charter of Fundamental Rights. The Constitution does, however, introduce rights in a clear and binding way that were not included explicitly in the ECHR. As such, it reflects the development of the concept of human rights and, in particular, of economic, social and cultural rights, a welcome and significant inclusion in the Constitution.

Are these enough?

No. There are limitations:

- The Charter will only apply to EU law or to Member States' interpretation and implementation of that law. In other words, it does not bind Member States when acting autonomously. Despite this, the fact that the Charter will be legally binding under the Constitution is an important step forward for the observance of human rights in the EU. However, the test of the importance of the Charter in the Constitution from a legal perspective will be when it comes to be interpreted by the European Court of Justice.
- A distinction has been made in the Constitution between 'rights' and 'principles': while 'rights' will be enforceable within the scope of EU competence including the impact of legislation or failure to legislate on the enjoyment of those rights, 'principles' may only be considered by a court for the purposes of interpreting legislation or ruling on its legality.
- AI is concerned that some provisions of the Constitution may be misused e.g. the idea of "partnership with third countries" which is foreseen under the provisions on the external dimension of the common asylum policy. This could be used to shift the burden of refugees to countries located at the external border of the EU where protection is lower.
- AI deplores that while the Constitution introduces enhanced democratic and judicial controls in some areas – i.e. the EU's common asylum and immigration policies - these controls will not apply to police and judicial co-operation.

Has AI made any contribution to the drafting process?

Yes. AI pushed for specific human rights provisions such as incorporation of the Charter of Fundamental Rights and the Union's accession to the ECHR. The EU Office of AI has been an active participant in a collective civil society effort to provide input into the drafting of the Constitution.

Is AI for or against the Constitution?

Because of the political nature of the Constitution, Amnesty International is neither for nor against it. But in so far as the Constitution is designed to improve the functioning and effectiveness of the EU, it also affects human rights policies so AI remains very interested in the process.

What is AI's overall opinion on the human rights elements in the Constitution?

Recognition of the Charter is welcome but it is not enough to guarantee proper protection of human rights. The Constitution does not adequately address the issue of enforceability across EU territory. This requires the establishment of a mechanism of control and monitoring over the respect for human rights in the EU in order to ensure the credibility and the effectiveness of the Charter as well as the system of protection of human rights as a whole. Whether or not this will be accommodated in practice within the EU through, for example, the proposed EU Fundamental Rights Agency, or through proactive interpretation in the Courts remains to be seen.

What happens if the Constitution is not ratified by all EU Member States?

The Constitution will not come into force which would be a setback for the process towards a better implementation of human rights in the EU. Under these circumstances, some core EU countries may decide to go ahead with closer cooperation amongst themselves, leading to a 'two-speed' Europe where some countries enjoy more European integration than others. This is likely to hamper efforts towards better implementation of human rights across the whole of the European Union.