Foreword

At the meeting of the European Council on 16–17 June 2005, two weeks after the negative referendums on the Treaty establishing a Constitution for Europe, the Heads of State and Government agreed upon a period of reflection ‘to enable a broad debate to take place in each of our countries, involving citizens, civil society, social partners, national parliaments and political parties’. While some declared the Constitutional Treaty dead and others carried on with the processes leading to its ratification, the academic debate continued. As a modest contribution to this academic debate, we held a seminar on ‘the ratification of the Constitution for Europe’ at the European University Institute in Florence from January to March 2005. Edward Elgar Publishing showed interest in publishing the materials we used in the framework of this seminar to prompt discussion with post-graduate students and post-doctoral fellows in law and political science.

The present book offers a selection of these materials, including excerpts of the European Convention’s work; selected statutory and constitutional provisions of the Member States; related passages from pertinent court decisions – from both European courts as well as Member States’ constitutional courts; institutional and doctrinal analyses; and relevant excerpts from the Constitutional Treaty itself. Many of these documents directly relate to the provisions of the Constitutional Treaty, while the others, although not directly related, are nevertheless relevant to the debate surrounding it. These documents should help the reader to better understand some of the most important changes that would be introduced by the Constitutional Treaty in the EU legal and political system. They might also help to assess the need for the reforms embedded in the Constitutional Treaty as well as the quality of the formulations agreed upon at the European Council of 18 June 2004, which resulted in the Treaty signed in Rome on 29 October of the same year.

The book is divided into nine chapters. Chapters 1 and 2 are designed to have a broad overview of the ratification process as a whole and especially of the referendums which took place in four Member States in 2005. They are not meant only as documents on contemporary history but as a contribution to the reflections of lawyers, political scientists, politicians and practitioners on the procedures to be adopted for future amendment of EU treaties. Chapter 3 presents a general but not exhaustive overview of the numerous innovations introduced by the Constitutional Treaty, from mere codification to institutional

reforms. This should also be useful for the reflection on the future of the European Union, both from the perspective of the possible entry into force of the Constitutional Treaty (either in its form as of 2004 or in an amended version) and from the perspective of a prolonged pause in constitutional reform at EU level. Chapters 4 to 9 explore in more depth several dimensions of these innovations: the wording of essential EU law principles such as the principle of primacy (Chapter 4), the transformation into a legally binding instrument of the Nice Charter of Fundamental Rights (Chapter 5), the streamlining of EU competences, instruments and legal bases (Chapter 6) and a specific aspect of the institutional changes which have an impact at both EU and Member State level, namely, the role of national parliaments. The two final chapters are devoted to the two policy areas where the constitution for Europe would introduce the biggest changes as compared to the present situation, that is, in the area of freedom, security and justice (the so-called ‘third pillar’ of the EU – see Chapter 8) and, last but not least, in the field of the common foreign, security and defence policies (Chapter 9).

We have tried to present a wide variety of documents, including translations of documents which do not exist in the English language, so as to give the readers as much information as possible in order for them to make up their minds in an independent way. We also avoided cutting the documents down too much, and we have kept our introductory comments to a very short introduction, in order to allow for discussion by those who will use this book as a teaching instrument to each chapter. We hope and expect that the discussions generated by these documents will be intense and fruitful.

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